

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 22-7-2019

Delivered on 24-7-2019

CRMP No. 1419 of 2019

1. Abhishek Singh S/o Dr. Raman Singh Aged About 38 Years Ex Member Of Parliament, R/o Maulshree Vihar, Vip Road, District- Raipur, Chhattisgarh
2. Madhusudan Yadav S/o Late Durga Prasad Yadav Aged About 49 Years Ex Member Of Parliament, Ward No. 5, Sheetalapara, Motipur, District- Rajnandgaon, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through Superintendent of Police, District- Ambikapur- Surguja, Chhattisgarh
2. Prem Sagar Gupta son of Dwarika Prasad Gupta, aged about 67 years, R/o. Deviganj Road, in front of Kailash STD, PS Ambikapur Distt. Ambikapur (Surguja) (CG) Gyandas S/o Basant Das Aged About 30 Years R/o Sumerpur, Post- Raghunathpur, Police Station- Lundra, Tahsil- Lundra, District- Ambikapur- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
3. Station House Officer Police Station- Ambikapur, Tehsil Ambikapur, Distt. Ambikapur (Surguja) (CG)

---- Respondents

For petitioners	Shri Surendra Singh, Sr. Adv. With Shri Vivek Sharma, Adv.
For Respondent No. 1 and 3	Shri Satish Chandra Verma, Adv. General with Shri Ghanshyam Patel, Govt. Adv.
Respondent No. 2	Shri Devershi Thakur, Adv. and Shri Anchal Kumar Matre, Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV Order**

1. By this order, I.A. No. 1/2019, application for interim relief is being disposed of.
2. Respondent No. 2 filed an application under Section 156(3) of the Code of Criminal Procedure (hereafter called as Cr.P.C.) before the Special Judge, under the Chhattisgarh Protection of Depositors Interest Act, 2005 (in short 'Act of 2005'), Ambikapur Distt. Surguja against petitioners and some other proposed accused alleging that Anmol India

Company had main office at Thane and branch offices were in maximum districts of Chhattisgarh. The Directors, and members of core committee and petitioners who were the star campaigner of the said company campaigned and made propaganda for the company before the general public that said company belongs to petitioner No. 1 and investment in said company is safe. Relying upon said campaigning and propaganda R-2 who is labour invested Rs. 98,876/- in said company, said company gave him forged bond and internal cheques. Thereafter the said company did not return due amount to him and closed its office and office bearers absconded. R-2 filed written complaint to police officials but they did not take any action.

3. The Special Judge finds that there is a necessity of investigation for the offences punishable under Section 10 of the Act of 2005, Section 3, 4 and 6 of the Prize Chits and Money Circulation Scheme (Banking) Act, 1978 (for short 'Act of 1978'), Section 3 and 4 of the Prevention of Money Laundering Act, 2002 (in short 'Act of 2002'), Section 420, 406, 467, 468, 471, 120-B, 384 of the Indian Penal Code (for short 'IPC'), which are the cognizable offences. The Special Judge allowed said application and directed the SHO Lundra to investigate the matter and submit final report.

4. In brief the petitioners' case is that a bare perusal of said application reveals that no case is made out against the petitioners. The Special Judge has not examined this aspect that the provisions of section 154(1) and 154(3) of Cr.P.C. are not complied with. The Special Judge did not call the report from concerned police station. Impugned order has been passed without proper application of mind. Thus, the effect and operation, and further proceedings in pursuance of impugned

order of the Special Judge dated 30-5-2019 may be stayed, and the police be restrained from taking any coercive action against the petitioners in pursuance of the crime in question.

5. In brief case of the respondents is that the original application is premature, Special Judge exercised its discretion properly, prima facie case is made out against the petitioners. Special Judge has not taken the cognizance of any offence.

6. Counsel for the petitioners argued that the alleged affidavit of R-2 does not contain the date in the foot of it, the date is 26.10.2018 while the application under Section 156 (3) Cr.P.C. has been filed on 13.11.2018 before the Special Judge, it indicates that after 13.11.2018 no affidavit was executed in support of said application, thus no prima facie case is made out against the petitioners at the face value of said application and other materials accompanying it. Petitioners neither are the director, manager nor the member of the said company. Petitioners are involved in the alleged crimes on account of political vendetta.

7. Counsel for the respondents argued that prima facie case for initiating proceedings against the petitioners is made out. The Special Judge has not committed any illegality or material irregularity or acted arbitrarily. If the affidavit was executed earlier and said application was filed later on, it does not affect the face value of said application. Some witnesses have been examined under Section 161 Cr.P.C. and some witnesses have examined under Section 164 Cr.P.C.

8. Counsel for the petitioners to buttress the argument placed reliance in **State of Haryana and others -v- Choudhary Bhajan Lal and others** reported in AIR 1992 SC 604, wherein Hon'ble Supreme Court has observed in para 108 as under:-

“108. 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.”

9. Counsel for the petitioners further placed reliance in **Priyanka**

Srivastava and Another vs. State of Uttar Pradesh and Others

[(2015) 6 SCC 287], wherein Hon'ble Supreme Court held that

application under Section 156 (3) Cr.P.C. must be supported by an

affidavit. Purpose of filing such affidavit stated is to prevent abuse of

process which is becoming more common now a days.

10. Counsel for the petitioners placed reliance in order of this Court

passed in **Dr. Smt. Krishna Dixit vs. State of Chhattisgarh and Others (Writ Petition (Crl) No. 146 of 2016) dated 14-5-2019** which relates to guidelines for criminal court directing to lodge an FIR and conducting investigation against medical practitioners regarding medical negligence. In the case in hand petitioners are not medical practitioners and matter does not relate to medical negligence, thus petitioners do not get help from the judicial precedent laid down by coordinate bench in the matter **Dr. Smt. Krishna Dixit** (Supra).

11. The Advocate General appearing for respondents No. 1 and 3 placed reliance in **HDFC Securities Ltd. vs. State of Maharashtra** [(2017) 1 SCC 640] wherein Hon'ble Supreme Court held that it appears that the order under Section 156 (3) Cr.P.C. in that case requiring investigation by the police cannot be said to have caused an injury of irreparable nature which at this stage requires quashing of the investigation.

12. The Advocate General further relied on **Satvinder Kaur vs. State (Govt. of NCT of Delhi)** [(1999) 8 SCC 728] wherein Hon'ble Supreme Court held that if the FIR prima facie discloses the commission of an offence the Court does not normally stop the investigation for to do so would be to trench upon the lawful power of the police to investigate into cognizable offence. It is also settled by long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash an FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se it has no jurisdiction to examine the correctness or otherwise of the allegations.

13. The Advocate General further relied on **Tilly Gifford vs. Michael Floyd Eshwar** [(2018) 11 SCC 205] wherein Hon'ble Supreme Court held that time and again it has been emphasized by this Court that the power under Section 482 Cr.P.C. would not permit the High Court to go into disputed questions of facts or to appreciate the defence of the accused.

14. The Advocate General further relied on **Mona Panwar vs. High Court of Judicature of Allahabad** [(2011) 3 SCC 496] wherein Hon'ble Supreme Court held that where the judicial discretion exercised was in consonance with the scheme postulated by the Code. No materials on record to indicate that the judicial discretion exercised was either arbitrary or perverse. Another view is possible. In these circumstances High Court had no occasion to interfere with the discretion exercised judiciously in term of the provisions of the Court.

15. Counsel for respondent No. 2 placed reliance in the matter of **State of Tamilnadu vs. S. Martin and Others** [(2018) 5 SCC 718] Hon'ble Supreme Court held that the investigation in any case ought not to have been set at naught but it ought to have been permitted to be taken to its logical conclusion.

16. Counsel for respondent No. 2 placed reliance in the matter of **State of Orissa -v- Debendra Nath Padhi** [2005 (1) GLH 312 (SC)] Hon'ble Supreme Court held that at the time of framing charge defence of accused is not relevant.

17. In the matter of **R.P. Kapur -v- State of Punjab** reported in AIR 1960 SC 866, wherein in para 6, the Full Bench of Hon'ble Supreme Court has held as under :-

“The inherent power of the High Court under Section 561-A of the

Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

18. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

"(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to

secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

(8) xxx xxx xxx

(9) xxx xxx xxx

(10) xxx xxx xxx

19. In the matter of **Umesh Kumar v. State of A.P.** [(2013) 10 SCC 591], Their Lordships have held as under in para 20 :-

“20. it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial.”

20. In the matter of Harshendra Kumar D. v. Rebatilata Koley, [(2011) 3 SCC 351], Their Lordships have held in para 25 that :-

“25.It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations.”

21. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in *Gian Singh v. State of Punjab*, [(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to

quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.”

22. In the matter of **State of UP -v- Golconda Linga Swamy** [2004(6) SCC 522] Hon'ble Supreme Court held that “while exercising the power under Section 482 of Cr.P.C. the Court does not function as a Court of appeal or revision.....”

23. Under the Act of 2002 the competent agency to investigate the offence punishable under this Act is Enforcement Directorate.

24. Counsel for the petitioners drew my attention on some paragraphs of the report of SEBI. In the case in hand there is no such allegation against the petitioners that either they were directors or managers or members of said company in the said application filed by R-2. Thus, petitioners at this stage do not get any help from the report of SEBI.

25. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Satvinder Kaur** (supra), **Tilly Gifford** (supra), **Umesh Kumar** (supra), **Golconda Linga Swamy** (supra), this Court finds that at this stage, this Court cannot scrutinize the effect of not mentioning date in the affidavit and its executing date being earlier than filing of said application. Moreover, mere these facts, do not struck the face value of said application and other materials accompanying it. Thus, petitioners do not get any help at this stage from the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Priyanka Shrivastava** (supra).

26. Looking to the judicial precedents laid down by Hon'ble Supreme Court in the matters of **Debendranath Padhi** (supra), **Harshendra Kumar** (supra), this Court finds that at this stage, Court

cannot look into the defence of petitioners relating to political vendeta.

27. From the allegations made in said application and other materials accompanying it, at their face value and accepted in their entirety, prima facie it cannot be said that, no cognizable offence is made out or no case is made out against the petitioners, the allegations are so absurd and inherently improbable on the basis of which no prudent person can reach a just conclusion that there is sufficient ground for proceeding against the petitioners. Thus, aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Choudhary Bhajan Lal** (supra), **Satvinder Kaur** (supra), **S. Martin and ors** (Supra), **R.P. Kapur** (supra), are applicable against the petitioners and in favour of respondents, regarding I.A. No. 1, except investigation of offence punishable under Section 3 and 4 of the Act of 2002 by SHO Lundra,

28. In the case in hand, there is no express legal bar engrafted in any of the provisions of the Code or the concerned act to the institution and continuance of the proceedings.

29. Prima facie it does not appear that while passing the impugned order except the investigation under Act of 2002 by SHO Lundra, the Special Judge committed any illegality or material irregularity. Prima facie it does not appear that SHO Lundra did not have jurisdiction to investigate the case in hand except the offence punishable under Act of 2002. Passing order under Section 156(3) of Cr.P.C., before taking cognizance is an ancillary step to investigate the cognizable offence. Thus, judicial precedent laid down by Hon'ble Supreme Court in the matter of **Mona Panwar** (supra) is applicable against the petitioners and in favour of respondents regarding I.A. No. 1 except investigation

of offence punishable under Section 3 and 4 of the Act of 2002 by SHO Lundra,

30. In the case in hand, prima facie it does not appear that there is an abuse of process or intervention is necessary to secure ends of justice, except investigation of offence punishable under Section 3 and 4 of the Act of 2002 by SHO Lundra. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matters of **Choudhary Bhajan Lal** (supra), **R.P Kapur** (supra), **Narinder Singh** (supra), **Parbatbhai Aahir** (supra) are applicable against the petitioners and in favour of respondents relating to I.A. No. 1 except investigation of offence punishable under Section 3 and 4 of the Act of 2002 by SHO Lundra.

31. Looking to the above mentioned facts and circumstances of the case, the effect and operation and further proceedings in pursuance of impugned order only to the extent it directs investigation of offence punishable under Section 3 and 4 of the Act of 2002 by SHO Lundra is stayed until further orders. Remaining part of impugned order is not stayed.

32. I.A. No. 1 is disposed of accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge