



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.630/2024 (F)
WITH
CRIMINAL MISC. APPLICATION NO.56/2024
WITH
CRIMINAL MISC. APPLICATION NO.678/2024 (F)

CHOWGULE AND COMPANY PVT. LTD.
Through authorized representative Mr Harsh
Shah, aged 25 years, having address at
Chowgule House, Mormugao Harbour, Goa –
403803.

... PETITIONER

Versus

1. STATE OF GOA through
the Public Prosecutor, State of Goa.
Porvorim, Goa.

2. POLICE INSPECTOR,
Economic Offences Cell, Goa.

3. UNION OF INDIA, through
Secretary Home, Ministry of
Home Affairs, New Delhi.

... RESPONDENTS

Mr. Rizwan Merchant, Advocate along with Mr. Gaurish Agni, Ms. Ramiz Shaikh, Mr. Nihal Kamat, Mr. Gautam Panvelkar, Mr. Harshil Gandhi and Mr Kishan Kavlekar, Advocates for the Petitioner and in connected matters (CRMA 56/2024 and CRMA 678/24(F) for Respondent No. 3.

Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondent Nos.1 and 2.

Mr. Pravin Faldessai, Deputy Solicitor General of India, for Respondent No. 3.

Mr. Amit Desai, Senior Advocate along with Mr. Parag Rao, Mr. Gopal Sheno, Ms. Bulbul Sinch Rajpurohit, Mr. Prashant Asher and Mr. Subhash Jadhav, Mr. Ajay Menon and Ms. Somya Drago, Advocates for the Applicant- Intervenor in CRMA 56/2024.

Mr. Aabad Ponda, Senior Advocate with Mr. Shivan Desai, with Ms. Tahira Menezes, Mr. V. Bhandankar and Mr. Subhash Jadhav, Advocates for the Applicant-Intervenor in MCA(F) 1836/2024.

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

DATE: 14th AUGUST 2024

JUDGMENT: (Per M. S. Karnik)

1. Heard learned counsel for the parties.
2. By this petition under Article 226 of the Constitution of India, the petitioner is seeking transfer of investigation of First Information Report (FIR) No.01/2024 dated 14.06.2024 registered with the Economic Offences Cell, Goa (EOC) to the Central Bureau of Investigation (CBI). The petitioner seeks a further direction to the CBI to conduct fair and impartial investigation and submit report in a time-bound manner.
3. The basic facts leading to the registration of FIR are thus:
4. The Chowgule and Company Pvt Ltd is a flagship company of the Chowgule Group established in 1965 for conducting mining and ship building operations in India. The said group was established by the members of Chowgule Family. On 04.10.2008, Mr. Vishwasrao Chowgule passed away leaving behind the heirs of the Chowgule family extending three generations.
5. In 2021, due to the numerous disputes, the family entered into Memorandum of Family Settlement dated 11.01.2021. The settlement contemplated splitting the family into two groups being Group A headed

by Ms. Padma Chowgule and Group B headed by Mr. Vijay Chowgule. The Companies and the assets of the Chowgule group were also divided into Schedule C and Schedule D. The members of Group A were entitled for the companies in Schedule C, whereas members of Group B were entitled for the Companies in Schedule D.

6. The accused no.1 Vijay Chowgule was Director of the petitioner company from 16.08.1974 to 12.01.2021 and Managing Director of the petitioner Company from 01.01.1988 to 28.05.2019. The accused no.2 Pradip Mahatme was the principal financial advisor from 1980 to 2020 and a director of the petitioner company from 14.02.1989 to 12.01.2021. The accused no.3 Pratap Shirke is the brother of accused no.1 and associated with the petitioner company through the accused no.1.

7. In the year 2009, Mr. Vijay Chowgule and Mr. Pradip Mahatme proposed establishing as wholly owned subsidiary overseas being Rudra Shipping and Trading Ltd representing it as a profitable business venture. They proposed creating a subsidiary in the country of Guernsey and investing the petitioner's monies in Rudra for establishing the shipping business. The said Rudra came to be incorporated in Guernsey on 31.07.2009 and a total sum of USD 128, 691, 536 was infused by the petitioner company into Rudra Shipping and Trading Ltd. from 31.07.2009 to 22.04.2014 under instructions of Vijay Chowgule and Pradip Mahatme. These funds were unlawfully utilized to make investments and provide loans to various entities, including those under the control of Mr. Pratap Shirke.

8. The said Pratap Shirke owned and controlled various entities including Pan Oceanic Bulk Carriers, Guernsey, ASP Ship Management Singapore Pvt. Limited, Wadi Foundation, Natlata Holding Corporation

(“Natlata”), Quail Investments Limited (“Quail”), Bulmark Limited, Bay Holdings (both companies incorporated in Guernsey), and Quail. Through these entities, the applicants and their associates executed numerous transactions to launder the monies received from the petitioner disguising the money trail and its ultimate beneficiaries.

9. Approximately USD 47 millions were advanced to Pratap Shirke Company Pan Oceanic Bulk Carriers. However, none of the monies were ever repaid. The security provided was not invoked and a significant portion of the loan was written off or waived through board resolutions. On 31.03.2017, an agreement to write off USD 10 million was executed without addressing or enforcing the loans secured by Pan Gulf Group Ltd under the consolidated loan agreement dated 25.10.2015. The remaining amount of approximately USD 38 million was waived through a mere board resolution.

10. Vijay Chowgule, Pradip Mahatme and Pratap Shirke made series of misrepresentations to the board of petitioner company regarding the utilization of the funds invested or lent through the petitioner company. They falsely assured the board that the monies were being used for legitimate and profitable business activities. However, the investments never generated the promised returns and were instead siphoned off under the pretext that further investment was necessary to recover the initial funds.

11. The audit conducted by Group A members revealed that about 40% of the investments in Rudra were transferred as loans to Pan Oceanic Bulk Carriers, ultimately benefiting Mr. Pratap Shirke. The audit uncovered that the funds were further siphoned to affiliated entities obscuring the money trail and ultimately enriching Mr. Pratap Shirke.

12. All the accused as part of criminal conspiracy to siphon off monies of the petitioner company established another company named Nilgiri. Rudra contributed USD 8.675 million to Ross Chemical IV on behalf of Nilgiri's subsidiary without disclosing this to the petitioner company's board. Nilgiri was engaged in various financial activities including acquiring shares and providing loans without informing the petitioner resulting in wrongful losses, impairments and undervalued sales of the company and its subsidiaries.

13. The loans to Pan Oceanic Bulk Carriers totalling USD 47 million, lacked proper documentation and commercial justification indicating malfeasance. The funds were transferred without adequate security or due diligence, showing a deliberate intent to defraud the petitioner company.

14. The accused no.1, 2 and 3 manipulated the accounts of Niligiri to facilitate its sale to Natlata Company owned by Pratap Shirke for a nominal amount of USD 1 despite its considerable assets. Nilgiri's involvement led to substantial wrongful gains for Pan Oceanic Bulk Carriers at the expense of complainant and Rudra.

15. The accused no.1, 2 and 3 in collusion and criminal conspiracy with accused no.4 to 6 engaged in a series of deceptive financial transactions. They concealed their identities provided unsecured loans, misrepresented vessel acquisitions and siphoned money for personal gain. The accused no.1 and 2 knowingly advanced large interest free loans though Rudra to companies under the control of Pratap Shirke which were subsequently written off without proper justification.

16. The accused no.1, 2 and 3 orchestrated dubious transactions involving Rudra, Pan Oceanic Bulk Carriers and affiliated entities to benefit themselves through a complex structure. Funds were transferred

from Rudra to Pan Oceanic Bulk Carriers some of which were diverted to Folar, a Company owned by Bay Holdings with USD 500,000 remaining unexplained with Pan Oceanic Bulk Carriers.

17. The accused no.1 deliberately and wilfully used family funds from Liechtenstein to purchase a property in New York in his daughter's name demonstrating a pattern of moving large sums of money to offshore entities without remitting them back to the original source.

18. All the accused and their known and unknown associates, orchestrated a series of deliberate and fraudulent actions, including disseminating false representations to the petitioner's board to secure endorsement and financial backing for Rudra. The accused falsified accounts concerning fund utilization, vessel quantifications and valuations misleading the petitioner's board. The FIR came to be registered.

19. Mr Rizwan Merchant, learned counsel for the petitioner submitted that having regard to the manner in which the application for anticipatory bail filed by the accused persons is handled by the investigating officer (IO), free and impartial investigation by the IO can never be expected and hence this is a fit case for transfer of investigation to CBI. Mr Merchant submitted that the FIR was registered after a delay of two months from the date when the petitioner had first made a complaint to the IO. Even after registration of FIR on 14.06.2024, it is the submission of the learned counsel for the petitioner, that there has been no progress in the investigation. The submission is that the accused have siphoned the money in a very systematic manner to the detriment of the petitioner. The documents which constitute materials required for investigation for proving the offence are mainly in the custody of the main accused who is

residing abroad and the entire money trail has to be traced in a foreign country.

20. Mr Merchant further submitted that the EOC, Goa is not adequately staffed to investigate a crime of such magnitude. Learned counsel urged that the investigation into the crime is of a complex nature. The EOC, Goa does not have the necessary infrastructure to investigate into such a complex crime. It is submitted that the investigation has to proceed in a scientific manner upon understanding the intricacies of the modus adopted by the accused persons and it is here that the Investigating Officer (IO), according to the learned counsel, may lack the necessary expertise in investigating the crime of such a nature. It is moreover submitted that the nature of transactions have an international ramification and therefore it is only the CBI which is competent and equipped with the necessary wherewithal to investigate and submit report. It is further submitted, assuming without admitting that the IO is competent to investigate, even then the investigation has to pass through various stages which involve making necessary applications before the competent Court, issuance of Letter Rogatories and considering the mutual arrangements between the India and the country where the offence is committed, it is ultimately for the CBI to look into the matter; as this will be a long-drawn process causing serious prejudice to the petitioner; instead, at this stage itself the investigation be transferred to the CBI.

21. It is further submitted that the petitioner had filed civil proceedings before the Foreign Court which came to be discontinued pursuant to a Consent Order dated 25.03.2024 passed by the Foreign Court, whereafter the complaint came to be lodged with the EOC, Goa. It is submitted that as the petitioner is not in possession of any documents which obviously are in the custody of the accused, the petitioner could not effectively pursue

the matter before the Foreign Court. The submission is that the IO is expected to collect all documents which are required for the process of effective investigation, for it is only then that the petitioner can effectively resort to civil remedies as well, as its claim is based on such documents. It is submitted that it is not possible for the IO with the limited resources available to retrieve such documents and hence, the said task can only be effectively performed by the CBI, for which the investigation has to be transferred to the CBI.

22. Though not part of the petition, Mr Merchant produced on record copy of the letter dated 10.08.2024 addressed by the petitioner to the Director General of Police, Panaji, Goa complaining about the unprecedented and belated methods of investigation being adopted by the IO in complete departure to the statutory procedure provided under the Code of Criminal Procedure and/or The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for the purpose of investigation of the above FIR. It is submitted that such complaint was made during the pendency of this petition. Learned counsel for the petitioner submitted that a reading of this complaint dated 10.08.2024 would indicate that the conduct of the IO who is supposed to be in-charge of free, fair and impartial investigation into the offences is totally unbecoming of a police officer. It is mentioned that the IO questioned the need for approaching the EOC, Goa, if the petitioner was interested in investigation to be done by the CBI. In the complaint it is further mentioned that the IO having totally neglected and ignored investigating in such a case involving international ramifications, had no authority to question the registration of FIR by the EOC, Goa.

23. It is submitted that the IO took least interest in objecting to the Anticipatory Bail Application filed by the accused persons as even the observations of the learned Sessions Judge would reveal. Reliance is placed

on the following decisions in support of the submissions that this is a fit case for exercising the extra-ordinary power of this Court when exceptional circumstances exist warranting transfer to the CBI.

1. Rhea Chakraborty v State of Bihar & Ors [(2020) 20 SCC 184]
2. Arnab Ranjan Goswami v. Union of India, (2020) 14 SCC 12
3. K.V. Rajendran v. CBCID (2013) 12 SCC 480
4. Bharati Tamang vs Union of India (2013) 15 SCC 578
5. Narmadabai v State of Gujarat & Ors [(2011) 5 SCC 79]
6. Rubabbuddin Sheikh v. State of Gujarat [(2010) 2 SCC 200]
7. State of W.B. v. Committee for Protection of Democratic Rights (2010) 3 SCC 571
8. Sri Bhagwan Vallabha Samardha Venkata Maharaj v. State of A.P. (1999) 5 SCC 740 Sreepada Vishwanandha
9. E. Sivakumar v. Union of India (2018) 7 SCC 365
10. Dhananjay Kumar v State of Chhattisgarh & Ors. [Criminal Writ Petition No.121 of 2017]

24. Mr Nikhil Vaze, learned Additional Public Prosecutor (APP) appearing on behalf of the State opposed the petition. He invited our attention to the affidavit in reply filed by the IO. It is submitted that the complaint was received by EOC on 10.05.2024. The complainant was asked to remain present for further inquiry into his complaint on 16.05.2024 at 16.00 hrs. for discussion and better understanding since the complaint was massive in nature and voluminous in documents. The complainant however did not turn up. On behalf of the complainant it was

informed that he is not in Goa. Learned APP submitted that the FIR was registered on 14.06.2024. It is submitted that the IO needs cooperation from the complainant and is always willing to record the statement of complainant and those who would throw light on the allegations made in the complaint. Learned APP submitted that the EOC is a specialized unit and conducting investigation of non-banking financial cases and cases which are directed by the higher authorities. It is submitted that there are 36 criminal cases which are pending with EOC Police Station and 15 different high profile and technical cases are investigated by the EOC Police Station.

25. Learned APP submitted that there is a valid explanation in paragraph 8 of the affidavit in reply as to why the IO could not file the Say before the Sessions Court. Learned APP submitted that the matter is of a highly complex nature involving financial crimes having cross-border ramifications which are partly committed in tax-haven countries of Guernsey, Lichtenstein, Panama, etc. and proceeds of crime have ultimately found its way to several countries and bulky in nature. It is submitted that considering the complex nature of the investigation and despite the complainant not cooperating, every possible effort is being made to investigate into the FIR and that the investigation will be conducted in a free, fair and impartial manner.

26. The rival contentions now fall for our determination.

27. Before considering the rival claims, we find it necessary to understand the principles laid down by the Hon'ble Supreme Court for transfer of investigation to the CBI. The Hon'ble Supreme Court in para 42 of the decision in *Arnab Ranjan Goswami (supra)* held that the transfer of investigation to CBI is not a matter of routine. The Supreme Court

emphasised that this is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances”. Para 42, 43, 44, 45, 47 and 52 are relevant and are quoted below for convenience of reference:

*“42. The transfer of an investigation to CBI is not a matter of routine. The precedents of this Court emphasise that this is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances". Speaking for a Constitution Bench in **State of W.B. v. Committee for Protection of Democratic Rights** ("CPDR, West Bengal"), D.K. Jain, J. observed: (SCC p. 602, para 70)*

"70. ... despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

(emphasis supplied)

43. This principle has been reiterated in K.V. Rajendran v. CBCID Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held: (SCC p. 485, para 13)

"13. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.

44. Elaborating on this principle, this Court observed: (K.V. Rajendran case 16, SCC p. 487, para 17)

"17. the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/ biased."

The Court reiterated that an investigation may be transferred to CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies". This observation must be read with the observations by the Constitution Bench in CPDR15, that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

45. In *Romila Thapar v. Union of India*, A.M. Khanwilkar, J. speaking for a three-Judge Bench of this Court (one of us, Dr D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in *Narmada Bai v. State of Gujarat*, *Sanjiv Rajendra Bhatt v. Union of India*, *E. Sivakumar v. Union of India* and *Divine Retreat Centre v. State of Kerala*, this Court observed: (*Romila Thapar* case 17, SCC p. 776, para 30)

"30. ... the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation."

47. As we have observed earlier, the petitioner requested for and consented to the transfer of the investigation of the FIR from Police Station Sadar, District Nagpur City to N.M. Joshi Marg Police Station in Mumbai. He did so because an earlier FIR lodged by him at that police station was under investigation. The petitioner now seeks to pre-empt an investigation by Mumbai Police. The basis on which the petitioner seeks to achieve this is untenable. An accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency. The line of interrogation either of the petitioner or of the CFO cannot be controlled or dictated by the persons under investigation/interrogation. In *P. Chidambaram v. Directorate of Enforcement*, R. Banumathi, J. speaking for a two-Judge Bench of this Court held that: (SCC p. 56, para 66)

"66. there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course

of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused."

(emphasis supplied)

*This Court held that so long as the investigation does not violate any provision of law, the investigating agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in **State of Bihar v. P.P. Sharma and Dukhishyam Benupani v. Arun Kumar Bajoria** in which it was held that the investigating agency is entitled to decide "the venue, the timings and the questions and the manner of putting such questions" during the course of the investigation."*

28. The principles which need to be followed by this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India are by now well settled. This Court in the exercise of its power of judicial review can in exceptional circumstances exercise its extraordinary power to transfer the investigation. The power has to be exercised with great caution. The same cannot be exercised routinely or merely because a party has levelled some allegations against the local police. This extraordinary power must be used sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for enforcing the fundamental rights. The Supreme Court has cautioned that if the power to transfer is exercised in routine manner, the CBI would be flooded with large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

29. In the present case, we have perused the order dated 09.11.2023 passed by the Foreign Court as well as the Consent Order dated 25.03.2024 discontinuing the proceedings which the claimant (petitioner) had initiated against the accused in the Foreign Court. Though the learned counsel for the petitioner extensively argued on the merits of the rival claims, we refrain from making any observations as the investigation is in progress. Suffice it to observe at this juncture that there is ongoing feud between two rival camps of the Chowgule family in India. The camp to which the petitioners belong allege that the accused were guilty of masterminding a massive US\$128 million fraud on the petitioner's companies before the Foreign Court. The accused, before the foreign Court, denied any fraudulent dealing and maintained that the claim was made before the Foreign Court which was only an attempt to exert pressure in the context of the family dispute. Thus, the FIR is lodged as a result of the outcome of the family dispute.

30. Upon perusing the affidavit in reply filed by the IO, it is not possible for us to form an opinion that the EOC, Goa does not have necessary infrastructure or wherewithal to investigate into the offences. The EOC is a specialized unit and conducting investigation of non-banking financial cases and cases which are directed by the higher authorities. There are 36 criminal cases which are pending with EOC Police Station and 15 different high profile and technical cases are investigated by the EOC Police Station. We find that the claim made by the petitioners before the Foreign Court was discontinued by the claimants (petitioners herein) in view of the terms mentioned in the Consent Terms. After the proceedings before the Foreign Court was disposed of on 25.03.2024 in the light of the Consent Terms, that the complaint dated 08.04.2024 was filed before the EOC, Goa. Even according to the petitioner the investigation is of a complex nature. It is petitioner's case that one of the accused is a foreign national

and the major part of the crime is committed abroad. It is the petitioner's own case that the documents which would show the complicity of the accused persons have to be retrieved/recovered from foreign country/s as the monies which have been siphoned off are parked in tax-haven countries of Guernsey, Lichtenstein, Panama, etc.

31. Looking at the very complexity of the crime, after inquiring into the complaint, the FIR was registered on 14.06.2024. This petition was filed for transfer of the investigation to the CBI on 19.07.2024. The stand of the learned APP on instructions of the IO who was present in the Court is that they are serious in proceeding with the investigation. He submitted that the IO is in the process of calling all the concerned persons whose presence is necessary in connection with the investigation. Learned APP submitted that the complainant must cooperate, as during the course of the inquiry prior to the lodging of FIR, there was no cooperation extended by the complainant. The affidavit in reply dated 08.08.2024 filed by the IO reflects that the present case is of a highly complex nature. This is as well the case of the petitioner. In fact, learned counsel for the petitioner submitted that the complexity of the investigation involves retrieving large number of documents from foreign countries which will show the money trail in respect of the proceeds of the crime.

32. It is the stand of the IO in the affidavit in reply filed, that the following investigation is to be conducted and hence the complainant's interaction and availability is valued in this case:

“a) To collect order of the accused Mr. Pradip Mahatme as Principal Financial Advisor to CCPL.

b) To collect service report from 1980 to 2020 engaged by accused Mr. Pradip Mahatme to CCPL as financial and tax consultant.

- c) To collect order of the accused Mr. Pradip Mahatme as Board Director to CCPL from 14/02/1989 to 12/01/2021.*
- d) To investigate role of entity called Pan Oceanic Bank Carriers (UK) Limited.*
- e) To investigate loan advanced to other entities by "Rudra company.*
- f) To investigate documents of write off of loan advanced by CCPL to Rudra.*
- g) To investigate loan 47 million advanced to POBC by Rudra.*
- h) To investigate USD 4.40 million siphoned off to Accused Mr. Pratap Shirke.*
- i) To investigate numerous transactions to launder the monies received from Petitioner Company, disguising the money trail and its ultimate beneficiaries.*
- j) To investigate transaction of approximately USD 47 Million advanced to Mr Pratap Shirke Company Pan Oceanic Bulk Carriers.*
- k) To investigate portion of loan which was written off or waived through board resolution.*
- l) To investigate regarding agreement date 31.03,2017 to write off USD 10 million by Pan Gulf Group Ltd without any security under the consolidated loan agreement dated 25.10.2015.*
- m) To investigate remaining USD 38 million waived off through Board resolution.*
- n) To investigate audit report conducted by the CCPL.*
- o) To investigate funds which siphoned to affiliated entities, obscuring the money trail to accused person.*
- p) To investigate role of Nilgiri Company established by the accused persons.*
- q) To investigate investment of USD 8.675 Million which was*

contributed by Rudra Company to Ross Chemical IV on behalf of Nilgiri without disclosing and transferred from Rudra to Pan Oceanic Bulk Carries.

r) To investigate funds from Liechtenstein which was used to purchase a property in New York in the name of Accused daughter Deepa Chowgule.

s) To investigate suit for recovery of the siphoned funds which was filed by the complainant against accused person before the Court of England.

t) To investigate the role of the known and unknown associates of the main accused persons in the commission of offence.

u) To investigate use of overseas entities, bank accounts and shell companies owned and operated by accused persons for the purpose of siphoning funds taken overseas under the garb of seed capital.”

33. It is the stand of the IO that the EOC is conducting a free, fair and impartial investigation for justice to the complainant and to the Company and there is no lackadaisical and perfunctory approach towards the investigation. It is submitted that every effort and hard work is being put in to take the investigation towards the logical conclusion. Learned APP on instructions from the IO who is present in the Court has assured that the IO is making every possible effort in carrying out the investigation which will be taken to its logical end in accordance with law in a free, fair and impartial manner.

34. Undoubtedly, the petitioner is entitled to a free and fair investigation into the FIR that is lodged on the basis of the complaint made. The FIR is an outcome of a family dispute regarding siphoning of funds by some of the family members (accused) who were managing the affairs of the Company. The civil proceedings before the Foreign Court were

discontinued apparently at the behest of the petitioner Company as can be seen from the Consent Order dated 25.03.2024. It is after the Consent Order of the Foreign Court that the complaint came to be made on the basis of which the FIR is registered.

35. This petition is filed for transferring the investigation to the CBI within a month and five days of lodging of the FIR. In our opinion, considering the complex nature of the accusations and the voluminous documents which the IO has to deal with, it is difficult to form any opinion that the delay or the inaction in conducting the investigation is deliberate and/or intentional. Likewise, it is not possible for us to form an opinion that the delay of two months by the EOC, Goa in registering the FIR is deliberate. The grievance of the petitioner is that before the Foreign Court they could not present their case effectively for lack of documents which are in possession of the accused. The petitioner wants the CBI to investigate so that the documents pertaining to the proceeds of the crime indicating the money trail can be retrieved expeditiously without unnecessary delay which will enable the petitioner to effectively explore civil remedies against the accused persons for recovery of money and damages.

36. We are afraid that it is not possible for us to form any opinion that the EOC, Goa does not have the sufficient wherewithal or infrastructure to investigate into the offences. Furthermore, there is a procedure established by law after registration of the FIR and the same cannot be bypassed only because it will help the petitioner speed up and expedite their claim for recovery of money or damages in civil proceedings after the documents are made available. The investigation is in progress. The IO has assured that the investigation will be proceeded in a fair and impartial manner. There is nothing on record to doubt the statement of the IO. The complex nature

of the offence is a factor because of which the investigation is taking some time, but that by itself is not sufficient, according to us, to infer that the IO is not competent to carry out the investigation or for that matter the investigation will not proceed in a free and impartial manner. Merely because at some stage according to the learned counsel for the petitioner, the CBI will come into picture considering the major part of the offence is committed abroad, will not be a ground in the facts of the present case to circumvent the procedure established by law and hand over the investigation to the CBI, and that too in a family dispute. It is always open for the petitioner to invoke remedies under the Criminal Procedure Code if there is any grievance about the investigation.

37. According to us, this is not an exceptional case where the extraordinary power to transfer the investigation to the CBI should be exercised by this Court. The transfer to the CBI cannot be in a routine manner merely because the petitioner feels that the CBI is better suited to investigate the offences. The CBI is already flooded with the large number of cases. It is the stand of the IO that the complainant is not cooperating. The observations of the learned Sessions Judge in the Application for Anticipatory Bail is at an interlocutory stage in the course of hearing of an anticipatory bail application. The explanation tendered by the IO is for the learned Sessions Judge to consider and it is not possible for us to form an opinion about the conduct of the IO based on such observations made at an interlocutory stage.

38. The petitioner has already made a grievance vide its letter dated 10.08.2024 to the Director General of Police, Goa about the unprecedented and belated methods of investigation being adopted by the IO in complete departure to the statutory procedure provided by the Criminal Procedure Code. The investigation is in progress and we find

that there are no materials to form an opinion that a free, fair and impartial investigation will be a casualty in the present case. The IO has assured that immediate steps are being taken to record statement of the complainant as well as those concerned required for the purpose of investigation into the FIR with reasonable dispatch.

39. As a complaint has already been made during the pendency of this petition about the conduct of the IO to the Director General of Police, Goa, it is for the Director General of Police to look into the complaint. At this stage we do not find any merit in this petition or that a case is made out for exercise of extraordinary power to transfer the case to the CBI. As is well settled this extraordinary power to transfer must be exercised sparingly and cautiously and only in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations. Though much has been argued by the learned counsel for the petitioner that the present case is having international ramifications, it needs to be borne in mind that the FIR is an outcome of a family dispute which was registered after the discontinuance of the civil proceedings before the Foreign Court by the petitioner. The submissions of learned counsel for the petitioner as to the international ramifications therefore will have to be considered in this light of the matter and do not afford a reason enough to transfer the investigation to CBI.

40. Taking an overall view of the matter and after considering all the rival contentions, considering that the investigation is at a preliminary stage, presently it is not possible for us to form an opinion that the investigation will not be carried out in a free, fair and impartial manner or that on the ground of international ramifications the case needs to be transferred.

41. The petition is dismissed.

42. It was not necessary to hear the learned Senior Advocates appearing on behalf of the intervenors as we were satisfied with the submissions of the learned APP. One of the objections raised by the learned counsel for the petitioner was that the intervention applications are not maintainable. It is made clear that we have not gone into the maintainability of the intervention applications. The intervention applications no.678/2024 (F) and No.56/2024 are disposed of.

VALMIKI MENEZES, J.

M. S. KARNIK, J.