THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.2687, 2688, 6428, 6473, 6483 & 6504 of 2017

COMMON ORDER:

All these petitions are filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the F.I.R.No.5 of 2017 on the file of Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore registered for the offences punishable under Sections 120-B read with 420, 468 & 471 of Indian Penal Code (for short "I.P.C.").

Petitioner in Crl.P.No.2687 of 2017 is accused No.6, Petitioner in Crl.P.No.2688 of 2017 is accused No.8, petitioner in Crl.P.No.6428 of 2017 is accused No.4, petitioner in Crl.P.No.6473 of 2017 is accused No.1, petitioner in Crl.P.No.6483 of 2017 is accused No.3, petitioner in Crl.P.No.6504 of 2017 is accused No.2 in Crime No.5 of 2017 on the file of Central Bureau of Investigation, Bank Securities & Frauds Cell, Bangalore.

Indian Overseas Bank lodged a complaint with Deputy Inspector General of Police, Central Bureau of Investigation, Bank Securities and Frauds Cell, Bellary Road, Ganganagar, Bangalore dated 14.02.2017 alleging that M/s.Leo Meridian Infrastructure Projects & Hotels Limited, Hyderabad (for short, hereinafter, referred to as 'company') having its registered office at Somajiguda Circle, Rajbhavan Road, Hyderabad promoted by Chakravarthy Raju, his friends and relatives on 15.01.2001 as "Leo Meridian Resorts & Developers Pvt. Ltd." with the objective of developing and maintaining a resort cum recreation centre as a Destination Centre. Subsequently, on 23.05.2005 the promoters changed the name of the company to “Leo Meridian Infrastructure Projects & Hotels Pvt. Ltd” so as to enlarge its objective to cover development/building of self sufficient housing colonies targeted at high net-worth individuals. The company changed its constitution from Pvt. Ltd. Company to Limited Company with effect from 23.03.2006. The company is engaged in building of Resorts, Hotels, Convention, Conference Halls, Recreation, SPA and Health Club etc.

Accused Nos.2 to 4 (petitioners in Crl.P.Nos.6504, 6483 and 6428 of 2017) were promoter directors of the company and all the promoters are understandably close relatives and are having a stake of 77.94% in the company. Accused No.5, accused No.6 (petitioner in Crl.P.No.2687 of 2017) and accused No.7 ceased to be Directors with effect from 06.02.2014, 29.05.2010, 28.09.2012 respectively and resigned from the board of the company. Accused Nos.2, 3 and 4 had joined the board of the company on 15.01.2001, 15.01.2001 and 30.09.2004 respectively and are continuing as directors. Accused No.2 to 4 had also extended their personal guarantee for securing the limits sanctioned by and availed from the complainant bank. The company is having two divisions i.e. “Resort & Property Development” and “Housing Project” and land in an extent of around 202 acres were acquired on the outskirts i.e. at a distance of 30 Kms from Hyderabad – Shameerpet. About 120 acres has been earmarked for housing and about Ac.8.30 cents for resort division. The balance portion of land was kept aside for future expansion.

On receipt of requisition from the company on 15.10.2009 the complainant – Indian Overseas Bank agreed to grant term loan to part finance the construction of 318 room hotel project by name M/s Leo Meridian Infrastructure Projects & Hotels Ltd., in site admeasuring Ac.1.15 guntas in Sy.No.389 situated at Bommaraspet village, Shameerpet Manal, Ranga Reddy District under multiple banking arrangement. The total cost of the project was Rs.485.58 crores and all the four banks i.e. Indian Overseas Bank, Bank of Baroda, State Bank of Mysore and Allahabad Bank formed into consortium, led by Bank of Baroda and the complainant Bank agreed to lend Rs.25.00 crores, whereas leader bank i.e. Bank of Baroda agreed to lend Rs.45.00 crores. Finally, consortium sanctioned the loan and due was Rs.432.22 crores. The amount due to the complainant bank was only Rs.54.50 crores as on the date of lodging complaint being outstanding amount inclusive of principal and interest.

The accused having committed default in payment of loan amount as agreed to the complainant – Bank and other members of consortium including leader bank. Petitioners offered security of Ac.1.15 Guntas in Survey No.389 situated at Bommaraspet Village, Shameerpet Mandal, and Fixed asset of 318 room deluxe hotel to be constructed at an estimated cost of Rs.124.64 crores along with other project lenders. Out of which the share of the complainant bank works out to Rs.34.61 crores proportionate to the share of 27.77% of the complainant. They also furnished collateral security i.e. land in an extent of Ac.2.05 Gts in Survey No.389 situated at Bommaraspet Village, Shameerpet Mandal adjacent to 318 room hotel proposed to be constructed and value of the security was about Ac.1.80 crores as valued by M.Prasad Rao, Panel Valuer for SBI and Punjab and Sind Bank.

Accused Nos.2 to 4 (petitioners in Crl.P.Nos.6504, 6483 and 6428 of 2017) also furnished personal guarantee besides collateral security of immovable property referred supra. The loan was sanctioned and availed from R P Road Branch of complainant bank on 06.01.2010, but subsequently, at the request of the company vide letter dated 08.06.2010 accounts were transferred to Raj Bhavan Road Branch of complainant bank on 18.06.2010, but the construction work in the hotel project financed by the complainant bank is partly completed and the accused No.1 had stopped the construction work during March 2012. Thereupon, the account is classified as Non Performing Asset as on 30.06.2012 as per prudential norms of the Reserve Bank of India and the book outstanding as on the date of NPA is Rs.25,39,60,481/- only. Action for recovery was initiated by filing a joint application by all the consortium banks before the Debts Recovery Tribunal at Hyderabad on 13.01.2015.

The Leader bank – Bank of Baroda vide there letter dated 05.09.2014 informed that the borrower defrauded the consortium and the fraud came to light after detailed investigation and fraud is reported to RBI as such. On further verification Bank of Baroda vide their letter dated 23.12.2014 informed that they have treated the account as fraud and reported to RBI as follows:

(i) Land admeasuring Ac.1.15 Gts, situated in Survey No.389, at Bommarasapeta Village, Shameerpet Mandal, R.R.District was mortgaged to the Bank. The same land of Ac.1.15 Gts, had already been divided into plot Nos.70,71, 72, 79, 80 and 81 and sold and this was not revealed to the Bank at the time of creation of mortgage. Therefore, the company misled the Bank.

(ii) The HMDA permission was granted for the construction of multistoried building of hotel consisting of 2 segments A & B in a single block (2 cellars + ground floor + mezzanine + service floor + 13 floors) and (3 cellars + ground floor + mezzanine + typical 12 floors) in survey No.389 (p) and 388 (p) of Bommaraspet village of Shammerpet Mandal as per the minutes of the meeting of MSB Committee held on 11.01.2010, File No.10983/MISC/PLG/H/2008. Whereas, the company submitted a letter bearing No.10983/MISC/P4/PLG/HMDA/2008 dated 14.05.2010 citing the reference of minutes of the MSB meeting held on 11.01.2010, wherein the permission had been granted for the construction of multistoried building of hotel consisting of 2 segments A & B in a single block (2 cellars + ground floor + mezzanine + service floor + 18 floors) and (3 cellars + ground floor + mezzanine + typical 12 floors) in survey No.389 (p) and 388 (p) of Bommarasapet village of Shammerpet Mandal, Ranga Reddy District. Therefore, the company misled the Banks to believe that the permission had been granted for the construction of 5 additional floors in Segment A and fraudulently got credit facilities sanctioned from the Banks and availed them.

(iii) The company constructed the hotel on the land situated in Survey No.388. This was not as per the sanction of credit facilities and approval of HMDA for construction of the hotel on the land situated in 388 (p) and 389 (p). They misled the Bank in believing that the construction has been done as per sanction.

Complainant bank admitted that the leader bank – Bank of Baroda had already lodged a complaint on 19.02.2015 and the same was received and registered by CBI as Crime No.2 of 2015. Again the complainant bank requested to register crime against the petitioners herein for the alleged fraud on the bank as urged in the complaint lodged by Leader bank – Bank of Baroda.

On the strength of the complaint lodged by the complainant bank – Indian Overseas Bank, a crime as registered against the petitioners as F.I.R.No.5 of 2017 and forwarded the same to XIV Additional Chief Metropolitan Magistrate, Hyderabad along with a letter dated 16.02.2017, a copy of which is placed on record.

As the respondent No.1 in all these petitions issued F.I.R. No.5 of 2017, the petitioners approached this Court to quash the same on the following grounds.

(1) Registration of crime against the petitioners is illegal and arbitrary and it is nothing but abuse of process of law since the allegations made in the present complaint are replica of complaint lodged by leader bank – Bank of Baroda and they are vogue, frivolous.

(2) None of the allegations would disclose the complicity of the petitioners or the alleged fraud or cheating against the complainant bank.

(3) The allegations made in the F.I.R. even if taken at their face value, they would not constitute any offence much less offence punishable under Sections 120-B read with 420, 468 and 471 of I.P.C., hence none of the petitioners are liable to be prosecuted.

(4) Respondent No.2 being the officer of the bank is incompetent to lodge the complaint in the absence of specific authorization, thereby the F.I.R. issued by the respondent No.1 on the basis of the complaint lodged by respondent No.2 without any authorization in writing from the Indian Overseas Bank is liable to be quashed. Apart from that, the remedy open to the complainant bank to recover the amount is resorting to civil litigation, but lodging of present complaint as an arm-twisting method is nothing but abuse of process of law.

(5) The petitioners are only directors and for the acts of the company, petitioners are not liable since principle of vicarious liability is not applicable in criminal law and prayed to quash the proceedings.

Since the grounds urged in all the petitions are identical, the grounds raised in Crl.P.No.2687 of 2017 are narrated hereinabove for deciding the real controversy.

None of the respondents filed any counter.

During hearing, Sri C.Nageswara Rao, learned senior counsel while reiterating the grounds urged in the petitions, raised the following contentions.

(1) The allegations made in the complaint would not constitute any offence much less offence punishable under Sections 120-B read with 420, 468 and 471 of I.P.C.,

(2) The petitioners being the directors are not liable to be proceeded with in criminal Court since the principle of vicarious liability has no room in criminal law.

(3) The F.I.R. lodged by the leader bank and the respondent No.2 bank are one and the same; each and every allegation in F.I.R.No.05 of 2017 lodged by respondent No.2 and the complaint lodged by leader bank, which is subject matter of F.I.R.No.02 of 2015 of CBI, Bank Securities and Frauds Cell, Bangalore are same. When the allegations are same in both the complaints, 2nd F.I.R. cannot be issued, on this ground the F.I.R. is liable to be quashed.

In support of his contentions he relied on "***Babubhai v. State of Gujarat***[1]" "***Awadesh Kumar Jha Alias Akhilesh***

[1] (2010) 12 SCC 254

Kumar Jha v. State of Bihar[2]" and the judgment of this Court rendered in "***Akbaruddin Owaisi v. Government of A.P.***[3]"

Finally, it is contended that at best the complainant is entitled to recover the amounts by resorting to appropriate proceedings and admittedly initiated proceedings under SARFAESI Act before the Debts Recovery Tribunal, in such case registration of crime against the petitioners and issuance of F.I.R. would amount to abuse of process of Court and at best, the course open to the complainant bank is to make a request to conduct further investigation if no investigation was conducted by C.B.I. in the earlier complaint lodged by the leader bank with regard to the transactions covered in the present crime registered based on the complaint of complainant bank, but no separate proceedings can be initiated and investigated into and if such procedure is resorted to it would amount to harassing the petitioner and prayed to quash the F.I.R.No.5 of 2017 of C.B.I, Bank Securities and Frauds Cell, Bangalore.

Sri D.V.Seetharamamurthy, learned senior counsel appearing for petitioner in Crl.P.No.6483 of 2017, who is accused No.3, while reiterating the contentions raised by Sri C.Nageswara Rao, senior counsel, supplemented that the accused No.3 is not directly connected with day to day affairs of the company. Therefore, he cannot be made liable under criminal law for any of the offences, even otherwise specific allegations made in the complaint would not constitute neither the offence punishable under Section 120-B of I.P.C. nor the offence punishable under

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[2] (2016) 3 SCC 8
[3] 2013 (6) ALT 101

Section 420 of I.P.C. Therefore, continuation of proceedings against the petitioners herein allowing investigating agency to investigate into the same allegations, which is the subject matter of F.I.R.No.02 of 2015 of leader bank is nothing but abuse of process of Court and this Court to meet the ends of justice has to quash the F.I.R.No.05 of 2017 on the file of C.B.I., Bank Securities and Frauds Cell, Bangalore.

Sri K.Surender, learned Special Public Prosecutor for CBI, specifically contended that the transactions among 4 banks are different and the loan agreements and amounts lent by them are different, though they constituted as consortium led by Bank of Baroda, it is improbable to contend that in view of complaint lodged by Bank of Baroda, the present complaint cannot be taken on file to investigate by the respondent No.1. Apart from that the investigation was done in Crime No.02 of 2015, which is the subject matter of complaint lodged by leader bank, but the respondent No.1 did not investigate into the allegations made by the complainant bank with regard to the specific transactions by playing fraud on it and placed on record the charge sheet filed in F.I.R.No.02 of 2015 to establish that the investigating agency investigated into the fraud played on Bank of Baroda and two other banks, but not the transactions pertaining to Indian Overseas Bank herein. Therefore, the complaint lodged by the complainant bank and leader bank are distinct and different; hence the present F.I.R.No.05 of 2017 cannot be quashed. When the transactions with the complainant bank – Indian Overseas Bank and leader bank – Bank of Baroda are distinct, the present F.I.R.No.05 of 2017 cannot be quashed. He placed reliance on "Jakir Hussain

Kosangi v. State of Andhra Pradesh (W.P.No.29374 of 2016 and batch)

Learned Special Public Prosecutor for CBI also contended that when the complaint was lodged with the police by any individual, the respondent No.1 is bound to register the crime, in this connection he relied on "***Lalita Kumari v. Government of U.P.***[4]"

Finally, he contended that the respondent No.1 is not required to wait to conduct preliminary enquiry for registration of crime. Therefore, the respondent No.1 registered crime against the petitioners and proceeding to investigate into the offence as the offence in F.I.R.No.02 of 2015 is distinct from the offence committed by these petitioners.

Finally, he contended that the company is represented by the directors and all the petitioners are dealing with day to day affairs of the company, in such case they cannot avoid criminal liability on the ground that they are not vicariously liable for the acts done by the company. The allegations made in the complaint would constitute a serious economic offence and at this stage Court cannot quash the proceedings since the proceedings are at fetus stage and requested to dismiss all the petitions.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

[4] 2014 (1) ALD (Crl.) 159 (SC)

1) ***Whether there exists prima facie ground to proceed before the Criminal Court against the petitioners for the offences punishable under Sections 120-B read with 420, 468 & 471 of I.P.C., if not, the F.I.R.No.05 of 2017 is liable to be quashed?***

2) ***Whether the petitioners being the Directors of M/s Leo Meridian Infrastructure Projects & Hotels Ltd., are vicariously liable for the acts of the company in F.I.R.No.05 of 2017. If not, the proceedings against them are liable to be quashed for the said offences.***

POINT Nos:1 & 2

The first and foremost contention of the learned counsels for the petitioners is that the allegations made in the complaint lodged by the respondent No.2 would not constitute any offence punishable under Sections 120-B read with 420, 468 and 471 of I.P.C. *prima facie* even if the allegations made in the complaint are accepted on their face value. Therefore, proceeding against them to investigate would cause enormous harassment to the petitioners. In view of the specific contention urged before this Court, it is necessary to advert to Section 482 of Cr.P.C., which is the basis for making request to exercise inherent powers of this Court.

Section 482 of Cr.P.C. deals with inherent powers of High Court, it reads as follows:

> **482. Saving of inherent power of High Court-** Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In view of the powers vested with this Court by Section 482 of Cr.P.C., it is apposite to advert to the law laid down by the Apex Court to exercise power to quash F.I.R. or any other proceedings.

In "***R.P. Kapur v. State of Punjab***[5]", the Apex Court laid down the following principles:

> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
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> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court

[5] AIR 1960 SC 866

as held by the Apex Court in ***"Mrs.Dhanalakshmi v. R.Prasanna Kumar[6]"***

In "**State of Haryana** v. ***Ch.*Bhajan Lal[7]"** this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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 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

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[6] AIR 1990 SC 494
[7] AIR 1992 SC 604

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.

In "***M/s. Medchl Chemicals and Pharma Private Limited v. M/s. Biological E. Limited***[8]" the Apex Court held that the power under Section 482 Cr.P.C. is to be exercised with care and sparingly, High Court has only to see whether allegations in complaint make out prima facie case. It has no power to examine truth and correctness of allegations. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. To exercise powers under Section 482 of Cr.P.C. the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall

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[8] AIR 2000 SC 1869

be taken into consideration without any critical examination of the same, but the offence ought to appear ex facie on the complaint.

In "***State of Orissa v. Saroj Kumar Sahoo***[9]**",** the Apex Court held that the inherent powers under Section 482, Cr. P.C. should not be exercised by the High Court to stifle a legitimate prosecution. The High Court, being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

Accepting the allegations made in the complaint on their face value, I would like to examine whether the allegations made in the complaint would constitute offence in view of the law declared by the Apex Court referred supra.

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[9] (2005) 13 SCC 540

In the present case, it is not the contention of the petitioners that the allegations made in the complaint would not disclose any offence, but contended that the present complaint is 2nd complaint and the allegations made in F.I.R.No.02 of 2015 lodged by the leader bank i.e. Bank of Baroda and the allegations made by the complainant – Indian Overseas Bank in the present complaint are one and the same and simply the Indian Overseas bank extracted part of the allegations made in the complaint lodged by the leader bank – Bank of Baroda and filed the same with the respondent No.1 – CBI. As the allegations made in the present complaint were already narrated in the earlier complaint lodged by the leader bank, the present complaint is not maintainable on the ground that no 2nd F.I.R. can be issued for the same offences.

Learned Special Public Prosecutor for C.B.I. fairly contended that there are certain allegations in the complaint lodged by the leader bank – Bank of Baroda, which is the subject matter of F.I.R.No.02 of 2015, but lending of amounts and loan agreements in the present complaint are independent with different dates. Therefore, registration of crime based on the complaint lodged by leader bank in F.I.R. No.02 of 2015 by itself is not sufficient to denude the respondent No.2 to prosecute the petitioners for various offences allegedly committed by them. Apart from that the copy of the charge sheet filed in F.I.R.No.02 of 2015 is also placed on record to contend that the respondent No.1 did not investigate into the allegations made against the petitioners by the leader bank pertaining to the alleged fraud played by the petitioners against the respondent No.2 herein though investigated into the allegations made against the petitioners in respect of fraud committed against the leader bank – Bank of Baroda, State Bank of Mysore and Allahabad Bank and filed charge sheet without touching any of the allegations made in the present complaint. In such case, the present case is independent and the same is maintainable and it would not amount to 2nd F.I.R.

Learned Senior Counsels Sri C.Nageswara Rao and Sri D.V.Seetharamamurthy would draw the attention of this Court to a judgment of Apex Court rendered in ***"Babubhai v. State of Gujarat"*** (referred supra) in support of their contention that the test determine to maintain subsequent F.I.R. is "sameness of allegations" in earlier and subsequent F.I.Rs. In ***"Babubhai v. State of Gujarat"*** (referred supra) the Apex Court considered the scope of Section 154 of Cr.P.C. and held that the FIR under Section 154 Cr.P.C. is a very important document. It is the first information of a cognizable offence recorded by the Officer In-Charge of the Police Station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. Thus, it is quite possible that more than one piece of information be given to the Police Officer In- charge of the Police Station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the Diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the First Information Report will be statements falling under Section 162 Cr.P.C. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counter claim, investigation on both the FIRs has to be conducted.

Similarly in "***Awadesh Kumar Jha Alias Akhilesh Kumar Jha v. State of Bihar"*** (referred supra)" the Apex Court relying on "***Amitbhai Anilchandra Shah v. CBI***[10]" "***T.T.Antony v. State of Kerala***[11]" "***Ram Lal Narang v. State (Delhi Admn.)***[12]" "***Upkar Singh v. Ved Prakash***[13]" "***C.Muniappan v. State of T.N.***[14]"and ***"Babubhai v. State of Gujarat"*** (referred supra). In all the judgments the Apex Court explained the "consequence test" i.e. if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR.

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[10] (2013) 6 SCC 348
[11] (2001) 6 SCC 181
[12] (1979) 2 SCC 322
[13] (2004) 13 SCC 292
[14] (2010) 9 SCC 567

The decision rendered in "***T.T.Antony v. State of Kerala"*** (referred supra) is the basis for laying down the test of "sameness" and "consequence test".

The scheme of Code of Criminal Procedure is that an officer in charge of a police station has to commence investigation only upon receipt of information about the occurrence of cognizable offence. F.I.R. is the basis to set the criminal law into motion, unless criminal law is set into motion, the police officer in charge of a police station is incompetent to commence investigation. Therefore, whatever complaint received, after registration of F.I.R. based on the complaint lodged by any person regarding occurrence of cognizable offence, shall be treated as a statement under Section 162 of Cr.P.C.

If the allegations made in both the complaints are one and the same in all respects, the 2nd F.I.R. is not maintainable since it amounts to prosecuting same accused twice for the same offence subjecting them to interrogation etc.

In "***Awadesh Kumar Jha Alias Akhilesh Kumar Jha v. State of Bihar"*** (referred supra) the Apex Court held that there can be no second FIR in the event of any further information being received by investigating agency in respect of the same offence or same occurrence, or, same transaction giving rise to one or more offences for which charge-sheet has already been filed by investigating agency. Recourse available with investigating agency in said situation is to conduct further investigation, normally with leave of Court as provided under Section 173 (8) of Cr.P.C.

In "***T.T.Antony v. State of Kerala***" (referred supra) view expressed by the Apex Court is identical. Basing on these principles, it is contended that when F.I.R.No.02 of 2015 based on the complaint lodged by leader bank, subsequent complaint by respondent No.2 shall be treated as a statement under Section 162 of Cr.P.C. and no crime can be registered and investigated into on the basis of such complaint.

In "***Akbaruddin Owaisi v. Government of A.P.***" (referred supra) this Court while deciding a writ petition had an occasion to consider the question of maintainability of 2nd F.I.R. and applied the test of "sameness" relying on "***T.T.Antony v. State of Kerala***" (referred supra) and "***Babubhai v. State of Gujarat***" (referred supra) concluded as follows:

> "The concept of "sameness" has been given a restricted meaning. In order to examine the impact of one or more FIRs, the Court has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence; and whether they are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. It is only if the second FIR relates to the same cause of action, the same incident, there is sameness of occurrence and an attempt has been made to improvise the case, would the second FIR be liable to be quashed. In cases where every FIR has a different spectrum, and the allegations made are distinct and separate, it may be regarded as a counter complaint, but it cannot be stated that an effort has been made to improve the allegations that find place in the first FIR or that the principle of "sameness" is attracted. (Babubhai v. State of Gujarat (2010) 12 SCC 254) "Surendra Kaushik v. State of Uttar Pradesh (judgment of the Supreme Court in Crl.Appeal No.305 of 2013 dated 14.02.2013.)
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> It is not possible to enunciate any formula of universal application to determine whether two or more acts constitute the same transaction. They are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. For several offences to be part of the same transaction, the test to be applied is whether they are so related to

one another in point of purpose or of cause and effect or as principal and subsidiary, so as to result in one continuous action. Where there is commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction". Where two incidents are of different times with involvement of different persons, there is no commonality, the purpose thereof is different, they emerge from different circumstances, and would not form part of the same transaction. (Anju Chaudhary v. State of Uttar Pradesh (2013) Cri.L.J. 776 (SC)."

The law declared by this Court is also identical to the principle laid down by the Apex Court in "***T.T.Antony v. State of Kerala"*** (referred supra) and "***Awadesh Kumar Jha Alias Akhilesh Kumar Jha v. State of Bihar"*** (referred supra).

Per contra, Sri K.Surender, learned Special Public Prosecutor for C.B.I. contended that though reference was made by the leader bank about the transactions between the respondent No.2 and the petitioners, the investigating agency did not look into the allegations and filed charge sheet based on those allegations. Apart from that the transactions between the respondent No.2 and the company are independent though the security furnished to all the banks for due payment of the loan is one and the same, the dates of transactions are also different; in such case the Court cannot treat the complaint lodged by the respondent No.2 herein as 2nd F.I.R. and quash the same. He placed reliance on a judgment of Division Bench of this Court rendered in "Jakir Hussain Kosangi v. State of Andhra Pradesh (W.P.No.29374 of 2016 and batch). On the strength of the principles laid down in the above judgment, he contended that the 2nd F.I.R. is maintainable against the same accused.

Undoubtedly, the law laid down by the Apex Court differs from one case to the other depending upon the situation. There are situations in which investigation may be done against both, when there are two F.I.Rs in respect of the same case. Of course, the legal position is that there cannot be two F.I.Rs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different F.I.R.'s and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the Court styling it as F.I.R. No. 208 of 1998 need be considered as an information submitted to the Court regarding the new discovery made by the police during investigation that persons not named in F.I.R. No. 135 are the real culprits. To quash the said proceeding merely on the ground that final report had been laid in F.I.R. No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it. Even otherwise the investigating agency is not precluded from further investigation in respect of an offence inspite of forwarding a report under sub-section (2) of Section 173 on a previous occasion. This is clear from Section 173 (8) of the Code as held in "***Kari Choudhary v. Most. Sita Devi***[15]"

In "***T.T.Antony v. State of Kerala***" (referred supra) different view was taken by the Apex Court, wherein two F.I.Rs were already registered and the 3rd F.I.R. was questioned, the Apex Court held that 3rd F.I.R. is not maintainable and quashed the same. But the principle 'no second F.I.R. for the same offence' was

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[15] (2002) 1 SCC 714

reviewed by Full Bench of Apex Court and expressed a different view. Therefore, the law declared in "***T.T.Antony v. State of Kerala"*** (referred supra) alone cannot be the basis for deciding the real controversy in the present case.

In the later judgment rendered in "***M.Krishna v. State of Karnataka***[16]" when a complaint was made to ACB for a particular period and another complaint was lodged covering the earlier period and subsequent period, the Apex Court held that such second F.I.R. by itself cannot be said to be illegal. Hence, it could not be quashed and investigation pursuant thereto could not be restrained under Section 482 of Cr.P.C. However, the investigating authority will have to essentially take into account the results of the earlier investigation, thereby refused to quash the 2nd F.I.R. registered under Section 13 (1) (e) and 13 (2) for the possession of assets disproportionate to known source of income on the ground that the 2nd F.I.R. is for enlarged period.

In "***Surender Kaushik v. State of Uttar Pradesh***[17]" the Apex Court discussed about the maintainability of 2nd F.I.R. by relying on "***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru***[18]" and "***T.T.Antony v. State of Kerala"*** (referred supra) and other judgments reviewed entire law and concluded that if the involvement of the number of accused persons and the nature of the allegations are scrutinized, it becomes crystal clear that every F.I.R. has a different spectrum. The allegations made are distinct and separate. It may be regarded as a counter complaint and

[16] (1999) 3 SCC 247
[17] (2013) 5 SCC 148
[18] AIR 2005 SC 3820

cannot be stated that an effort has been made to improve the allegations that find place in the first F.I.R. It is well-nigh impossible to say that the principle of sameness gets attracted.

In "***Ram Lal Narang v. State (Delhi Admn.)***" (referred supra) the Apex Court held that it has to be examined on the merits of each case whether a subsequently registered FIR is a second F.I.R. about the same incident or offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. It will not be appropriate for the Court to lay down one straightjacket formula uniformly applicable to all cases and laid down the following principles:

> "Anyone acquainted with the day today working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate ? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the

Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

As in the present case, occasions may arise when a second investigation started independently of the first may disclose a wide range of offences including those covered by the first investigation. Where the report of the second investigation is submitted to a Magistrate other than the Magistrate who has already taken cognizance of the first case, it is up to the prosecuting agency or the accused concerned to take necessary action by moving the appropriate superior Court to have the two cases tried together. The Magistrates themselves may take action suo motu. In the present case, there is no problem since the earlier case has since been withdrawn by the prosecuting agency. It was submitted to us that the submission of a charge-sheet to the Delhi Court and the withdrawal of the case in the Ambala Court amounted to an abuse of the process of the Court. We do not think that the prosecution acted with any oblique motive. In the charge-sheet filed in the Delhi Court, it was expressly mentioned that Mehra was already facing trial in the Ambala Court and he was, therefore, not being sent for trial. In the application made to the Ambala Court under Section 494 Criminal Procedure Code, it was expressly mentioned that a case had been filed in the Delhi Court against Mehra and others and, therefore, it was not necessary to prosecute Mehra in the Ambala Court. The Court granted its permission for the withdrawal of the case. Though the investigating agency would have done better if it had informed the Ambala Magistrate and sought his formal permission for the second investigation, we are satisfied that the investigating agency did not act out of any malice. We are also satisfied that there has been no illegality. Both the appeals are, therefore, dismissed.

In "***Rameshchandra Nandlal Parikh v. State of Gujarat***[19]" the Apex Court held that the subsequent F.I.Rs. cannot be prohibited on the ground that some other F.I.R. has been filed against the petitioner in respect of other allegations filed against the petitioner. The Apex Court had an occasion to deal with the situation where the first F.I.R. was a cryptic one and later on, upon receipt of a proper information, another F.I.R. came to be recorded which was a detailed one. In that case, the Court took the view that no exception could be taken to the same being treated as an F.I.R.

In "***Vikram v. State of Maharashtra***[20]" the Apex Court held that it was not impermissible in law to treat the subsequent information report as the First Information Report and act thereupon.

In "***Tapinder Singh v. State of Punjab***[21]" the Apex Court examined the question as to whether cryptic, anonymous and oral messages, which do not clearly specify the cognizable offence, can be treated as FIR, and answered the question in the negative.

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[19] (2006) 1 SCC 732
[20] (2007) 12 SCC 332
[21] (1970) 2 SCC 113

In "***Shiv Shankar Singh v. State of Bihar***[22]" the Apex Court expressed a view that the law does not prohibit filing or entertaining of a second complaint even on the same facts, provided that the earlier complaint has been decided on the basis of insufficient material or has been passed without understanding the nature of the complaint or where the complete facts could not be placed before the court and the applicant came to know of certain facts after the disposal of the first complaint. The Court applied the test of full consideration of the complaints on merits and held as under: -

> "Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

The Division Bench of this Court relied on ""***Ram Lal Narang v. State (Delhi Admn.)***" (referred supra), "***M.Krishna v. State of Karnataka***" (referred supra), "***V.K.Sharma v. Union of India***[23]" "***Mohan Bhaitha v. State of Bihar***[24]" "***T.T.Antony v. State of Kerala***" (referred supra) "***Narinderjit Singh Shani v. Union of India***[25]" "***Kari Chaudhary Vs. Most. Sita Devi***" (referred supra) ***"State of Punjab v. Rajesh Syal***[26]***" "Upkar Singh v. Ved Prakash"*** (referred supra) "***Rameshchandra Nandlal Parikh v.***

[22] (2012) 1 SCC 130
[23] (2000) 9 SCC 449
[24] (2001) 4 SCC 350
[25] (2002) 2 SCC 210
[26] (2002) 8 SCC 158

State of Gujarat*"** (referred supra) "Vikram v. State of Maharashtra"*** (referred supra) ***"Pramod Kumar Saxena v. Union of India[27]" "Nirmal Singh Kahlon Vs. State of Punjab***[28]" "***C.Muniappan v. State of T.N.***" and ***"Babubhai v. State of Gujarat"*** (referred supra) "***ChirraShivraj Vs. Sate of AP[29]"*** "***Shiv Shankar Singh v. State of Bihar***" (referred supra) "***Surender Kaushik v. State of Uttar Pradesh***" (referred supra) "***Amitbhai Anilchandra Shah v. CBI"*** (referred supra) "***Anju Chowdry Vs. State of U.P[30]"***, "***YanabSheikh@gagu Vs. State of West Bengal***[31]", distinguished the facts and on analysing the decisions of Apex Court recorded "evolution of the law" in the form of table, which is as follows:

S.NO	**Decision**	**The dispute arose out of**	**Whether the Second (2nd) FIR or Multiple FIRs filed are Valid or Invalid**
1.	Ram Lal Narang Vs. State(Delhi Administration) and Om Prakash Narang & Ors Vs. State(Delhi Administration), (1979) 2 SCC 322	Arose out of theft of two sandstone pillars of great antiquity.	Valid
2.	M. Krishna Vs. State of Karnataka, (1999) 3 SCC 247	Arose out of amassing wealth disproportionate to one's source of income.	Valid
3.	V.K. Sharma Vs. Union of India, (2000)9SCC449	Arose out of swindling a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. (White-Collar Crime)	Valid (Multiple FIRs)

[27] (2008) 9 SCC 685
[28] (2009) 1 SCC 441
[29] (2010) 14 SCC 444
[30] (2013) 6 SCC 384
[31] (2013) 6 SCC 428

4.	Mohan Bhaitha Vs. State of Bihar, (2001)4SCC350	Arose out of a dowry death. Note: - The question involved here is not concerned about whether there can be more FIRs than one but whether there can be more trials than one.	Held: -Offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of facts so as to form the same transaction.
5.	T.T. Antony Vs. State of Kerala, (2001) 6 SCC 350	Arose out of police firing resulting into deaths of few people and injuries to a large number of people.	Third (3rd) FIR Invalid.
6.	Narinderjit Singh Shani and another Vs. Union of India, (2002)2SCC210	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
7.	Kari Chaudhary Vs. Most. Sita Devi and Ors, (2002) 1 SCC 714	Arose out of a murder case.	Valid
8.	State of Punjab Vs. Rajesh Syal , (2002)8SCC158	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. (White-Collar Crime)	Valid (Multiple FIRs)
9.	Upkar Singh v. Ved Prakash, (2004) 13 SCC 292	Arose out of an attempt to murder and house-trespass cases	Valid
10.	RameshchandraNandlal Parikh v. State of Gujarat (2006) 1 SCC 732	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
11.	Vikram Vs. State of Maharashtra, (2007) 12 SCC 332	Arose out of a murder case.	Valid
12.	Pramod Kumar Saxena Vs. Union of India and Ors, (2008)9SCC685	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
13.	Nirmal Singh Kahlon Vs. State of Punjab and Others, (2009) 1 SCC 441	Arose out of scandal involving selection of Panchayat Secretaries.	Valid

14.	C. Muniappan and others Vs. State of Tamil Nadu, (2010) 9 SCC 567	Arose out of setting fire to a university bus and several public buses.	Investigation of the Second FIR was clubbed with the investigation of the First FIR. In essence, two complaints/FIRs are clubbed together and investigated jointly.
15.	Bahubhai Vs. State of Gujarat, (2010) 12 SCC 254	Arose out of altercation that took place between members of the two communities.	Invalid
16.	ChirraShivraj Vs. Sate of AP, (2010) 14 SCC 444	Arose out of an attempt to murder case.	Second F.I.R. held Valid because SHO made a mistake by recording information as a fresh F.I.R. and that this mistake should not make the case of prosecution weak especially when no prejudice had been caused.
17.	Shiv Shankar Singh Vs. State of Bihar, (2012) 1 SCC 130	Arose out of dacoity and murder.	Valid
18.	Surender Kaushik and Others Vs. State of UP, (2013) 5 SCC 148	Arose out of fake and fraudulent documents prepared by the accused persons.	Invalid
19.	AmitbhaiAnilchandra Shah Vs. CBI, (2013) 6 SCC 348	Arose out of murder cases	Invalid
20.	Anju Chowdry Vs. State of UP, (2013) 6 SCC 384	Arose out of a hate speech.	Valid
21.	YanabSheikh@gagu Vs. State of West Bengal, (2013) 6 SCC 428	Arose out of a murder case.	Invalid

Finally, concluded that the decision of the Two member bench in "***T.T.Antony v. State of Kerala***" (referred supra) was not taken note of in "***Narinderjit Singh Shani v. Union of India" "State of Punjab v. Rajesh Syal" "Pramod Kumar Saxena v. Union of India"*** (referred supra). In all those 3 decisions, the Apex Court concerned with the cases of persons who collected money from innumerable persons but failed to repay the same. The decision in "***T.T.Antony v. State of Kerala***" (referred supra) arose out of offences relating to Law and Order, Public Order and the Police Firing. When the offences alleged against the person relates to collection of deposits and failure to repay, the reatio decidendi in "***Narinderjit Singh Shani v. Union of India" "State of Punjab v. Rajesh Syal" "Pramod Kumar Saxena v. Union of India"*** (referred supra) alone would apply and not the ratio in "***T.T.Antony v. State of Kerala***" (referred supra). But in view of the Full Bench judgment of Apex Court and various decisions referred supra, more particularly in "***State of Punjab v. Rajesh Syal***" (referred supra) multiple F.I.Rs. are valid. Similarly in "***Rameshchandra Nandlal Parikh v. State of Gujarat***" "***Pramod Kumar Saxena v. Union of India***" "***V.K.Sharma v. Union of India***" "***Narinderjit Singh Shani v. Union of India***" (referred supra) it is also held that multiple F.I.Rs. are maintainable. But in few judgments "***Bahubhai v. State of Gujarat***" "***T.T.Antony v. State of Kerala***" "***Surender Kaushik v. State of U.P.***" "***Amitbhai Anilchandra Shah v. CBI***" (referred supra) it is held that multiple F.I.Rs. are not maintainable. But in view of Full Bench judgment of Apex Court rendered in "***State of Punjab v. Rajesh Syal***" (referred supra) the Division Bench of this Court concluded that multiple F.I.Rs. are maintainable.

Keeping in view of the law declared by various Courts referred supra, I would like to examine the present case.

Bank of Baroda, State Bank of Mysore, Allahabad Bank, Union Bank of India, Andhra Bank and Indian Overseas Bank with a view to lend amount to the M/s.Leo Meridian Infrastructure Projects & Hotels Limited, Hyderabad i.e. by corporate financing formed into Consortium. In Consortium financing, several banks (or financial institutions) finance a single borrower. In this case, there is a common documentation, joint supervision and follow-up exercises between all banks/financial institutions. So the participating banks form a new consortium bank. The whole loan amount is divided among those banks forming consortium, so the risk also gets divided. The bank which takes the higher risk (by giving the highest amount of loan) will act as a leader and thus it acts as an intermediary between the consortium and the borrower. Therefore, in the present case, the leader bank i.e. Bank of Baroda is only an intermediary between Consortium and borrower. But the documentation, supervision, follow-up exercise between all banks is joint and common. Consortium financing is suggested for corporate financing in view of the guidelines issued by Reserve Bank of India.

In the present facts, the leader bank is Bank of Baroda. The documentation, supervision etc., though common and joint, the leader bank is acted as an intermediary between Consortium and borrower. There is a lot of difference between multiple banking and consortium.

Multiple Banking is a banking arrangement where a borrowal avails of finance independently from more than one bank. Thus, there is no contractual relationship between various bankers of such borrower. Also in such arrangement each banker is free to do his own credit assessment and old security independent of other bankers.

In multiple banking arrangement, a borrower gets freedom to deal with each bank separately and thus can negotiate borrowal terms one to one with each bank. As rider, such borrower also has to spend more time and effort in dealing with multiple banks.

As per the consortium lending approach, the group of banks would have a common agreement wherein a lead bank would assess the borrower's fund requirements, set common terms and conditions and disseminate information about borrower's performance to other lenders. Thus, the move is expected to keep a check on the high value frauds in the system as well, which ride high in case of multiple lending arrangement.

The prime difference between the multiple banking and consortium is that “in multiple banking the borrower has to follow the same procedure of documentation with all banks and in consortium the borrower may create Pari-Passu charge against the properties i.e. common charge over the property in favour of all banks.

In recent past, Reserve Bank of India has issued guidelines for working capital finance and credit limits, but they are not relevant for deciding the present issue.

Admittedly, a Pari-Passu charge was created in favour of four banks i.e. consortium over the property including proposed hotel to be constructed. At this stage, it is apposite to mention meaning of Pari-Passu charge.

Most of the large borrowers are financed by multiple banks in a consortium or under Joint Lending Arrangement (JLA). Each bank that participates in the joint lending program takes the share of the certain percentage of total amount of finance under uniform terms and conditions including the rate of interest. The loan program of multiple banks will be under common loan documentation and common asset classification for the combined limits sanctioned by them. For this purpose, participating banks enter into an inter-se agreement which allows these banks to hold common security against their advances. The borrowing company executes the common loan agreements, hypothecation deeds, mortgage deeds and other similar documents for the combined limits sanctioned by the participating banks under consortium/JLA. The leader bank (usually the bank which takes up the largest share of the limits deemed to be the leader of the consortium/JLA) will hold the common documentation executed by the borrowing company. This type of charge created through common documents on behalf of multiple banks is called Pari-Passu charge. Law requires such charges on assets of the company to be registered at Registrar of Companies within 30 days from the date of creation of charge or such extended time permitted by the Registrar of Companies.

Pari-Passu charge provides an equivalent right to the share of specified assets of a borrowing company to all the lenders under the arrangements. In the event of default of repayment from the borrower the joint lenders may decide to dispose-off the security held by them in order to recover their dues. The realization proceeds of the assets disposed-off would be shared among joint lenders in proportion to the balances outstanding in their accounts.

Thus, in view of the meaning of Pari-Passu charge, the rights of the joint lenders in consortium banking proportionate to their share and any one of them in the event of default may sell the property and realise the debt due proportion to their share and the entire amount shall be divided among all the members of consortium in proportion to their shares. Therefore, any one of the joint holders or any member of the Consortium can proceed against the borrower for recovery of amount in case of default.

In the present facts of the case, leader bank – Bank of Baroda lodged complaint on 23.02.2015 with Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore narrating various transactions of M/s Leo Meridian Infrastructure Projects and Hotels Ltd. One of the transactions covered by complaint lodged by leader bank – Bank of Baroda referred in paragraph No.5 (a) and the same pertains to Rs.13.00 crores for expansion of the hotel project for increasing the rooms from 240 to 265 rooms. The credit facility is primarily secured by pari passu charge by way of equitable mortgage of land and building belonging to the company admeasuring Ac.1.26 guntas in S.No.389 situated at Bommaraspet village, Shamirpet Mandal, Ranga Reddy District. Paragraph No.5 (b) of the complaint refers to cash credit limit of Rs.3.00 crores, for working capital needs of the 265 room hotel, under multiple banking arrangement with State Bank of India and Union Bank of India. Both are different transactions. The present transaction is shown in Para 5 (c) of the complaint referring pari-passu charge. Para 5 (d) pertains to lending of Rs.20.77 crores by Andhra Bank being the lead bank for construction of Water Theme Park. The execution of documents in favour of consortium consisting of 2nd respondent and other two banks is also referred in paragraph 6, it shows that M/s LMIPHL again by application dated 05.04.2010 requested the consortium led by Bank of Baroda for sanction of loan of Rs.75 crores for expansion of hotel to 903 rooms from 318 rooms. Similarly, various other loan transactions were referred in the complaint in Crime No.02 of 2015 and details were given in paragraph No.11, which is as follows:

"11. Details of various credit facilities availed by the company from our bank and the outstanding balance as on 30.12.2014 is given below:

Sl. No.	Facility	Purpose	Date of Sanction	Limit (Rs.in lacs)	Outstanding Balance (Rs.in lakhs)
1	Term Loan I (06/156)	Garden Villa Suites Renovation Expansion	23.08.16	1400.00	629.13
2	Term Loan II (06/161)	For Construction of 240 Room Hotel	02.11.06	2500.00	1513.43
3	Bank Guarantee	BG facility – Non Fund Based Limit	02.11.06	300.00	120.39
4	Term Loan III (06/238)	For expansion of 240 room hotel to 265 room hotel with additional facilities	12.10.09	1300.00	1073.44
5	Term Loan V (06/257)	For construction of Water Theme Park	12.10.09	2077.00	2063.68
6	**Term Loan VII (Merger of TL-IV & TL-VI (06/324)** **(Transaction covered by the present complaint)**	**TL-IV (06/246) Rs.45.00 crs for construction of 318 Room Hotel and TL-VI (06/287) Rs.75.00 crs for expansion of 318 Room Hotel to 903 Rooms**	**TL IV on 12.12.09** **TL VI on 12.06.10**	**12000.00**	**11987.72**
7	Cash Credit (05/46)	For working Capital needs of 265 room hotel	12.10.09	300.00	416.23
8	Overdraft (04/6) (180904/177)	Overdraft against property	22.08.12	1100.00	1100.00
	Total			20977.00	18904.02

Item No.6 in the above table covered by Indian Overseas Bank being member of Consortium. The present complaint lodged by the respondent No.2 herein – Indian Overseas Bank is only with regard to item No.6 of the table shown in the complaint in Crime No.02 of 2015 lodged by the leader bank. Though Special Public Prosecutor for C.B.I. would contend that the transactions are different, but the Pari-Passu charge created over the property is one and the same and it is common charge against the properties. But the amount lent is different. The C.B.I based on the complaint in Crime No.02 of 2015 lodged by the leader bank filed charge sheet against several accused viz. G.S.Chakravarthi Raju (A.1), M/s Leo Meridian Infrastructure Projects and Hotels Ltd. (A.2), Sri Satya Sai Pradeep Geddam @ GSS Pradeep (A.3), Medisetti Adinarayana (A.4), Veerendra Babu Ponugumati (A.5) for the offences punishable under Sections 120-B read with 420 and 471 of I.P.C. the said charge sheet confined to '7' term loans referred. (vide page Nos.41 to 50 of charge sheet filed therein) and cash credit and overdraft referred in Page No.51 of the charge sheet filed in Crime No.02 of 2015.

In the present complaint, crime was registered against M/S Leo Meridian Infrastructure Projects and Hotels Ltd. (A.1), G.S.Chakravarthi Raju (A.2), Rangaraju Kalidindi (A.3), Rama Chandra Raju Dendukuri (A.4), Kolluri Prashant (A.5), Gokaraju Swarna Kumari (A.6), Sarat Yenigalla (A.7) and T.V.Narasimham (A.8) and the offences allegedly committed by the accused are punishable under Sections 120-B read with 420, 468 and 471 of I.P.C.

Copy of F.I.R.No.02 of 2015 is also placed on record, in which crime was registered against only G.S.Chakravarthi Raju (A.1) and M/s.Leo Meridian Infrastructure Projects and Hotels Ltd. (A.2), but not against all the petitioners herein. But charge sheet was filed therein against three others also.

As discussed above, the accused in F.I.R.No.05 of 2017 of Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore are different from the F.I.R.No.02 of 2015. In both the complaints, there is only two common accused. All the more, in F.I.R.No.02 of 2015, the transaction covered by the present complaint was not investigated into though made an allegation against the accused therein about the commission of fraud against the respondent No.2 herein. Therefore, on the principle of sameness, the Court cannot quash the proceedings by exercising power under Section 482 of Cr.P.C. Even as per the principles rendered in various prospective pronouncements of Apex Court referred supra, 2nd F.I.R. is maintainable in certain circumstances, which I stated above. Consequently, the contention of the counsel for the petitioners cannot be sustained, which is based on "***Babubhai v. State of Gujarat***" "***Awadesh Kumar Jha Alias Akhilesh Kumar Jha v. State of Bihar***" "***T.T.Antony v. State of Kerala***" (referred supra) and the judgment of this Court rendered in "***Akbaruddin Owaisi v. Government of A.P.***" (referred supra) as the principle laid down in "***T.T.Antony v. State of Kerala***" was distinguished by the Full Bench of Apex Court in "***Upkar Singh v. Ved Prakash***" (referred supra). Therefore, on the ground of "sameness" I am unable to quash the proceedings in F.I.R.No.05 of

2017 on the file of Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore.

Though learned Special Public Prosecutor for C.B.I. contended that the transactions between respondent No.2 and the accused are separate, hence the Court cannot quash the F.I.R. Since the petitioners created Pari-Passu charge i.e. common charge in favour of consortium, the member banks of consortium are entitled to a share the charged property, on this ground, this court cannot deny the quashing of proceedings.

When the complainant and accused are different except two in both the complaints, on the concept of "sameness" the proceedings cannot be quashed and the allegations made in the complaint would disclose commission of cognizable offence *prima facie*.

The other contentions raised by the counsel for the petitioners is that except the Managing Director, other directors of the company has no liability since the principle of vicarious liability is not applicable to criminal liability. No doubt, the directors have no vicarious liability and the persons who are actually participating in day to day affairs of the company are liable for the criminal acts committed by the company or its Managing Director.

There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents as held in "***Standard Chartered Bank v. Directorate of Enforcement***.[32]"

The Apex Court in a recent judgment rendered in "***K.Sitaram and another v. CFL Capital Financial Service Ltd. & Another***[33]**"** observed that "no doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically invoking such a provision."

However, at this stage, this Court cannot decide whether all the petitioners are actually participated in day to day affairs of the company or not since the investigation is not yet commenced and it is at fetus stage. When the facts are hazy, not complete and not totally placed before the Court, this Court cannot quash the F.I.R. at the crime stage in view of the judgment in "***State of Orissa v. Saroj Kumar Sahoo***" (referred supra). Therefore, in view of the law laid down by the Apex Court, it is difficult to quash the proceedings at this stage when investigation is not yet commenced.

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[32] (2005) 4 SCC 530
[33] JT 2017 (6) SC 52

Economic offences are described as special class and the Court normally would not quash such proceedings except in extraordinary circumstances. In "***Sushil Suri v. Central Bureau of Investigation***[34]" overwhelming material is available on record which clearly shows that the Company and its directors and other persons had conspired to forge, fabricate and use documents in order to avail loan from the bank and had opened or caused to be opened fictitious bank accounts in the names of the suppliers to encash the pay orders/demand drafts issued by Bank, and played fraud with Bank as also on the public exchequer by claiming depreciation on the machinery, which was never purchased. Charge sheet was filed against the accused therein for the offences punishable under Sections 120-B read with 420, 409, 468 and 471 of I.P.C. Petitioners contended that they have paid the entire amount due to the bank and no monetary loss caused to the bank. Therefore, continuation of criminal proceedings against the accused would not proper and thus pleaded that it was a fit case where High Court should have exercised its jurisdiction under Section 482 of Cr.P.C. and quashed the charge sheet. The Apex Court considered the tenability of such contentions and held that it would neither be desirable nor proper to return a final finding, as to whether essential ingredients of said sections are satisfied. On a conspectus of factual scenario, *prima facie*, charge sheet does disclose commission of offences by the appellant therein under aforementioned sections. More than sufficient circumstances exist, suggesting hatching of criminal conspiracy and forgery of several documents, leading to commission of aforementioned offences.

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[34] (2011) 5 SCC 708

Having regard to modus operandi adopted by accused therein, as projected in charge sheet, it is not a fit case for exercise of jurisdiction by High Court under Section 482 of Cr.P.C. as the accused had not only duped bank, they had also availed of depreciation on machinery, which was never purchased and used by them, causing loss to exchequer, which is a serious economic offence against society; merely because dues of bank were paid up, the accused cannot be exonerated from criminal liability and charge sheet cannot be quashed by exercising inherent power under Section 482 of Cr.P.C.

Same view was expressed by the Apex Court in "***State v. R.Vasanthi Stanley***[35]" and "***State of Maharashtra through Central Bureau of Investigation v. Vikram Anantrai Doshi***[36]".

In the facts of "***State of Maharashtra through Central Bureau of Investigation v. Vikram Anantrai Doshi***" (referred supra) charge sheet was filed making serious allegations that the accused therein made number of applications to the Bank of Baroda for sanction of various credit facilities, stating that they wanted to induct the said bank as a new consortium member to replace the existing members, namely, the UTI Bank and the Federal Bank. They requested the said Bank to sanction 15% of the total Working Capital facility sanctioned by the consortium of Banks, so that, that much amount could be transferred to the UTI bank and Federal Bank to take over the existing liabilities with the said two banks. It was revealed during investigation that the account of the company, with the consortium of banks as well as the finance institutions, was highly irregular and in the said

[35] (2016) 1 SCC 376
[36] (2014) 15 SCC 29

condition the accused persons approached the Bank for sanction of loan. In the application to the Bank, the accused persons concealed the fact relating to the dues outstanding against them. Thereafter, when asked for the outstanding position with the existing consortium members, the accused persons willfully and with the criminal intent to mislead the Bank of Baroda, furnished wrong statements about the outstanding position by giving considerably lesser amount as outstanding than the actual. Accused persons wilfully and with criminal intent to mislead Bank of Baroda, furnishing to said Bank wrong statements about the outstanding position with the existing consortium members. As per terms and conditions of sanction, entire working capital and term loan were to be directly paid to UTI Bank and Federal Bank. But accused No.1 therein induced the Bank to release sanctioned working capital funds to current account. From that account, accused No.1 dishonestly diverting money to his own accounts with SBI and Dena Bank, to bring down the outstanding liabilities in those accounts. Further, accused No.1 getting letters of credit issued from SBI and Dena Bank in favour of fictitious companies propped up by accused persons and using said Letters of credit to siphon off the funds from those banks. Because of the acts of accused, facilities sanctioned by Bank of Baroda rendered with;out any securities and Bank suffered wrongful loss. During pendency of criminal case before trial Court, on payment of certain amount by accused No.1, settlement of dispute taking place between Bank of Baroda and accused persons. On considering the above serious allegations made in the charge sheet, the Apex Court held that “availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skilfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction Under Article 226 of the Constitution or Under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, there is no other option but to hold that the order of the High Court is wholly indefensible."

In the present facts also the petitioners allegedly committed offences punishable under Sections 120-B read with 420, 468 and 471 of I.P.C. and the investigation is not yet commenced, but the petitioners sought for quashment of the proceedings on the ground that no case is made out against them. But in view of the judgments referred supra, this Court cannot quash the proceedings at this stage.

One of the contentions is that when the allegation in the complaint predominantly a civil dispute, the F.I.R. is liable to be quashed, but this contention is contrary to law laid down in "***R.Kalyani v. Janak C.Mehta***[37]", wherein the Apex Court had an occasion to deal with the vicarious liability of the directors of the company and held that "the High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently

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[37] (2009) 1 SCC 516

innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

From the principle laid down in the above judgment, the F.I.R. in the present case cannot be quashed except in extraordinary circumstances and the allegations made in the F.I.R. amounting to civil liability by itself is not a ground to quash the proceedings.

In "***Vijayander Kumar v. State of Rajasthan***[38]" also the Apex Court held that "a given set of fact may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to informant/complainant that itself cannot be a ground to quash a criminal proceeding and the real test is whether allegations in complaint disclose a criminal offence or not and declined to quash the proceedings."

In "***Devendra v. State of U.P.***[39]" the Apex Court considered the scope of quashing of F.I.R. and held that when the dispute purely of civil nature and no offence is made out from the allegations in F.I.R., quashing of complaint is justified. In the same judgment, the Apex Court distinguished the criminal wrong from civil wrong.

In the present facts of the case, the principle laid down in the above judgment has no application since the petitioners siphoned and devoured the funds of financial institutions, which were formed into consortium under corporate finance and caused huge loss by their acts and omissions and such persons are not entitled to claim benefit under Section 482 of Cr.P.C. Therefore, on

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[38] (2014) 3 SCC 389
[39] (2009) 7 SCC 495

the ground that the allegations made in the F.I.R. amount to civil liability, the proceedings cannot be quashed.

Section 482 of the Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely:

(i) to give effect to an order under the Code of Criminal Procedure;

(ii) to prevent an abuse of the process of Court; and

(iii) to otherwise secure the ends of justice.

It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, the Apex Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 of the Code of Criminal Procedure. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Charge sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offences alleged.

Learned senior counsels for the petitioners contended that the allegations made in the complaint would not constitute any offence even if they are taken on their face value, hence this Court can exercise inherent power under Section 482 of Cr.P.C. to prevent abuse of process of law.

No doubt, as per the guidelines laid down in "**State of Haryana** *v.* ***Ch.*****Bhajan Lal" and** "***R.P. Kapur v. State of Punjab"***, (referred supra) it is clear that this Court can exercise such power only to give effect to the orders passed under the Code and to prevent abuse of process of Court and to meet the ends of justice and the duty of the Court is only to look into the allegations made in the complaint to find out whether the allegations on their face value would attract any offence under Indian Penal Code or any of the statutes. In the present case, the petitioners submitted false statement to the Consortium consisting of four banks as narrated in the complaint and such false statement made the member banks of consortium to part with huge amount with dishonest intention and finally failed to repay the amount and stopped construction of hotel, it would certainly attracts criminal wrong. The offences allegedly committed by the petitioners are punishable under Sections 120-B read with 420, 468 and 471 of I.P.C.

Finally, it is contended that when the investigating agency failed to investigate with regard to the allegations in the earlier F.I.R.No.02 of 2015, at best this Court can direct the investigating agency to investigate further and file supplementary charge sheet by exercising power under Section 173 (8) of Cr.P.C., but cannot permit the investigating agency to investigate further subjecting the petitioners to harassment insisting their appearance before the authorities concerned. No doubt, if the complainant and the accused are one and the same in the earlier complaint, which is the subject matter of F.I.R.No.02 of 2015 and the present complaint, there is any amount of justification in the request made by the learned senior counsels. But in the present case, the complainant is different, out of 8 accused, only 2 accused are common. Moreover, this Court cannot direct the investigating agency to conduct further investigation under Section 173 (8) of Cr.P.C. in F.I.R.No.02 of 2015, which is not the subject matter pending before this Court. If such direction is issued, it would amount to illegal exercise of power under Section 482 of Cr.P.C. Merely, because investigating agency did not investigate into the allegations pertaining to the present complaint, which are identical to the allegations in the earlier complaint, which is the subject matter of F.I.R.No.02 of 2015 for one reason or the other, the petitioners cannot be allowed to escape from criminal liability taking advantage of technicalities in the law, as they allegedly committed serious economic fraud against the banks. Therefore, contention of the learned counsels for the petitioners holds no substance and on that ground the proceedings cannot be quashed.

The complaint is only an information sent to the police about the occurrence of cognizable offence and such complaint need not contain minute details and mere failure to make out a specific case constituting any of the offences referred supra by itself is not a ground to quash the proceedings when the investigation is not yet commenced. If the investigation is commenced and proceed further, the investigating agency may collect evidence to constitute specific offences allegedly committed by the petitioners. Therefore, at this stage it is difficult to sustain the contention that the allegations made in the complaint would not constitute any of the offences allegedly committed by the petitioners and the F.I.R. cannot be quashed by exercising power under Section 482 of Cr.P.C.

The petitioners created Pari-Passu charge for huge loan amount lent by consortium of banks and the properties mortgaged with the bank is as follows:

> "Prime Security: (Property owned by accused No.1)
>
> (1) First pari passu charge by way of Equitable mortgage of land belonging to the company admeasuring Ac.1.15 Guntas in Survey No.389 situated at Bommaraspet village, Shameerpet Mandal, Ranga Reddy District and the fixed assets of the 318 room deluxe hotel to be constructed at an estimated cost of Rs.124.64 crores along with other project lenders. Our share of security works out to Rs.34.61 Crores on our share of 27.77%.
>
> Collateral Security (Property owned by accused No.1)
>
> (2) Second pari passu charge on the current assets of the company.
>
> (3) First pari passu charge by way of equitable mortgage of land belonging to the company admeasuring Ac.2.05 Guntas in Survey No.389 situated at Bommaraspet Village, Shameerpet Mandal, Ranga Reddy District, adjacent to the 318 room hotel proposed. Forced sale value Rs.1.80 crores. Valuation done by Shri M.Prasad Rao, Panel valuer for SBH and Punjab & Sind Bank. Our share works out to Rs.0.50 crores (27.77%)."

The value of property as assessed by the valuer is minimum and the hotel construction was stopped long back. In such case, the security furnished by the petitioners showing the inflated rate of land is nothing but deceiving the consortium of banks and made them to believe to part with huge amount with dishonest intention. Unless there is meeting of minds among the petitioners, it is difficult to commit such serious economic fraud on the banks.

Unless the investigation is proceeded in the present crime, it is difficult to unearth such serious financial fraud against the public institution and the money which the banks lent to the industrialists under different schemes is not the money of the bank itself, it is the money belonging to the poor depositors who invested the same with the bank either for safe custody or for other reasons and if the persons, who indulged in corporate fraud are allowed to scot-free, the ultimate losers are the public depositors and it will not only affect the economy but also affects the public depositors to recover the amount from such banks. Therefore, at this stage in view of seriousness and gravity of offence, I find no ground to quash the proceedings at this fetus stage.

As discussed above, the petitioners allegedly committed a serious economic offence amounting to crores submitting false statement and made the member banks of the consortium to believe that they complied with all the requirements and documentation is in accordance with law and procedure and siphoned entire amount without completing construction of hotel and now the consortium rendered security less to recover the amount by their wilful act with dishonest intention and when the petitioners committed serious economic offence, the High Court cannot exercise inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings at the preliminary stage of registration of crime i.e. registration of F.I.R. since such acts would not only affects the economy of the institution and dent the economic spine of the nation also as observed in "***State v. R.Vasanthi Stanley***" (referred supra). Therefore, I am unable to exercise such inherent jurisdiction to quash the F.I.R.No.5 of 2017 on the file of Central

Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore at this stage. Consequently, the petitions are devoid of merit and liable to be dismissed.

In the result, the criminal petitions are dismissed.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.09.2017
Ksp