IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.21388 OF 2021 (GM-RES)

C/W

CRIMINAL PETITION No.6690 OF 2021

WRIT PETITION No.24431 OF 2021 (GM-RES)

IN WRIT PETITION No.21388 OF 2021

BETWEEN:

SMT.ASHABEN SUBHASHBHAI SHINDE
W/O SUBHASHBHAI SHINDE
AGED ABOUT 42 YEARS,
PROPRIETOR
YASHRAJ BULLION
OFF/AT NO.2, GF PRAGATI BHAVAN
OPP. RATAN CHEMBERS,
SETH NI POLE,
RATAN POLE, AHMEDABAD,
GUJRAT – 380 001.

... PETITIONER

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE A/W
SRI MOHAMMED TAHIR, ADVOCATE)

AND:

1. STATE BY SOUTH CEN CRIME PS
SOUTH DIVISION
BENGALURU CITY
REP. BY THE STATE PUBLIC PROSECUTOR
OFFICE AT HIGH COURT COMPLEX
OPP. TO VIDAHAN SOUDA
BENGALURU – 560 001.

2. BRANCH MANAGER
AXIS BANK
LIC JEEVAN PRABHA BUILDING,
RELIEF ROAD, PATTHAR KUVA,
AHMEDABAD – 380 001.

3. GOWTHAM P.K.,
S/O KRISHNA KUMAR,
AGED ABOUT 38 YEARS,
RESIDING AT NO.28, 1ST FLOOR,
19TH CROSS, 24TH MAIN, J.P.NAGAR,
7TH PHASE, BENGALURU – 560 078.

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1
SRI VIVEK REDDY, SR.ADVOCATE A/W
SRI S.RUPESH KUMAR, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE IMPUGNED DIRECTION I.E., IMPUGNED DIRECTION OF RESPONDENT POLICE TO R-2 BANK UNDER VIDE NOTICE DTD 18.11.2021 LIEN/HOLD OF RS.16,18,914/- (RUPEES SIXTEEN LAKH EIGHTEEN THOUSAND NINE HUNDRED AND FOURTEEN ONLY/-) ACCOUNT NUMBER 920020071525908, AXIS BANK ACCOUNT HOLDER NUMBER MS. YASHRAJ BULLION, SAME AT ANNX-D IN CONNECTION OF CRIME

NO.335/2021 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 66(C), 66(D) OF THE IT ACT 2008 AND UNDER SECTION 419, 420 OF IPC.

IN CRIMINAL PETITION No.6690 OF 2021

BETWEEN:

KUNAL ANUP CHANDARANA
S/O ANUP,
AGED ABOUT 42 YEARS,
PERMANENTLY RESIDING AT NO.K-84,
ORCHID WHITE FIELD CORPORATE ROAD,
PRAHLADNAGAR, VEJALPUR,
AHMEDABAD – 380 015.

... PETITIONER

(BY DR.NARENDRA K.AMIN, ADVOCATE)

AND:

1. GOWTHAM P.K.,
   S/O KRISHNA KUMAR,
   AGED ABOUT 37 YEARS,
   RESIDING AT NO.28, 1ST FLOOR,
   19TH CROSS, 24TH MAIN, J.P.NAGAR,
   7TH PHASE, BENGALURU – 560 078.

2. STATE BY SOUTH
   CEN CRIME-POLICE STATION
   BENGALURU – 560 023
   REPRESENTED BY GOVERNMENT ADVOCATE,
   HIGH COURT OF KARNATAKA,
   BENGALURU – 560 001.

... RESPONDENTS

(BY SRI VIVEK REDDY, SR.ADVOCATE A/W
SRI S.RUPESH KUMAR, ADVOCATE FOR R1;
SMT.K.P.YASHODHA, HCGP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR FILED IN CR.NO.335/2021 REGISTERED BY THE RESPONDENT NO.2 i.e SOUTH CEN CRIME P.S., BENGALURU 560 023 BASED ON THE RESPONDENT NO.1 COMPLAINT AGAINST THE PETITIONER FOR THE OFFENCE P/U/S 66C, 66D OF I.T ACT AND R/W SEC.419, 420 OF IPC WHICH IS PENDING BEFORE I ADDL. HONBLE MAGISTRATE COURT BENGALURU CITY.

IN WRIT PETITION No.24431 OF 2021

BETWEEN:

M/S AARAV BULLION
A PROPRIETORSHIP ENTITY
ENGAGED IN BULLION TRADE,
HAVING PLACE OF BUSINESS AT
4/B KUMAR SOCIETY,
MALAV TALAV JIVARAJ PARK ROAD,
AHMEDABAD, GUJARAT 380 051,
REPRESENTED BY ITS PROPRIETOR,
SHRI SONI ASHVIN KUMAR VRAJLAL,
S/O SONI VRAJLAL.

... PETITIONER

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE FOR
DR.VANDANA P.L., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY CEN CRIME POLICE STATION,
BENGLAURU SOUTH DIVISION,
ABOVE BANASHANKARI POLICE STATION
THYAGARAJA NAGARA,
BANASHANKARI 2ND STAGE,
BENGALURU 560 070,
BY ITS STATION HOUSE OFFICER.

2. MR.GOWTHAM P.K.,
S/O KRISHNA KUMAR,
AGED ABOUT 37 YEARS,
RESIDING AT NO.25, 1ST FLOOR,
19TH CROSS, 24TH MAIN, J.P.NAGAR,
7TH PHASE, BENGALURU – 560 078.
(AMENDED AS PER ORDER DATED 04/01/2022)

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;
SRI VIVEK REDDY, SR.ADVOCATE A/W
SRI S.RUPESH KUMAR, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASHING THE IMPUGNED ORDER DATED 07.07.2021 ISSUED BY THE RESPONDENT POLICE UNDER SECTION 91 OF CRPC TO THE MANAGER, RBL BANK LIMITED, AHMEDABAD VIVA COMPLEX BRANCH, VIVA COMPLEX ELLISEBRIDGE, OPP TO PARIMAL GARDEN, AHMEDABAD – 380 006 WHEREBY ORDERING TO DEBIT FREEZE THE BANK ACCOUNT NUMBER 409825052331, BELONGING TO THE PETITIONER AND SEEKING KYC, ADDRESS, ID PROOF, STATEMENT OF ACCOUNTS, AND ALSO SEEKING TO LIEN MARK, HOLD THE AMOUNT BY PROVIDING CLOSING BALANCE WHICH IS PRODUCED AT VIDE ANNEXURE-A TO THE PETITION AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.06.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

All these petitions are an off-shoot of registration of crime in Crime No.335 of 2021 registered for offences punishable under

Sections 419 and 420 of the IPC and Sections 66C and 66D of the Information Technology Act, 2008. The petitioner in Criminal Petition No.6690 of 2021 calls in question registration of crime and investigation sought to be conducted thereupon. Petitioners in Writ Petition Nos. 21388 and 24431 of 2021 call in question the direction issued by the respondent/Police to the respective Banks in which the petitioners have their accounts, to mark lien, on certain amounts arising out of the very same crime. Since these petitions arise out of a common crime, they are taken up together and considered in this common order.

2. Heard Dr. Narendra K.Amin, learned senior counsel appearing for the petitioner in Crl.P.No.6690 of 2021; Sri M.S.Shyam Sundar, learned senior counsel appearing for the petitioners in W.P.Nos. 21388 of 2021; Sri Vivek Reddy, learned senior counsel appearing for the complainant and Smt. K.P.Yashodha, learned High Court Government Pleader for the respondent/State.

Criminal Petition No.6690 of 2021:

3. The petitioner in the subject petition calls in question the very registration of crime in Crime No.335 of 2021. 1st respondent is the complainant. It is the case of the complainant that he, one Ramesh TV and Mahendra generated certain interest to start a business in Crypto currency trading and were introduced to the petitioner, he being a dealer in Crypto currency through Ramesh TV. Ramesh TV had known the complainant for 6 years and had already been in certain business transactions with the complainant. It is, therefore, the complainant, Ramesh TV and other person come in contact with the petitioner. The petitioner appears to have assured the complainant and others that the trade in Crypto currency is good and if the amount of investment is higher the amount of returns would be even higher. Believing the words of the petitioner, the complainant makes a transfer of Rs.3.5 crores through 2 P2P account namely Dinero payment solutions and Akonto payment solution to the account of Bhumi Agro maintained at the Central Bank of India, Ahmedabad. The transaction was made on 15th May 2021. After the said transaction for two days,

the petitioner was in touch with the complainant and later, he becomes absconding and the money that the complainant had transferred had lost its track after getting into the Central Bank of India of the petitioner.

4. A complaint was initially sought to be made before the jurisdictional police at Ahmedabad on different set of facts *albeit* on a money transaction. The police therein, after investigation, filed a 'B' report. Later, the complainant registers the impugned crime alleging that the petitioner had lured the complainant and others into transfer of Rs.3.5 crores to generate it into Crypto currency deal for return of high value and had cheated the complainant, as the money lost its track as well as the petitioner. The complaint becomes a crime in Crime No.355 of 2021 for the aforesaid offences. It is the registration of crime that drives the petitioner to this Court in the subject petition. This Court by its order dated 08-09-2021 interjects the proceedings for a period of 8 weeks insofar as it concerns the petitioner and the same is in operation even as on date. Therefore, further investigation in Crime No.355 of 2021 has not gone on.

Writ Petition No.24431 of 2021:

5. The petitioner in the subject petition is a bullion trader engaged in the business of buying and selling bullion. On registration of crime in Crime No.355 of 2021, on the facts as narrated hereinabove in Criminal Petition No.6690 of 2021 the subject matter of which was transfer of Rs.3.5 crores through 2 P2P account, it generated through the account of Piyush Soni, accused No.3 who received Rs.70,000/- as commission for such transfer and accused No.4 Santaram Jeweller is said to have received its share of commission of Rs.18,000/- and also purchased 3 Kgs. of gold from Yashraj Bullion and Yashraj Bullion purchased 2 Kgs of gold from Aarav Bullion, the petitioner herein. All these transactions happened through RTGS. The petitioner is alleged to have sold and delivered gold to Yashraj Bullion and the purchases are linked to the transfer of funds of Rs.3.5 crores. Holding the link in the chain of events, a direction is issued by the respondent/Police on 8-07-2021 and 2.08.2021 directing RBL Bank, Ahmedabad Branch to mark lien of Rs.1,49,04,000/- by its communication dated 8-07-2021 and thereafter modifying the said lien by restricting it to

Rs.96,26,000/- by another communication dated 2-08-2021. The petitioner challenges the direction so issued by the Police and on both days viz., 8-07-2021 and 2-08-2021 insofar as they direct marking of lien of the said amount.

Writ Petition No.21388 of 2021:

6. This petition is filed by a proprietor of Yashraj Bullion. The facts narrated are the same as in Writ Petition No.24431 of 2021. The link in the chain of events, here as well flows from registration of the crime, in Crime No.335 of 2021. The challenge in this petition is to a notice issued to the 2nd respondent/Axis Bank, Ahmedabad Branch to mark lien for Rs.16,18,914/-.

Therefore, the criminal petition that is filed is calling in question the very registration of crime in Crime No.335 of 2021 and the two writ petitions are calling in question the offshoot of the said crime insofar as they direct marking of lien of the amount in the Bank accounts of the petitioners as mentioned hereinabove.

7. Dr.Narendra K.Amin, learned counsel representing the petitioner in Criminal Petition No.6690 of 2021 would contend with

vehemence that the entire proceedings instituted by the complainant is a repetition of what was sought to be instituted by the jurisdictional police in Ahmedabad which ended in filing of 'B' report and after the closure of the case therein, the subject crime is registered at Bangalore. Therefore, the second FIR needs to be obliterated. He would further submit that the petitioner does not even know who the complainant is and no money has come to his account. No doubt he is a trader in Crypto currency, but has not in any way induced or cheated the complainant for him to register the complaint alleging offences punishable under the IPC or the Information Technology Act, 2008 as the case would be. On these submissions, he seeks quashing of the entire proceedings.

8. The learned senior counsel Sri Vivek Reddy, on the other hand, representing the complainant/respondent would take this Court through the documents appended to the petition and other documents produced to demonstrate that the submission of the learned counsel appearing for the petitioner that he does not even know the complainant is contrary to the record, as the complainant has placed on record plethora of whatsapp chats between the

petitioner and the complainant to demonstrate transfer of funds twice to the account of the petitioner. He would contend that the matter is at the stage of investigation and there are serious disputed questions of fact, as money of Rs.3.5 crores after the complainant being induced into the business has vanished. Filing of 'B' report by the Police at Ahmedabad was on a different set of facts and has no bearing on the case at hand and on that score itself the complaint cannot be quashed.

9. Sri M.S.Shyam Sundar, learned senior counsel representing the petitioner in Writ Petition No.24431 of 2021 would contend that petitioner is a trader in bullion, buys and sells bullion and in the same way he has brought and sold certain bullion. Proceeds for purchase of such bullion is not known to the petitioner and on mere assumption or on the bare fact that there have been transactions between the petitioner and the complainant in Criminal Petition No.6690 of 2021, the account of the petitioner cannot be sought to be frozen or lien marked and as the amount lying in the bank is akin to property that cannot be taken away on mere assumption.

10. The learned counsel Mr. Mohammed Tahir representing the petitioner in Writ Petition No.21388 of 2021 would tow the lines of the learned senior counsel to contend that lien for Rs.16,18,914/- marked is without any rhyme or reason and the petitioner is also a bullion trader to whom several amounts of transaction happen every day.

11. Learned senior counsel Sri Vivek Reddy refuting the aforesaid submissions made for the petitioners in the writ petitions would contend that the Police are empowered to direct freezing or marking of lien in the accounts which becomes suspicious when a crime is registered. If the money trail is found that would link to the accounts in a concerned crime, it is always open to the Police to direct such action. No fault can be found with the Police.

12. The learned High Court Government Pleader would again tow the lines of the learned counsel senior counsel for the respondent/complainant to contend that the matter is still at the stage of investigation and the petitioners in the writ petitions have no role to play for the lien to be lifted.

13. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

14. The afore-narrated facts in each of the petitions, the link in the chain of events are all borne out from the pleadings and since they are already narrated, they need not be reiterated over again. The contention of the petitioner in the Criminal Petition that he is in no way connected or is unaware with the business of Crypto currency or trading in Crypto currency, its marking or its exchange is contrary to the record. The contention that he does not know the complainant or any of his friends is again contrary to the record. It is the case of the complainant and others that having generated desire to invest money in Crypto currency, the petitioner gets introduced to the complainant and the amount of Rs.3.5 crores is transferred to an account in Ahmedabad of one Bhumi Agro as per the instructions of the petitioner. When money went missing, a complaint was registered before the Ellis Bridge Police Station at Ahmedabad City. The said police filed a 'B' report. The contents of the said complaint are claimed to be different from the contents of

the impugned complaint in the subject petition. The petitioner, if not dealing with Crypto currency there was no occasion for him to enter into chats with the complainant or Mr. Ramesh TV. The complainant has placed on record the fact of whatsapp chats between the petitioner and the complainant. Several transactions are found in those whatsapp chats and money trail beyond the shores of this nation as well. Therefore, the statement of the petitioner that he has nothing to do with Crypto currency or does not know the complainant is farther from truth, as the first tranche of transaction of Rs.2/- crores the petitioner receives from one Dinero payment solutions and the second tranche is received from Akonto payment solution. The money, thus the complainant transfers for investment in Crypto currency travels all over.

15. The money was transferred on 15-05-2021 and the petitioner has confirmed receipt of Rs.3.5 crores into Bhumi Agro account on 17-05-2021 and also assures the complainant delivery of the said Crypto currency in the next few hours. The whatsapp chats would reveal creation of a group with regard to the subject crypto trade and the petitioner has communicated to the said group

on all three days i.e., 15th, 16th and 17th May, 2021 acknowledging the transaction. Therefore, it is not for the petitioner to now contend *albeit, prima facie,* that he does not know who the complainant is or what the transaction is, or that he does not deal in Crypto currency. Therefore, these facts would necessarily come within the realm of disputed questions of fact, as mere production of whatsapp chats would not mean that the complainant has proved his point or from the statements made by the petitioner that he does not deal in crypto trade or does not know the complainant would not make out his point that FIR should be quashed. The matter is still to be investigated into by the jurisdictional police. Since the investigation is interjected by an interim order of this Court, the finding of truth in the allegation is yet to come about by the investigating authority.

16. In the light of the issue completely shrouded with disputed questions of fact and the money trail developing different links, the matter is to be investigated into, as the offence alleged against the petitioner is the one punishable under Section 419 or 420 of the IPC. Section 420 of the IPC can be alleged if the

ingredients as found in Section 415 of the IPC are present. Section 415 of the IPC mandates that there should be inducement by the accused to the victim to part with property and such inducement should be with dishonest intention from the outset of the transaction. Narration of facts, *prima facie*, indicates that the complainant was lured into this business and Rs.3.5 crores have been transferred. If it were to be bald statement, it would have been altogether different circumstance. Whatsapp chats produced *prima facie* vindicate the stand of the complainant and the money trail brings in the entire net of crypto trading into the realm of investigation. Therefore, it is not for this Court to quash the proceedings in the facts of this case at the stage of investigation relying on the judgment in the case of ***STATE OF HARYANA V. BHAJAN LAL (1992 Supp. 1 SCC 335)***. None of the postulates stipulated by the Apex Court at paragraph 102 in the case of ***BHAJAN LAL*** would become applicable to the case at hand.

17. On the other hand, the judgments rendered by the Apex Court with a word of caution to the High Court exercising its jurisdiction under Section 482 of the Cr.P.C. particularly when the

case is shrouded with seriously disputed questions of fact would become applicable. The Apex Court in the case of ***KAPTAN SINGH v. STATE OF UTTAR PRADESH***[1] has held as follows:

> ***"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance.*** *From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded.* ***If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation.*** *Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate*

[1] ***(2021) 9 SCC 35***

jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. ***At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.***

9.2. In Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC. Similar view has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of

the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the

accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by

the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."

(Emphasis supplied)

The Apex Court, in a little later judgment, in the case of ***STATE OF ODISHA v. PRATIMA MOHANTY ETC.***[2] has held as follows:

*"**14.** At the outset, it is required to be noted that by the impugned judgment and order the High Court in exercise of its powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Section 13(2) read with Section 13(1)(d) of the Act and Section 420 read with Section 120B IPC. From the impugned judgment and order passed by the High Court, it appears that the High Court has entered into the merits of the allegations and has conducted the mini-trial by weighing the evidence in detail which, as such, as observed and held by this Court in a catena of decisions is wholly impermissible. As held by this Court in the case of State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335 : AIR 1992 SC 604, the powers under Section 482 Cr.P.C. could be exercised either to prevent an abuse of process of any court and/or otherwise to secure the ends of justice. In the said decision this Court had carved out the exceptions to the general rule that normally in exercise of powers under Section 482 Cr.P.C. the criminal proceedings/FIR should not be*

[2] 2021 SCC OnLine SC 1222

quashed. Exceptions to the above general rule are carved out in para 102 in Bhajan Lal (supra) which reads 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 channelized 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 42 PART E 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."

15. *Looking to the allegations in the present case against the respondents - accused and considering the fact that charge-sheet has been filed by the Vigilance Cell after a thorough investigation, it cannot be said that the case falls within any of the exceptions as carved out by this Court in para 102 in the case of Bhajan Lal (supra). It cannot be said that the criminal proceedings initiated against the respondents - accused are an abuse of process of any court. On the contrary, the allegations are an instance of abuse of the powers with a mala fide intention and allotment of the plots to the family members by hatching a criminal conspiracy and to allot the plots to the family members at throw away price causing loss to the B.D.A. and the public exchequer.*

16. *It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a*

> *complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducing the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."*

In the light of the preceding analysis and the judgments rendered by the Apex Court, the criminal petition lacking in merit is not entertainable at this juncture.

18. The writ petitions are filed challenging directions issued by the jurisdictional police at Bangalore to mark lien on certain amounts in the accounts of the petitioners. The contention is that it is contrary to law and could not have been done. The justification of the State is that the money trail led to these dealings of the petitioners insofar as money of the complainant is parked and on suspicion, the police are empowered to direct effect of lien in terms of Section 91 or Section 102 of the Cr.P.C. as the case would be.

19. The learned senior counsel Sri Vivek Reddy appearing for the complainant would again join issue and contend that marking of lien at the stage of investigation on accounts getting suspicious with regard to the subject crime cannot be found fault with. If the investigation does not reveal any such act on the part of the petitioners, the lien would be lifted. The accounts are not frozen. Certain amount is sought to be kept untouched and he would submit that if the investigation is permitted to be completed everything would fall inline.

20. The submission so made, sounds acceptable, as money trail into the accounts of the accused, generation of suspicion and consequent marking of lien, is considered by the Apex Court in the case of ***TEESTA ATUL SETALVAD v. STATE OF GUJARAT***[3] wherein the Apex Court considering the purport of Section 102 of the Cr.P.C. has held as follows:

> *"**17.** The sweep and applicability of Section 102 of the Code is no more res integra. That question has been directly considered and answered in State of Maharashtra v. Tapas D. Neogy [State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685: 1999 SCC (Cri) 1352]. The Court examined the question whether the police officer investigating any offence*

[3] ***(2018) 2 SCC 372***

can issue prohibitory orders in respect of bank accounts in exercise of power under Section 102 of the Code. The High Court, in that case, after analysing the provisions of Section 102 of the Code had opined that bank account of the accused or of any relation of the accused cannot be held to be "property" within the meaning of Section 102 of the Code. Therefore, the investigating officer will have no power to seize bank accounts or to issue any prohibitory order prohibiting the operation of the bank account. This Court noted that there were conflicting decisions of different High Courts on this aspect and as the question was seminal, it chose to answer the same. In para 6, this Court noted thus : (SCC p. 691)

> *"6. A plain reading of sub-section (1) of Section 102 indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression "any property" and "any offence" have made the applicability of the provisions wide enough to cover offences created under any Act. But the two preconditions for applicability of Section 102(1) are that it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence. In this view of the matter the two further questions that arise for consideration are whether the bank account of an accused or of his relation can be said to be "property" within the meaning of sub-section (1) of Section 102 CrPC and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same."*

18. *After analysing the decisions of different High Courts, this Court in para 12, expounded the legal position thus : (SCC pp. 694-95)*

> *"12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow*

> *interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. … In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay [Chandrashekar Ramprakash Agarwal v. State of Maharashtra, 1997 SCC OnLine Bom 632] committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon."*

After this decision, there is no room to countenance the challenge to the action of seizure of bank account of any person which may be found under circumstances creating suspicion of the commission of any offence.

19. *In the present case, FIR has been registered at least against three private appellants, naming them as accused. CJP Trust has not been named as an accused in the FIR. But the investigation thus far, according to the respondents, reveals that Teesta Atul Setalvad and Javed*

Anand are actively associated with the said Trusts and have carried out transactions which may be found under circumstances suspicious of the commission of the alleged offence. That is still a matter of investigation. For the present, the investigating officer is of the view that there are certain circumstances emerging from the transactions done from these bank accounts which create suspicion of the commission of an offence. It is on that belief he has exercised his discretion to issue directions to seize the bank accounts pertaining to CJP Trust.

20. As regards the procedure for issuing instructions to freeze the bank accounts, it is noticed that the same has been followed by giving intimation to the Magistrate concerned on 21-11-2014 as required in terms of Section 102 of the Code. There is nothing in Section 102 which mandates giving of prior notice to the account-holder before the seizure of his bank account. The Magistrate after noticing that the principle stated by the Division Bench of the Bombay High Court in Shashikant D.Karnik v. State of Maharashtra [Shashikant D. Karnik v. State of Maharashtra, 2008 Cri LJ 148 (Bom)] has been overruled in terms of the Full Bench judgment of the Bombay High Court in Vinodkumar Ramachandran Valluvar [Vinodkumar Ramachandran Valluvar v. State of Maharashtra, 2011 SCC OnLine Bom 402 : 2011 Cri LJ 2522] , rightly negatived that contention. The Full Bench of the Bombay High Court has expounded that Section 102 does not require issuance of notice to a person before or simultaneously with the action attaching his bank account. In Adarsh Coop. Housing Society Ltd. v. Union of India [Adarsh Coop. Housing Society Ltd. v. Union of India, 2011 SCC OnLine Bom 974 : 2012 Cri LJ 520] , the Division Bench of the Bombay High Court once again considered the issue and rejected the argument that prior notice to the account-holder was required to be given before seizure of his bank account. It also noted that the bank account need not be only of the accused but it can be any account creating suspicion about the commission of an offence. The view so taken commends us.

21. In Jayendra Saraswathy Swamigal [Jayendra Saraswathy Swamigal (2) v. State of T.N., (2005) 8 SCC 771 : (2006) 1 SCC (Civ) 1] , the Court while considering a transfer petition under Section 406 of the Code, seeking transfer of the case pending before the Principal Sessions Court, Chenglepet, to any other State outside the State of Tamil Nadu, adverted to the circumstance of a motivated order passed under Section 102 of the Code for freezing of 183 bank accounts of the Mutt on the ground that the head of the Mutt was involved in a murder case. *In that context, it observed that the power vested under Section 102 of the Code cannot be stretched to irrelevant matters, to extremes and to a breaking point. The power must be exercised cautiously, failing which, the discretion exercised by the authority would be tainted with arbitrariness. In para 23, the Court observed thus: (SCC p. 791)*

> *"23. … Again, the action of the State in directing the banks to freeze all the 183 accounts of the Mutt in the purported exercise of the power conferred under Section 102 CrPC, which had affected the entire activities of the Mutt and other associated trusts and endowments only on the ground that the petitioner, who is the head of the Mutt, has been charge-sheeted for entering into a conspiracy to murder Sankararaman, leads to an inference that the State machinery is not only interested in securing conviction of the petitioner and the other co-accused but also to bring to a complete halt the entire religious and other activities of the various trusts and endowments and the performance of pooja and other rituals in the temples and religious places in accordance with the custom and traditions and thereby create a fear psychosis in the minds of the people. This may deter anyone from appearing in court and give evidence in defence of the accused."*

22. *The Court in Jayendra Saraswathy Swamigal case [Jayendra Saraswathy Swamigal (2) v. State of T.N., (2005) 8 SCC 771 : (2006) 1 SCC (Civ) 1] did not lay down as a proposition that it is impermissible to freeze multiple bank*

accounts, even though circumstances emanating from the nature of transactions effected from the bank accounts concerned and the conduct of the account-holders created suspicion of the commission of an offence. The Court while directing lifting of seizure of bank accounts had noted that the Mutt could not be paralysed by freezing of all its bank accounts in the guise of a direction issued under Section 102 of the Code. Further, the continuation of the seizure of all the bank accounts even after completion of the investigation of the case and filing of charge-sheet was unwarranted.

23. *In M.T. Enrica Lexie [M.T. Enrica Lexie v. Doramma, (2012) 6 SCC 760 : (2012) 3 SCC (Civ) 1024 : (2012) 3 SCC (Cri) 309] , the Court noted in para 7 that agencies had completed their respective investigations and vessel was seized in exercise of power under Section 102 of the Code. In para 16, the Court noted the concession given by the counsel for the Government that the vessel was not the object of the crime or the circumstances which came up in the course of investigation that create suspicion of the commission of any offence. In that case, it was alleged that while the fishing boat was sailing through Arabian Sea, indiscriminate firing was opened from the vessel in question, as a result of which two innocent fishermen, who were on board, died. The counsel for the State had also conceded that the vessel was no longer required in connection with the offence in question. Indeed, in para 14, the Court made the following observations : (SCC p. 765)*

> *"14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other."*

These observations are in no way different from the proposition expounded in Tapas D. Neogy [State of

Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352] .

24. Keeping these principles in mind and the material on record, it is noticed that the prosecution has alleged that the two Trusts are run by the private appellants and other accused. They were actively involved in collecting huge funds as donation in the name of providing legal assistance to the 2002 Gujarat Riot Victims. Such donations received by the two Trusts had never reached the victims, the members of the Gulberg Society in respect of which grievance has been made in the subject FIR. Further, substantial discrepancies have been noticed from the bank accounts, copies of audited account statements and balance sheet. The final account did not tally with the accounts, as submitted. The appellants did not offer credible explanation in that regard, much less satisfactory. According to the respondents, the conduct of the appellants of non-cooperation during the investigation strengthens the suspicion of the commission of an offence. They provided incorrect information. It is also a case of non-disclosure and suppression of material facts. These circumstances create suspicion of the commission of offence under investigation. It is alleged by the respondents that the appellants deliberately and intentionally did not disclose that they have already opened new accounts and transferred huge sums of money after knowing that stated bank accounts of the appellants were seized on 21-1-2014 by the investigating agency. The details of the two newly opened accounts were not forthcoming. Further, in the proceedings filed before different courts, incorrect plea has been taken by the appellants, suggestive of the fact that their accounts were not compliant and duly scrutinised by the competent authority.

25. Suffice it to observe that as the investigating officer was in possession of materials pointing out circumstances which create suspicion of the commission of an offence, in particular, the one under investigation

> ***and he having exercised powers under Section 102 of the Code, which he could, in law, therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-section (2) and sub-section (3) of the same provision. As aforementioned, the investigating officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the Magistrate concerned and thus complied with the requirement of sub-section (3).”***
>
> *(Emphasis supplied)*

The Apex Court clearly holds that the investigating officer being in possession of such material pointing at circumstances which create suspicion of the commission of an offence which is under investigation, is empowered to legitimately seize the bank accounts after following the procedure. The accounts are not frozen in the case at hand but lien on a particular sum is marked. Therefore, the said lien cannot be directed to be lifted, by issuance of a writ in the nature of mandamus, at this juncture, that too, at the stage when Crime No.335 of 2021 is pending investigation. Therefore, none of the grounds urged in the petitions or in the submissions made by the learned counsel appearing for the petitioners merit acceptance.

21. In view of the petitions lacking in merit meet their dismissal and are accordingly dismissed.

It is made clear that the observations made in the course of this order are only for the purpose of consideration of cases of the petitioners for quashment of FIR or direction issued by the Police. No observation made in the course of this order or any finding rendered would be binding or influence the investigating officer in the investigation.

Consequently, pending applications if any, also stand disposed.

Sd/-
JUDGE

bkp
CT:MJ