IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3193 of 2023
Anurag Gupta & Anr.
Vs.
The State of West Bengal & Anr.

For the Petitioners	: Mr. Moyukh Mukherjee, Ms. Sagnika Banerjee, Ms. Sarmistha Basak.
For the O.P. 2	: Mr. Shataroop Purkayasta, Mr. Parikshit Basu, Mr. Srinjan Ghosh, Ms. Bidisha Manna, Ms. Rajorna Mazumder.
For the State	: Mr. Sagar Saha, Mr. Sandeep Prasad Shaw.
Judgment reserved on	: 15.07.2026
Judgment delivered on	: 24.07.2026

SHAMPA DUTT (PAUL), J. :

1. The revisional application has been preferred praying for quashing of proceedings in connection with G.R. No. 09/2021 arising out of Bidhannagar (South) P. S. Case No. 1 of 2021 dated January 2, 2021 under Sections 420/406/34 of the Indian Penal Code, 1860 pending before the Learned Court of the Additional Chief Judicial Bidhannagar, Magistrate, 24 Parganas (North).

2. The petitioner's case is that the dispute/case made out in the FIR arises out of a breach of an **alleged agreement for sale for purchase of a flat wherein the opposite party no. 2 being the de facto complainant advanced a sum of money to the developer MKHS Realty LLP for purchasing a flat.** However, the proposed flat was not constructed and handed over in time as per the allegation of the de facto complainant within the time limit mentioned in the agreement in spite of receiving major part of the consideration as alleged.

3. **Even though the petitioners who were the Director's of LGW Ltd. had no role to play in such construction of flat and handing over the have been same to de facto complainant, the petitioners have been made as accused in the FIR** and Chargesheet only for the sake of harassment and to extort money.

4. It is stated that this is purely a civil dispute arising out of the breach of a contract in relation to non handing over of flat in spite of receiving the money by the developer in which the petitioners have no role to play. Such civil dispute arising out of a mere breach of an agreement for sale has been sought to be given a criminal colour by lodging FIR by the de facto complainant. In fact, the charge sheet also does not disclose any criminal offence, rather the dispute is entirely civil in nature and as such, the FIR as well the charge sheet filed subsequently is an abuse of process of law and thus the charge sheet as well as the FIR should be quashed with immediate effect by exercising the powers under Section 482/401 of the Code of Criminal Procedure, 1973.

5. The petitioners are Director's of LGW Ltd. involved in manufacturing of garments and jewellery. The company also holds substantial portion of land in various part of Kolkata as well as around Rajarhat area. **Since LGW Ltd. has substantial portion of land in various part of Kolkata, in respect of one of such land in Rajarhat, the company through its Director's being the petitioners herein entered into six development agreements, all dated 5th December, 2014 in respect of six plots of land with a developer by the name of MKHS Realty LLP, which was represented by its partners Mounthill Realty Pvt. Ltd. and Sankalp Height pvt. Ltd. for development of a project in the said land by the name of "The Pyramid" consisting of 17 towers having G+10 storied.** All the six development agreements contains similar terms and conditions. Along with the six development agreements six Powers of Attorney were also executed by the company through its Directors in favour of MKHS Realty LLP for construction of the said project. As will be evident from the clauses contained in the said powers of attorney, the entire responsibility of construction of the building, approval of building plan and permission from all necessary authorities for construction of the buildings and obtaining necessary permissions were solely responsible upon the MKHS Realty LLP, which was represented by its partners.

6. **The company being LGW Ltd. is the land owner represented the by its Director's the petitioners herein** and the petitioners have no role to play for approval of sanction plan or for construction of any part of the building or for timely construction of the project or handing over the flats constructed in the building to any prospective purchaser.

7. Subsequent to the Development Agreements and Powers of Attorney, six Allocation Agreements were also entered into on 5th December, 2014. As will be evident from the Allocation Agreements, the proposed flat in respect of which the FIR has been lodged by the de facto complainant being Flat No. J/2 in tower/Block No. 16 **was solely falling within the Developer's allocation.**

8. The written complaint on the basis of which the Police Case was started is dated 02.01.2020 wherein the complainant in the written complaint has lodged the complaint against the LGW Limited and its Directors and M/s. MKHS Realty LLP and its Directors.

9. It appears from the said written complaint that it has been categorically stated by the complainant as follows:-

> *"In the year 2015 an agreement for sale was executed by and between me along with my wife Mrs. Venu Vidastaas purchaser, MKHS Realty LLP as developer and* ***LGW Limited as owner."***

10. The complainant has stated in the written complaint that the petitioner/company herein is the owner of the land and not the developer and the other petitioners are its directors.

11. It further appears from the written complaint that part of the construction was made but not within the estimated period. The complainant has further stated that the developers did not have the complete sanction plan.

12. In course of hearing, written notes was filed by the petitioners along with judgments relied upon.

13. A supplementary affidavit has been filed. The State has placed a Memo of Evidence along with the case diary in the present case.

14. It appears from the said Memo of Evidence that the articles seized includes the original agreement between the petitioners herein and the company MKHS Realty LLP. The **money receipts seized show that all the receipts were issued by the MKHS Realty LLP,** who is the developer in the present case.

15. There are no money receipts seized, to show that any amount was received by the petitioner/company herein or its Directors.

16. The Investigating Agency has seized the agreements between the land owner, which is the petitioner company and its Directors and the developers. The said fact prima facie goes to show that the petitioners herein, themselves also appear to be prima facie victims in the present case.

17. The following judgments have been relied upon by the petitioner:-

(i) ***Lalita Kumari Versus Government of Uttar Pradesh & Ors. (2014) 2 SCC 1;***

(ii) ***S.W. Palanitkar Versus State of Bihar (2002) 1 SCC 241;***

(iii) ***Uma Shankar Gopalika Versus State of Bihar (2005) 10 SCC 336;***

(iv) ***Sarabjit Kaur Versus State of Punjab (2023) 5 SCC 330***

(v) ***State of Kerala Versus A. Parneed Pillai & Anr. (1972) 3 SCC 661;***

(vi) ***Dalip Kaur & Ors. Versus Jaganar Singh (2009) 14 SCC 696;***

(vii) ***Lalit Chaturvedi & Ors. Versus State of Uttar Pradesh & Anr. 2024 SCC Online SC 171;***

18. Affidavit-in-opposition has been filed by the opposite party no. 2, the complainant herein who has stated as follows:-

(a) *The Petitioner no. 1 and 2 are the Directors of LGW Limited which is a body corporate registered under the Companies Act, 1956 and* ***is the Owner of six plots*** *of landslying and situated at L.R. Khatian No. 4835 at Mouza Gopalpur, J.L. No. 02, being Holding No. RGM/5/03, BL1, Narayanpur, under Ward No. 5 of Rajarhat Gopalpur Municipality (Now Bidhannagar Municipal Corporation) Police Station Airport, District North 24 Parganas.*

(b) *M/s MKHS Realty LLP Limited Liability Partnership Firm, incorporated under the Limited Liability Partnership Act, 2008, having its office at Narayanpur, P.O. Rajarhat, Gopalpur, North 24 Parganas, West Bengal 700136, P.S Airport,* ***being a Real Estate Developer, entered into six development agreements dated 5th December 2014 with the LGW Limited (being the owner), for developing and/or constructing a housing complex over the 'said land',*** *on an advance payment of Rs 3.5 Crore in each development agreements (totalling to Rs 21 Crores in the said 6 numbers of development agreement) to the said LGW Limited and on further terms and conditions as contained therein.*

(c) *The said LGW Limited (the owners) had also entered into 6(six) numbers of Joint-Development Power of Attorney with MKHS Realty LLP in respect to the 6(six) plots of lands as mentioned above.*

(d) *The said LGW Limited* ***(the owners)*** *and MKHS Realty LLP* ***(the developers)*** *in pursuance to the said 6(six) numbers of development agreement had entered into 6(six) numbers of "owners allocation" and "developers allocation" supplementary agreement, wherein the owners and the developers had distributed and/or allocated amongst themselves flats in the said project named, "The Pyramid" having G+10 storied building in 17 Towers/Block."*

19. It appears from the further statements made by the opposite party no. 2 in the affidavit-in-opposition from paragraph 4(e) onwards that the complainant in the present case. He has developed his case from as stated in the initial written complaint. The opposite party no. 2 has very cleverly concealed his affidavit-in-opposition that the agreement for sale entered into by the opposite party no. 2 in respect of the flat sought to be purchased was with MKHS Realty LLP.

20. It appears that the grievance of the complainant was regarding delay in making constructions and handing over the property in due time as per agreement. The further grievance was that there was no sanction plan for above five stories.

21. It is expected that a prudent person prior to entering into an agreement shall be prima facie satisfied with the documents required for such investment. A sanction plan is a document which is available to a developer at the initial stage and is available for inspection, which in this case it appears that the complainant was not diligent enough to look into.

22. The opposite party no. 2 has further gone into the allegation about the amount received by the petitioner as owners of the land, from MKHS Realty LLP (Developers) which actually does not concern the **opposite party no. 2, who has an agreement only with MKHS Realty LLP, the developers.**

23. The Supreme Court in ***Rikhab Birani & Anr. Vs State of Uttar Pradesh & Anr., 2025 SCC OnLine SC 823, decided on 16.04.2025,*** held:-

> ***"15.*** *In Lalit Chaturvedi v. State of Uttar Pradesh, this Court quoted an earlier decision in Mohammed Ibrahim v. State of Bihar, wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:*
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> *"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:*
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> *(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*
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> *(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and*
>
> *(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property."*

16. *Reference was also made to the decision in V.Y. Jose v. State of Gujarat and it was observed:*

"7. Similar elucidation by this Court in "V.Y. Jose v. State of Gujarat", explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr. P.C. Section 482 of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in "Hira Lal Hari Lal Bhagwati v. CBI", "Indian Oil Corporation v. NEPC India Ltd.", "Vir Prakash Sharma v. Anil Kumar Agarwal" and "All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain"."

17. *This Court, in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, highlighted the fine distinction between the offences of criminal breach of trust and cheating, observing that the two are antithetical in nature and cannot coexist simultaneously. Police officers and courts must carefully apply their minds to determine whether the allegations genuinely constitute the specific offence alleged.*

18. *In Kunti v. State of Uttar Pradesh, this Court referred to Sarabjit Kaur v. State of Punjab wherein it was observed that a breach of* *contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.*

19. *It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature. The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure. Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.*

20. *In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh, this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in Thermax Limited v. K.M. Johny, which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate* *should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.*

21. *Lastly, we would refer to another detailed judgment of this Court in Sharif Ahmed v. State of Uttar Pradesh, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:*

"36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out *or established at the time when the agreement was entered.*

38. An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially : to compel or deter by or as if by threats. The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in Manik Taneja v. State of Karnataka, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threating another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct."

***22.** Significantly, this Court in Sharif Ahmed (supra) cautioned courts to check such attempts of making out a criminal case on the basis of vague and ex facie false assertions."*

24. In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). .... of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022),*** the Supreme Court held:-

> *"**15.** This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another**, **(2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*
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> *"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*
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> *23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*
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> *'7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice*

require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in* ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** *as under :*

*"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they

are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

> ***17.*** *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in* ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315****."*

25. The present case falls under category 1, 3 and 7 of Para 102 of ***Bhajan Lal (Supra).***

26. It appears that the dispute in the present case is regarding an investment made by the complainant with the developer and the petitioners had no role to play other than being the owner of the land, which was handed over to the developer by way of agreements.

27. **The dispute is thus clearly a civil dispute** and that too in the present case not with/against the petitioners herein.

28. The materials on record, do not prima facie show presence of the ingredients required to constitute the offences alleged against the petitioners herein and as such the proceeding in this case are liable to be quashed in the interest of Justice and to prevent an abuse of the process of law.

29. **CRR 3193 of 2023 is thus allowed.**

30. The proceeding in connection with G.R. No. 09/2021 arising out of Bidhannagar (South) P. S. Case No. 1 of 2021 dated January 2, 2021 under Sections 420/406/34 of the Indian Penal Code, 1860 pending before the Learned Court of the Additional Chief Judicial Bidhannagar, Magistrate, 24

Parganas (North), **is hereby quashed in respect of the petitioners namely Anurag Gupta and Sanjay Kumar Gupta.**

31. All connected Applications, if any, stand disposed of.

32. Interim order, if any, stands vacated.

33. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

34. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]