HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1066 OF 2017

ORDER:

Aggrieved over registration of crime in First Information Report No.263 of 2016, the petitioner viz., Pawan Agarwal, who is arraigned as accused No.14, filed the present Criminal Petition invoking jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (Cr.P.C.), requesting to quash the complaint and investigation in the said crime on the ground that he has been falsely implicated for the offences punishable under Sections 420, 467, 468, 471, 474, 477-A, 109 and 120-B read with Section 34 of the Indian Penal Code, 1860 (IPC), as the complaint and investigation is an abuse of process of law so far as he is concerned.

2. Heard Sri Vedula Venkataramana, learned Senior Counsel appearing for Sri Sharad Sanghi, learned counsel for the petitioner, and the learned Additional Public Prosecutor.

3. Even before adverting to the submissions made by the learned Senior Counsel for the petitioner and the learned Additional Public Prosecutor, it is necessary to refer to certain basic facts.

(a) The *de facto* complainant in the present petition is Deputy Director of Income Tax (Investigation) Unit -11 (II), Hyderabad.

(b) Basing on the complaint of respondent No.2, of course, what made the *de facto* complainant to lodge a complaint would be detailed a little later, the aforesaid crime was registered, alleging that M/s. Musaddilal Gems and Jewels Private Limited, M/s. Vaishnavi Bullion Limited and M/s. Musaddilal Jewelles Private Limited have adopted illegal practices for exchange of old high value denominations notes of Rs.500/- and Rs.1,000/- after the Government of India has issued notification on 08.11.2016 and facilitated conversion of the demonetized currency for purchase of gold bullion. To put it in a nut-shell, the sum and substance of the complaint allegations would point out that the said legal entities have accepted demonetized currency notes to a tune of Rs.100.00 crores, deposited the same in their bank accounts and the same was sent by R.T.G.S. transfer to gold bullion dealers, obtained gold and thereafter raised invoices in the name of non-existing persons numbering about 5,200.

(c) The petitioner claims that during the course of investigation, he was added as accused No.14 as per the General Case Diary and there is no justification in impleading him as an accused at the investigation stage.

(d) So far as the allegations levelled against the petitioner are concerned, who is a partner of M/s. Sri Balaji Gold which does business of sale and purchase of gold biscuits, that himself and M/s. Sri Balaji Gold have sold gold biscuits to M/s. Musaddilal Gems and Jewels Private Limited to a tune of about Rs.30.00 crores on

10.11.2016 and 11.11.2016 and claims that during the course of its business, M/s. Sri Balaji Gold received a bank transfer (RTGS) from M/s. Musaddilal Gems and Jewels Private Limited and sold gold biscuits to the value of the money received.

(e) The grounds on which the petitioner claims that it is nothing but abuse of process of law to proceed with further investigation have been, (i) he is no way concerned with the allegations which are levelled against M/s. Musaddilal Gems and Jewels Private Limited, (ii) unconcerned with the existing or non-existing persons of 5200 and the advance cash receipts issued to such persons, (iii) the allegations in the complaint *ex facie* do not constitute any offence at all, (iv) any violation of the Notification does not constitute a criminal offence for the reason that the decision of the Government of India to demonetize the high value currency notes is by way of statutory notification but not by way of the law made by the Parliament or ordinance issued by the President of India (v) the very Notification speaks that the demonetized currency notes are legally tendered when it is deposited in a bank account, and (vi) the very case of the prosecution is that money has been deposited in the bank account only and since the demonetized notes are directly treated as consideration for sale of goods, there is no criminal offence involved either against the petitioner or any other persons in the said crime.

(f) Placing reliance on the law declared by the Hon'ble Supreme Court in **State of West Bengal v. Swapan Kumar Guha**[1] that unless there is commission of an offence, investigation by the police is violation of Article 21 of the Constitution of India, claims that the compliant is liable to be quashed so far as he is concerned.

(g) The petitioner discloses in paragraph No.4 of his petition as to his filing W.P. No.1953 of 2017 before this Court against the concerned police for the relief of not to harass him by calling upon and confining him to the police station, but the said writ petition was dismissed as infructuous on 30.01.2017 and the same would not come in the way of seeking present request on a different cause of action.

4. Turning to the submissions made by the learned Senior Counsel for the petitioner, first, that the name of the petitioner is nowhere to be found in the complaint as to commission of a cognizable offence; second, as per the Notification issued by the Government of India, there is no prohibition to deposit demonetized currency without there being any cap and whatever done by the petitioner and M/s. Sri Balaji Gold was in normal course of business; third, the confession of co-accused, that is, the confession said to have made by accused No.13 concerning the present petitioner's trade, is inadmissible in view of the law declared by the Hon'ble Supreme Court in **Bandlamuddi Atchuta Ramaiah v. State of A.P.,** and lastly impleading an accused would arise only when the case reaches trial

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[1] **1982 (1) SCC 561**

stage by invoking the provisions of Section 319 of Cr.P.C., but not at the stage of investigation.

5. Per contra, the learned Additional Public Prosecutor would submit that it is not only the confession of accused No.13 that lead to disclosing complicity of the petitioner in the commission of the offences alleged against him, but, even the confessions made by accused Nos.1 and 3 would also lead to the complicity of the petitioner showing his active involvement in the commission of offences alleged against him. He has drawn attention of this Court to the confessional statements of accused Nos.1, 3 and 13 filed along with the material papers. He would submit that the case on hand is a concrete example of cheating the Government of India by misusing demonetization scheme causing huge loss to the Government exchequer, involving in criminal conspiracy, fabrication of invoices etc., and, therefore, it can never be said that investigation is nothing but abuse of process of law as sought to be viewed by the petitioner.

6. Learned Senior Counsel places reliance on **Bandlamuddi Atchuta Ramaiah**[1], **Indian Oil Corporation v. NEPC India Limited**[2] and **International Advanced Research Centre for Power Metallurgy and new Mateials (ARCI) v. NIMRA CERGLASS Technics Private Limited**[3] to fortify his submissions.

[2] 2006 (6) SCC 136
[3] 2016 (1) SCC 348

7. The submission of the learned Senior Counsel that the complaint does not spell-out the name of the petitioner and nothing is reflected in the complaint as to commission of cognizable offences by the petitioner, requires an intrinsic examination of the Remand Case Diary, the statement of one M. Narsing recorded under Section 161 of Cr.P.C., and the confessional statements of accused Nos.1, 3 and 13. Admittedly, the complaint was lodged by the Deputy Director, Income Tax Department, which triggered criminal action. The complainant having referred to the entities M/s. Musaddilal Gems and Jewels Private Limited, M/s. Vaishnavi Billion Private Limited, M/s. Musaddilal Jewellers Private Limited and having conducted investigation, arrived at that all the three entities have indulged in fraud, inducement, forgery, falsification of accounts and cheating committed by the directors of the respective legal entities. In arriving at such a conclusion, the complainant has assigned the reasons which are based on the acts constituting the aforesaid offences which were unravelled in his investigation. Referring to them is absolutely indispensable. They are as follows:

(a) M/s. Musaddilal Gems and Jewels Private Limited has deposited an amount of Rs.57.85 crores on 10.11.2016 in State Bank of India Account No.32895770198, Industrial Finance Branch, Punjagutta, Hyderabad through their staff viz., one Mr. Narsingh and Basha etc.

(b) It claimed that the said amount was received from 3100 customers towards cash advance for bullion on 08.11.2016 from 9.00 p.m. onwards.

(c) It claimed that they delivered bullion during the period 11.11.2016.

(d) M/s. Vaishnavi Bullion Private Limited had deposited an amount of Rs.40.00 crores in Axis Bank A/c. No.916020066093266, Jubilee Hills Branch, Hyderabad, through their staff viz., S. Mallesh, Neel Sunder, Nisha Gupta and Basha etc. which account is a new account opened on 10.11.2016 exclusively for the said purpose.

(e) It claimed that the said amount was received from 2100 customers towards cash advance for bullion on 08.11.2016 from 9.00 p.m. onwards.

(f) It claimed that they delivered the bullion during the period between 11.11.2016 to the customers who gave cash advance on 08.11.2016.

(g) Nithin Gupta, who is accused No.1, is one of the directors of both the legal entities. In his statement recorded by the Deputy Director, Income Tax Department under Section 131 of Income Tax Act, 1961, he stated that more than 5000 persons visited the office of the said two entities located at the same premises i.e., “Shanti Kiran” on 08.11.2016 from 9.00 p.m. onwards. But, the said statement appears to be incorrect in view of the circumstantial evidence gathered by him during investigation thus:

(i) The first circumstances is that he stated that he did not call the police to manage huge crowd of 5200 and managed the crowd through his 8 to 10 employees whose details, according to him were not known to him;

(ii) the statement of security guards, who were on night duty on 08.11.2016, revealed that no person has visited the premises on the night of 08.11.2016;

(iii) the statement of other director/accounts head, Mr. Seera Mallesh of both entities, was to the effect that both the entities were not having any regular business, there were no employees in these companies, they were not opened at all on 08.11.2016 and he left the office at around 6.00 p.m. and was not called back to the office and he attended the office again on 09.11.2016 around 10.00 a.m. and thus, shows that the claim of 5200 customers visiting the premises on 08.11.2016 is false;

(iv) Sri Jeelani Basha, Cashier, contradicts the statement of Nithin Gupta, as he stated that he attended the office on 10.00 a.m. and left around 8.30 p.m. on 08.11.2016 falsifying the claim of 5200 customers visiting the premises;

(v) the C.C. T.V. footage of a neighbour of these two entities, clearly indicates that there was no visitors after 8.00 p.m. on 08.11.2016 falsifying the statement that 5200 customers visiting the premises;

(vi) all the advance cash receipts and subsequent sale invoices raised by both the companies relate to the amount less than Rs.2,00,000/- only, as Permanent Account Number (PAN) is not required to be mandatorily obtained for transactions below Rs.2,00,000/-;

(vii) declarations were collected from only 65 customers on 08.11.2016 out of 5200 customers and even they do not contain complete address, I.D. proof of the customers etc.;

(viii) biometric attendance of the employees of the companies revealed that all the employees left the office at around 7.00 to 7.30 p.m. on 08.11.2016.

(ix) the business premises of these two companies is covered by C.C. T.V. Surveillance system, but no C.C. T.V. footage was available for 08.11.2016 and its director made a statement that the C.C. T.V. footage was overwritten after 72 hours which gives rise to suspicion that the C.C. T.V. footage was erased by the management of the companies;

(x) The C.C. T.V. footage of one of the neighbours shows that on the night of 08.11.2016, there was no movement of any person/vehicle in the said lane;

(xi) on his examination, it was found that both the companies have not made any sale in the Financial Year 2016-17 barring a sale of Rs.18,00,000/- in October, 2016, which was only sale from 01.04.2016 to 08.11.2016 in M/s. Musaddilal Gems and Jewellers Private Limited;

(xii) the premises of both the companies do not have any showroom, signboard displaying the name of the company of their brand;

(xiii) their sister company M/s. Musaddilal Jewellers Private Limited which has registered office at the same premises has also collected cash advance of Rs.6.50 crores from about 350 persons on 08.11.2016;

(xiv) even the investigation revealed that M/s. Vaishnavi Bullion Private Limited, Hyderabad, has their regular bank account with A/c. No.26610200000453 in Bank of Baroda, PBB, Hyderabad, but since the officials concerned did not agree for depositing the huge demonetized currency in their bank, they opened the account at Axis Bank, Jubilee Hills Branch, Hyderabad, and deposited the amount in different branches of Axis Bank during the period from 10.11.2016 onwards;

(xv) thus, according to the complainant, the investigation conducted by him revealed that the amount deposited in the bank accounts of the said companies were transferred to other companies immediately to various bullion dealers.

8. Now, turning to the question whether the petitioner is concerned with the three legal entities in any way, the learned senior counsel would submit that when the counter was filed in Criminal M.P. No.212 of 2017, the petitioner, for the first time, learnt that he is roped along with the other accused in the offences alleged. Criminal Petition No.212 of 2017 was filed by the petitioner herein requesting to grant anticipatory bail. The Assistant Commissioner of Police, Central Crime Station, Detective Department, Hyderabad filed the said counter on 30.01.2017. In the said counter, the copy of which is placed on record, submitted by respondent No.2 herein, the role played by the petitioner is referred to in paragraph Nos.15, 17, 24, 25, 26, 27, 28, 30 and 31. It is stated that the petitioner being director of Sri Balaji Gold, Abids, Hyderabd, conspired with accused No.1, accumulated an amount of over Rs.30.00 crores and handed-over it to accused No.1 and made subsequent transactions as done by him through their respective bank accounts for the sake of commission and it is clear that an amount of Rs.37.00 crores was diverted to M/s. Sri Balaji Gold which belongs to the petitioner through R.T.G.S. and the relevant details have been mentioned in a table in paragraph No.27 and the petitioner diverted the said amount to various bullions for

purchase of gold and procured about 248 Kilograms of gold from R.V.J. Overseas Private Limited, SK Impex and SMC Comtrade Limited through Brinks India Private Limited between 08.11.2016 and 30.11.2016. Certain other aspects have been referred to relating to the petitioner herein. But, suffice it to say, at this stage, that the alleged complicity of the petitioner referred to hereinbefore came to light through the confessional statement made by accused No.13.

9. Now again the question is whether such a confessional statement is totally inadmissible and would suffice to view that further investigation against the petitioner herein would amount to abuse of process of law?

10. The learned Additional Public Prosecutor has also drawn attention of this Court to the confessional statements made by accused Nos.1 and 3. It is unnecessary to refer to the details except to mention that Mr. Neel Sunder Tharad, accused No.13, went to the house of accused No.1 Nithin Gupta on 08.11.2016 after the Government of India announced demonetization and ceasing currency notes of Rs.500/- and 1,000/-, as accused No.1 is no other than the cousin of his wife Smt. Nisha and at the house of Mr. Kailash Chand Gupta, his sons, Nithin, Nikhil, daughter-in-law Smt. Neha, Narender Kumar Agarwal, Jithender Agarwal, Pavan Kumar Agarwal, who is the petitioner herein, and their company directors, relatives and others gathered, and hatched a plan and conspired to convert huge unaccounted amounts, which are in the denomination of demonetized

currency into new currency by depositing them into banks or by purchasing gold etc., and during that process, some of the known persons of Kailash Chand Gupta and his son Nithin Gupta came in contact, requesting to get their amounts exchanged, on which, Nithin Gupta and Nikhil Gupta negotiated to get their amounts exchanged through their firms on 30% commission and Nithin Gupta instigated him (accused No.13) to negotiate on his behalf when the persons who came forward to invest their amounts for exchanging and converting into gold and also instigated to make transactions using the accounts of his firm M/s. Ashta Lakshmi Gold and assured to give him 20% commission. His confessional statement is also to the effect that the petitioner, M/s. Sri Balaji Gold, also accumulated an amount of Rs.30.00 crores and handed-over it to Nithin Gupta and made subsequent transactions. Thus, accused No.13's confessional statement would show the alleged complicity of the petitioner. Even the confessional statement of accused No.1 Nithin Gupta shows that he accumulated Rs.37.00 crores through Pavan Agarwal, who is the petitioner herein, including his own amount and the said amount of Rs.37.00 crores accumulated by the petitioner, on his directions from various persons, was diverted to the account of Sri Balaji Gold of the petitioner, who in turn diverted the same to various bullion firms and purchased about 250 Kilograms of gold. Part of the gold purchased through the petitioner was distributed to the persons who gave their money for exchange and the remaining gold is with the petitioner which they could not disburse in time to the persons invested as they were running from pillar to post to evade police arrest. The confessional statement of accused No.3 Nikhil Gupta also reveals the alleged role played by the petitioner.

11. The statement of Mr. M. Narsing, recorded under Section 161 of Cr.P.C., contains the complicity of the petitioner.

12. Thus, to show the complicity of the petitioner, there are at least two sources. First, the confessional statements said to have made by accused Nos.1, 3 and 13; second, the statement of Mr. M. Narsingh recorded under Section 161 of Cr.P.C. If the material placed on record is examined, yet another source in the form of depositing the amount of Rs.37.00 crores evidenced by the entries in the bank account in Axis Bank, where a new account was opened on that day, as his regular banker Bank of Baroda, refused to receive such huge demonetized currency notes.

13. It is no doubt true, as contended by the learned Senior counsel appearing for the petitioner that the complaint is bereft of the alleged complicity of the petitioner, but that cannot be a ground to suggest false implication of the petitioner by the date he was lodging the said complaint as the Deputy Director of Income Tax Department, could reach to that stage during the course of his investigation and even otherwise, it is well settled that a complaint need not be an encyclopedia.

14. The complicity of the petitioner in the commission of the offences alleged appears to have came into light when the arrest of accused Nos.2 and 11 was done coupled with the confessional statements of accused Nos.1, 3 and 13, who were subsequently arrested. Therefore, mere absence of allegations in the direction of pointing at the alleged complicity of the petitioner in the complaint is no ground to quash the First Information Report so far as the petitioner is concerned. Thus, there is no merit in that submission.

15. Touching the evidentiary value of confessional statement made by a co-accused falling within the ambit of the provisions of Section 30 of the Indian Evidence Act, 1872, the submission of the learned Senior counsel that it is inadmissible in evidence is unconvincing. Learned Senior counsel has placed reliance on the ruling in **Bandlamuddi Atchuta Ramaiah**[2]. But, on facts, it is distinguishable from the case on hand. The fact-situation in **Bandlamuddi Atchuta Ramaiah**[2] would show that the statement in the First Information Report given by an accused contains incriminating material against another accused. The said Atchuta Ramaiah, who was accused No.1, had lodged a complaint against the prosecution witnesses. Himself and his two sons are the accused Nos.1 to 3. In an attack by accused Nos.1 to 3 on prosecution witnesses, and the deceased, it was alleged that accused Nos.1 and 3 caught hold of the deceased therein and accused No.2 stabbed him resulting in death of the deceased; thus, a complaint was lodged

against the accused by PW.1 therein, whereas accused No.1 has also lodged a complaint against PW.1 and others; in the context of F.I.R. registered on the complaint of accused No.1 therein, the said judgment was rendered observing in paragraph No.17, thus:

> "17. The legal position, therefore, is this: A statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is as an admission under Section 21 of the Evidence Act against its maker alone unless the admission does not amount to confession."

Therefore, the fact-situation therein is altogether different. In the present case, the confessional statements of co-accused are sought to be examined. Section 30 of the Indian Evidence Act, 1872, reads thus:

> "30. **Consideration of proved confession affecting person making it and others jointly under trial for same offence:-** When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons as well as against the person who makes such confession."

16. So far as admissibility or evidentiary value of confessional statement of co-accused is concerned, in case, a statement which implicates the confessing prisoner more than his co-prisoners, it would come within Section 30 of the Act; a paragraph from page 654 of the Text by **Woodroffe & Ameer Ali's Law of Evidence in India, Twelfth Edition (1968),** would be useful to refer to, to comprehend the purport of Section 30 of the Indian Evidence Act, 1872.

> "Again, "this section must be interpreted to mean that the statement of fact made by the prisoner, which amounts to a confession of guilt on his part, may be taken into consideration, so far, and so far only, as that particular statement of fact itself extends against the other prisoner, who are being tried as well as himself, for the offence which is thus confessed. I think the two illustrations which are given to section bear out this view. If this be so, we must be careful not to apply statements made by R. I. D. before the magistrate, against other prisoners than himself further than those same statements amount in themselves to a confession of guilt on his part." "Neither can the statement of one prisoner be taken as evidence against another prisoner under Sec. 30 of the Evidence Act, unless the parties are admittedly in *pari delicto,* when, that is, the confessing prisoner implicates himself to the full as much as his co-prisoner whom he is criminating." The *ratio decidendi* of the above cases is, that statements which inculpate the maker more than, or equally with, others alone can afford any satisfactory guarantee of their truth."

17. However, the evidentiary value of confessional statements, now, occurring on record can only be examined during trial, but not at a stage where investigation is under progress. Suffice it to say that the confessional statements of accused Nos.1, 3 and 13, at this stage, cannot be out-rightly rejected acceding to the request of the learned senior counsel.

18. The ruling in **Indian Oil Corporation[3],** relied on by the learned senior counsel, refers to the principles relating to the exercise of jurisdiction under Section 482 of Cr.P.C. to quash the complaint and criminal proceedings. In paragraph No.12, some of the principles have been re-stated by the Hon'ble Supreme Court, which reads thus;

> Re : Point No. (i) :
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> 12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd.

Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual

> dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

The aforesaid principles laid down by the Hon'ble Supreme Court have been in the context, where the complaint alone is available on record; which is not so in the present case, for the reason there is other material in the form of Remand Case Diary, counter filed by the complainant in the pre-arrest bail petition filed by the petitioner, confessional statements of co-accused referred to in the above. Hence, the said decision would not render assistance to the petitioner.

19. Touching the test to be applied, when a prosecution at the initial stage is asked to be quashed, the Court is required to see whether the un-controverted allegations as made in the complaint establish the offence and the High Court being superior Court of the State should refrain from analysing the material which are yet to be adduced and seen in their true perspective; that the inherent jurisdiction of the High Court under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution; the power under Section

482 is to be used sparingly only in rare cases; that in a catena of cases, the Hon'ble Supreme Court reiterated that the power of quashing criminal proceedings should be exercised very sparingly and quashing a criminal case would depend upon the facts and circumstances of each case. The learned Senior counsel placed reliance on the ruling in **NIMRA Cerglass Technics Private Limited[4].** These are the principles again reiterated by the Hon'ble Supreme Court.

20. Further submission of the learned Senior Counsel that impleading the petitioner at the stage of investigation is unknown to law and such a power or situation would arise only during the course of trial by exercising the power under Section 319 of Cr.P.C. is concerned, the same is unsustainable. It is not an impleadment, that can be construed, but it is arraigning an accused at the stage of investigation when certain facts were un-ravelled touching the alleged complicity of the petitioner. Hence, the said submission is rejected.

21. It is no doubt true, there is no dispute that the Notification issued by the Government of India does not prohibit by laying down the limit for exchange of demonetized denomination of currency notes, but the alleged complicity of the petitioner is not in regard to construing that he has committed an offence by depositing Rs.37.00 crores of demonetized currency notes, but, it was so done in order to gain 30% or 20% commission and in that direction, alleged to have conspired with the other main accused and resorted to such acts which give rise to the offences alleged against all the accused. Therefore,

this submission is also of any avail to quash the proceedings by acceding to the request herein.

22. In view of the discussion made hereinabove, there are allegations *prima facie* establishing the complicity of the petitioner in the commission of the offences alleged against him.

23. Therefore, the Criminal Petition is dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

February 13, 2017.

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