THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9882 of 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the F.I.R.No.706 of 2017 on the file of Sanjeevareddy Nagar Police Station, Hyderabad, registered for the offences punishable under Section 420 of I.P.C. and under Section 4 of Prize Chits and Money Circulation Schemes (Banning) Act (for short "the Act").

The case of the prosecution is that on receipt of credible information by the complainant about running of multi level marketing business on the name of Apex Direct Private Limited at the premises in plot Nos.23 and 24A, SIG – I, 6th floor, Nandanavanam Building, Opp.Umesh Chandra Statue, S.R. Nagar, visited the premises on 03.10.2017 along with his staff. It is alleged that the petitioner and others cheating the innocent public by encouraging them to enroll as members in the said company by paying Rs.4,600/- and Rs.6,000/- by inducing them with high returns on enrolling of other members and the scheme of Multi Level Marketing in Binary method. It is also alleged that the staff explained on white paper that if a person join as member of their company, they would provide ID and password for a member as well as herbal products worth Rs.4,600/- and Rs.6,000/-, and the staff explained binary system method on their company laptops. As soon as member becomes a distributor, he has to initially sponsor two referrals. Each pair will receive commission of Rs.1,000/- the process would be continued uniformly level by level, maintaining the 1:2 ratio or 2:1 ratio apart from this the accused company also offered sponsor team commission based on the number of levels and also offered incentives like mobiles, digital cameras, bikes, foreign trips, car worth of Rs.7,00,000/- and flat worth of Rs.25,00,000/- on the pair enrolled by the distributor. They maintained website www.apexdaily.net. No sale or purchase of any other goods or services in the business would take place except enrolling members in a multi level fashion.

Sub-Inspector of Police, Commissioners Task Force, West Zone Team, Hyderabad lodged report with S.R.Nagar Police Station, the same was registered as F.I.R.No.706 of 2017 for the offence punishable under Section 420 of I.P.C. and under Section 4 of the Act and forwarded the copy of F.I.R. to III Additional Chief Metropolitan Magistrate, Hyderabad. Initially, the petitioner was not arrayed as accused in F.I.R, but later he was arrayed as accused No.1 in the remand report filed by the police.

It is contended in the petition that the allegations made in the report would not constitute any offence if taken on their face value, in fact Government of India published the model frame work for guidelines on direct selling in the extra ordinary gazette dated 26.10.2016, pursuant to the guidelines, the Apex Direct Private Limited submitted an application on 09.12.2016. The Government of India communicated the same to the erstwhile director of Apex Direct Private Limited on 13.12.2016 and in view of the declaration made under the guidelines mere selling would not attract the penal provisions, and without considering the guidelines of Government of India, the present report was lodged by Sub-Inspector of Police.

The Apex Direct Private Limited was re-constituted and the directors were substituted by the petitioner and another. The change of management was also intimated on 28.09.2017. The petitioner, who has taken over the company from the earlier management, has continued the business with the same terms and conditions without violating any of the provisions of the Penal Statutes. Therefore, the petitioner did commit no offence much less the offence punishable under Section 420 of I.P.C. and under Section 4 of the Act.

It is also urged in the petition that the acts of the petitioner would not constitute any offence as there is absolutely no deceptive intention at the inception and the facts of the present case would not attract any offence under Section 415 or 420 of I.P.C., thereby the petitioner is not liable to be prosecuted for the said offences. It is also contended that no complaint was lodged by any private individual, but the Sub-Inspector of Police himself inspected the premises and lodged the report, and the same was registered as a case in crime/F.I.R.No.706 of 2017 on 03.10.2017 on the file of S.R.Nagar Police Station, Hyderabad, therefore registration of crime is illegal and requested this Court to quash the proceedings.

During hearing, Sri T.Niranjan Reddy, learned Senior Counsel on behalf of Sri Naga Praveen Vankayalapati, learned counsel for the petitioner contended that when the petitioner followed guidelines issued by Government of India and registered with Government of India, he cannot be prosecuted for any of the offences, more particularly for the offence punishable under Section 4 of Prize Chits and Money Circulation Schemes (Banning) Act. Therefore, investigation in the crime by the police is illegal and it is nothing but abuse of process of law.

It is also contended that when no material is found to constitute any offence, this Court can interfere with the investigation to prevent any kind of uncalled for and unnecessary harassment to any individual and by placing reliance on the judgment of Apex Court rendered in "***State of West Bengal v. Swapan Kumar Guha***[1]" and requested this Court to quash the proceedings.

Per contra, learned Public Prosecutor for the State of Telangana contended that the allegations made in the report would constitute an offence if taken on their face value. When the investigation is at initial stage, this Court cannot quash the proceedings expressing its view as to commission of offence. So far investigating agency examined only two witness viz. V.Kishore, Sub-Inspector of Police, who lodged report and one Nagavamshi Mukesh as L.Ws.1 and 2. He relied upon various judgments of various High Courts and Apex Court and viz., "***Kuriachan Chacko v. State of Kerala***[2]" "***Amway India Enterprises v. Union of India***[3]" "***M/s Apple FMCG Marketing Private Limited v. Union of India***[4]" and "***Gold Quest Private International Limited v. State of Tamil Nadu***[5]" to contend that the business being carried on by the petitioners would attract the provisions of the Act i.e. Section 4 of Prize Chits and Money Circulation Schemes (Banning) Act.

Considering rival contentions and perusing the material available on record, the point that arises for consideration is:

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[1] (1982) 1 SCC 561
[2] (2008) 8 SCC 708
[3] 2007 (4) ALT 808 (D.B.)
[4] 2005WritLR 115
[5] (2014) 15 SCC 235

Whether the proceedings against the petitioner/accused No.1 in crime No. 706 of 2017 on the file of Sanjeevareddy Nagar Police Station, Hyderabad be quashed?

P O I N T:

The petitioner is accused No.1 in the above crime and he allegedly committed an offence punishable under Section 4 of Prize Chits and Money Circulation Schemes (Banning) Act and an offence punishable under Section 420 of I.P.C. The basic contention of the learned counsel for the petitioner is that the petitioner has not violated the guidelines issued by Government of India published in the Gazette of India, Extraordinary, Part-II, Section 3 to carryon such business i.e. known as Model Framework for Guidelines on Direct Selling, wherein the Ministry of Company Affairs formulated certain guidelines for carrying on business in proforma Part-A, Part-B, Part-C of the guidelines. In addition to that, Government also issued guidelines for Direct Selling Entities/Companies. The petitioner satisfied the conditions and informed the Government about compliance of those guidelines. Hence, the petitioner cannot be proceeded with for the offences punishable under Sections referred above and investigate into.

The petitioner is allegedly carrying on business and indulged in Money Circulation Schemes by selling of herbal products. Even as per the investigation so far done i.e. statements of L.Ws.1 and 2 *prime facie* reveals that Apex Direct Private Limited is situated in plot Nos.23 and 24A, SIG – I, 6^{th} floor, Nandanavanam Building, Opp.Umesh Chandra Statue, S.R. Nagar, its Managing Director is the petitioner herein.

The investigation also revealed that the members, who intend to join in their company, are bound to pay Rs.4,600/- or Rs.6,000/-, then they would provide ID and password for a member as well as herbal products worth Rs.4,600/- or Rs.6,000/- and the staff would explain binary system method. As soon as member becomes a distributor, he has to initially sponsor two referrals. Each pair will receive commission of Rs.1,000/- the process would be continued uniformly level by level, maintaining the 1:2 ratio or 2:1 ratio apart from this the accused company also offered sponsor team commission based on the number of levels and also offered incentives like mobiles, digital cameras, bikes, foreign trips, car worth of Rs.7,00,000/- and flat worth of Rs.25,00,000/- on the pair enrolled by the distributor.

In view of these allegations, it is the duty of this Court to find out "Whether the sales being undertaken by the petitioner as a Managing Director of the Company by name "Apex Direct Private Limited" fall within the meaning of Money Circulation Scheme?"

Money Circulation Scheme is defined in Section 2(c) in the following words :

> "Money circulation Scheme' means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions."

Prize Chit is defined in Section 2(e) in the following terms :

Prize chit' includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in installments by way of contributions or subscriptions or by sale of unit, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefits, thrift or any other scheme or arrangement by whatever name called, and utilises the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes, namely :

> (i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or gifts in cash or in kind, whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement;
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> (ii) refunding to the subscribers or such of them as have not won any prize or gift, the whole or part of the subscriptions, contributions or other monies collected with or without any bonus, premium, interest or other advantage by whatever name called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein, but does not include a conventional chit.

Manufacturer, then wholesaler, and finally retailer, this is what normally is seen in any traditional business model. Multi-Level-Marketing is somewhat different.

"Multi-Level-Marketing consists of the following:

(1) In MLM (Multi-Level-Marketing), the sale is networked from individual to individual. This system already existed in India and many other companies are doing the same business of individual networking system. *E.g.* Amway, Oriflame, Modicare, *etc.*
(2) There is no place for intermediates in MLM business model. A consumer purchases the goods directly from the distributors out of his own will. Furthermore, the

consumer may become a distributor or remain as a consumer himself.

(3) Also, the distributors get a commission for the sale he is undertaking. Such independent distributor has the power not only to sell the products of the company but also appoint other distributors under him. Finally, all of them can sell the company products and earn the value points or commission through the sale.

(4) At times in MLM business model, the products are also sold under direct sale marketing including, door to door sales and by exhibiting the products and also by institutional sale.

(5) The principle underlying this system is instead of having the wholesale dealer or retailer, the network marketing system enables the consumer himself to be the distributor to venture upon the marketing of the products.

(6) Finally, the profit is shared reasonably by the company to the distributors on the sale of every product and the distributors also become consumers of the products."

Thus, the Multi-Level-Marketing system is distinct from traditional marketing system. In traditional marketing system, there is manufacturer, then wholesaler and finally retailer, later to the customer. In Multi-Level-Marketing system, the Distributor himself is the customer sometimes and distribution of profit and incentives is varying from traditional business.

In the present facts of the case, as narrated above, the procedure adopted by the petitioner for sale of herbal products would fall within Money Circulation Scheme, which is defined under the Act *prima facie*.

Learned counsel for the petitioner while contending that when the petitioner followed guidelines issued by the Government of India in the Gazette referred supra, the petitioner is not liable to be proceeded for the offences referred above and placed reliance on "***State of West Bengal v. Swapan Kumar Guha***" (referred supra). The said judgment is directly relates to the Money Circulation Scheme. The Apex Court highlighted the ingredients of Money

Circulation Scheme and the power of police to investigate into such offences.

In the facts of the above judgment, Sanchaita Investments is a registered partnership firm consisting of three partners and with share capital of Rs.7000. The firm started its business in 1975 as financiers and investors and in its business it had been accepting loans or deposits from the general public, for different periods repayable with interest at the rate of 12 per cent per annum. The commercial Tax Officer filed an F.I.R. against the firm and its partners alleging that the firm had been offering 48 per cent and later 36 per cent interest which showed that 'money circulation scheme' was being promoted and conducted for the making of quick and easy money, that prizes or gifts in cash were also being awarded to agents, promoters and members of the firm, and that the partners of the firm thus had been carrying on business in violation of Section 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. It was alleged that the excess amount of interest was being paid in cash in a clandestine manner to the depositors, was not being accounted for and resulted in accumulation of black money, the firm used to invest the monies received from the depositors in high-risk investments earning huge amount of unaccounted profits, the investments made by the firm and the earnings from the investments also resulted in generation of black money, and because of the allurement of high rate of interest offered to the depositors, a major part of which was given in unaccounted black money, the firm with a meagre share capital received deposits over crores of rupees within a very short span of time. Consequently, the office of the firm and also the houses of the partners were searched and various documents and papers as also a large amount of cash were seized. The firm and its two partners then filed a writ petition in the High Court challenging the validity of the F.I.R. and the proceedings arising out of the same including the validity of the searches and seizures. The Single Judge of the High Court held in the circumstances of the case that the Act did not apply to the firm and that the searches and seizures were also illegal and hence quashed the proceedings and directed return of all documents and refund of cash monies seized to the petitioners therein. Further, the Apex Court held as follows:

> "There is another aspect of the matter which needs to be underscored, with a view to avoiding fruitless litigation in future. Besides the prize chits, what the Act aims at banning is money circulation schemes. It is manifestly necessary and indeed, to say so is to state the obvious, that the activity charged as falling within the mischief of the Act must be shown to be a part of a scheme for making quick or easy money, dependent upon the happening or non-happening of any event or contingency relative or applicable to the enrolment of members into that scheme. A 'scheme,' according to the dictionary meaning of that word, is 'a carefully arranged and systematic program of action', a 'systematic plan for attaining some object', 'a project', 'a system of correlated things'. (see Webster's New World Dictionary, and Shorter Oxford English Dictionary, Vol. II), The Systematic programme of action has to be a consensual arrangement between two or more persons under which, the subscriber agrees to advance or lend money on promise of being paid more money on the happening of any event or contingency relative or applicable to the enrolment of members into the programme. Reciprocally, the person who promotes or conducts the programme promises, on receipt of an advance or loan, to pay more money on the happening of such event or contingency. Therefore, a transaction under which, one party deposits with the other or lends to that other a sum of money on promise of being paid interest at a rate higher than the agreed rate of interest cannot, without more, be a 'money circulation scheme' within the meaning of Section 2(c) of the Act, howsoever high the promised rate of interest may be in comparison with the agreed rate. What that section requires is that such reciprocal promises, express or implied, must depend for their performance on the happening of an event or contingency relative or applicable to the enrolment of members into the scheme. In other words, there has to be a

community of interest in the happening of such event or contingency. That explains Why Section 3 makes it an offence to "participate" in the scheme or to remit any money "in pursuance of such scheme". He who conducts or promotes a money-spinning project may have manifold resources from which to pay fanciful interest by luring the unwary customer. But, unless the project envisages a mutual arrangement under which, the happening or non-happening of an event or contingency relative or applicable to the enrolment of members into that arrangement is of the essence, there can be no 'money circulation scheme' within the meaning of Section 2(c) of the Act."

Learned counsel for the petitioner drew the attention of this Court to paragraph No.66 of the Judgment rendered in "***State of West Bengal v. Swapan Kumar Guha***" (referred supra), wherein the Apex Court held as follows:

"Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the Court has mainly to take into consideration the complaint or the F.I.R. and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual."

Thus, the power conferred on the Court is to interfere with the investigation if the Court concludes that the allegations made in the complaint did not disclose requirements to constitute offence.

Here, in this case the material produced before the Court as on today would disclose the commission of offence punishable under Section 4 of the Act. In such case, this Court cannot stifle the legitimate prosecution by exercising power under Section 482 of Cr.P.C. In the same judgment, the Court discussed about the nature of the business at length and finally concluded that the crux of question is whether these allegations disclose an offence under Section 4 of the Act namely, violation of Section 3 of the Act even if all these allegations are deemed to be correct.

As per Section 3 of the Act no person shall promote or conduct any prize chit or money circulation scheme, or enrol as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme.

Section 7 of the Act provides :

> (1) It shall be lawful for any police officer not below the rank of an officer in charge of a police station :
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> (a) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary any premises which he has reason to suspect, are being used for purposes connected with the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act;
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> (b) to search the said premises and the persons whom he may find therein ;
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> (c) to take into custody and produce before any judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any such prize chit or money circulation scheme as aforesaid ;
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> (d) to seize all things found in the said premises which are intended to be used, or reasonably suspected to have been used, in connection with any such prize or money circulation scheme as aforesaid.

(2) Any officer authorised by the State Government may :

(a) at all reasonable times, enter into and search any premises which he has reason to suspect, are being used for the purposes connected with, or conduct of, any prize chit or money circulation scheme in contravention of the provisions of this Act ;

(b) examine any person having the control of, or employed in connection with, any such prize chit or money circulation scheme ;

(c) order the production of any documents, books or records in the possession or power of any person having the control of, or employed in connection with, any such prize chit or money circulation scheme; and

(3) All searches under this section shall be made in accordance with the provisions of the CrPC, 1973.

Section 13 confers necessary powers to make rules and reads as under:

(1) The State Government may, by notification in the Official Gazette and in consultation with the Reserve Bank, make rules for the purpose of carrying out the provisions of the Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for :

(a) the office of the Reserve Bank to whom full information regarding any prize chit or money circulation scheme may be furnished under the first proviso to Sub-section (1) of Section 12, and the form in which and the period within which such information may be furnished;

(b) the particulars relating to the winding up plan of the business relating to prize chits or money circulation schemes.

In the present case also the Police Inspector himself lodged report by exercising power under Section 7 of the Act. When the search was conducted by the complainant and same disclosed commission of offence, the investigating agency can proceed to investigate into the offence and file final report either positive or negative subject to the material collected during investigation.

Section 13 conferred power on the State Government by may, by notification in the Official Gazette and in consultation with the Reserve Bank, make rules for the purpose of carrying out the provisions of the Act.

In the present facts of the case, the State Government did not frame any rules, but some guidelines were issued by the Central Government. Whether the said guidelines were issued based on any power conferred on the Central Government or not is a question. Even if the Central Government is permitted to frame rules under Section 13 of the Act, the guidelines issued will have no statutory force. Therefore, those guidelines are mandatory but without any statutory force.

Even to proceed against a particular person for commission of offence under Section 4 of the Act, the investigating agency has to satisfy itself that the acts done by the petitioner would fall within Section 2 (c) of the Act. To constitute a scheme under Section 2 (c) of the Act i.e. "money circulation scheme", the requirements are as follows:

> (i) there must be a scheme;
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> (ii) there must be members of the scheme;
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> (iii) the scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrolment of members into the scheme or there must be a scheme for the receipt of any money or valuable thing as the consideration for a promise to pay money on any event or contingency relative or applicable to enrolment of members into the scheme;
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> (iv) the event of contingency relative or applicable to the enrolment of members into the scheme will however not be in any way affected by the

fact whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscription.

If those requirements are applied to the present facts of the case, there is a scheme and members are being admitted to gain quick or easy money besides providing valuable gifts as incentives. Therefore, the scheme being run by the petitioner would fall within the provisions of Section 2 (c) of the Act *prima facie*. If for any reason, the scheme would not fall within the provisions of Section 2 (c) of the Act, there is substance in the contention of the learned counsel for the petitioner.

Learned Public Prosecutor for the State of Telanganga contended based on the judgments, which he relied, and the statements of Sri V.Kishore, Sub-Inspector of Police and Sri Nagavamshi Mukesh recorded during investigation, that the business being conducted by the petitioner would fall within the meaning of "Money Circulation Scheme" as defined under Section 2 (c) of the Act. He further contended that the acts committed by the petitioner i.e. Multi Level Marketing and the same would attract an offence punishable under Section 4 of the Act. He relied on "***M/s Apple FMCG Marketing Private Limited v. Union of India"*** (referred supra), wherein it was held as follows:

"The progress of the chain of customers, at some point of time, would get saturated and the distributor, who purchases the goods, will not find any purchaser/sub-distributor to sell or enroll afresh. At that time, due to the progress of the chain, in the manner stated above, such persons who would not find new members may be in lakhs or even millions. Therefore, lakhs or even millions of people are bound to lose their entire money of Rs. 550/- (value of one starter kit). At the same time, major portion of 65% of the amount would be a gain to the petitioners-company since there would be no one share that money."

In view of the law declared in the judgments referred supra, the acts committed by the petitioner not only attract Section 4 of the Act, and also attract the offence punishable under Section 420 of I.P.C. as the Apex Court in "***Kuriachan Chacko v. State of Kerala***" (referred supra), held as follows:

> "There is element of cheating inasmuch as a representation was made by the accused that every unit holder will get double the amount invested by him; the representation was false, the maker of the representation was aware that the representation was not true and by such representation, he deceived the victim to believe the representation to be true and actuated him to act on such representation. The promoters induced common public to part with money on the lure of doubling the amount. Prima facie, the Courts were satisfied that but for such representation and the benefit sought to be given under the scheme, the victims would not have acted on such representation. It was, therefore, a case of application of Section 415, IPC. Prima facie case had been made out in absence of better explanation by the accused. If it is so, it could be said to be a case for application of Section 420 read with Section 34, IPC, of course, at this stage."

In another judgment of the High Court of Judicature at Bombay rendered in Anticipatory Bail Application No.327 of 2016 with Criminal Application No.361 of 2016, the Bombay High Court at length discussed about various schemes based on several judgments to find out whether the Act or Commission done by the accused would fall within Section 2 (c) of the Act and liable for punishment under Section 4 of the Act. In the said judgment, the Bombay High Court relied on "***Kuriachan Chacko v. State of Kerala***" (referred supra) "***Amway India Enterprises v. Union of India***" (referred supra) "***Gold Quest Private International Limited v. State of Tamil Nadu"*** (referred supra) and held that the scheme allegedly run by the accused in the said complaint would fall within the provisions of Section 4 of the Act so also under Section 420 of I.P.C.

In view of the law declared by the Apex Court, this Court and persuaded by the law declared by the Bombay High Court, it is difficult to accept the contention of the learned counsel for the petitioner that the petitioner did commit no offence. As on today, the investigating agency examined only two witnesses and recorded their statements and filed remand report before the Court. Even the allegations made in the remand report and F.I.R. would disclose *prima facie* that the petitioner indulged in money circulation scheme as defined under the Act. Even otherwise, based on such allegations made in the F.I.R. when the investigation is not completed, it is difficult to quash the proceedings at this stage. When the facts are incomplete and hazy before this Court, taking into consideration of the magnitude of the offence, which crumble the financial condition of several consumers, it is difficult to quash the proceedings at this stage in view of the law declared in "***State of Orissa v. Saroj Kumar Sahoo***[6]" and "***Kurukshetra University v. State of Haryana***[7]"

In view of the issue involved in this petition, it is relevant to refer the law declared by the Apex Court in various judgments.

In "***Jehan Singh v. Delhi Administration***[8]" it was held that where at the date of filing the petition under Section 561-A (old Code equivalent to Section 482 of the Code), no charge sheet has been laid and the matter is only at the stage of investigation by

[6] (2005) 13 SCC 540
[7] AIR 1977 SC 2229
[8] AIR 1974 SC 1146

police, the court cannot, in exercise of its inherent jurisdiction under Section 561-A interfere with the statutory powers of the police to investigate into the alleged offence and quash the proceedings, Even assuming that the allegations in the F.I.R are correct and constitute an offence so as to remove the legal bar to institute proceedings the court cannot at that stage appraise the evidence collected by the police in their investigation. So any petition under Section 561-A at such a stage is premature and incompetent.

Earlier to the judgment rendered in "***Jehan Singh v. Delhi Administration***" (referred supra), in "***King Emperor v. Nazir Ahmad***[9]" "***State of West Bengal v. S.N. Basak***[10]" similar view was expressed.

Relying on the principles laid down by the Privy Council in the above said judgment, the Apex Court in "***State of Bihar v. J.A.C. Saldanha***[11]" held that there is a clear cut and well demarcated sphere of activity in the field of crime detection and punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under S. 190 of the Code, its duty comes to an end. On cognizance of the offence being taken by the court there commences the

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[9] AIR 1945 PC 18 : 58 L.W. 57
[10] AIR 1963 SC 447
[11] 1980 Cri. L. J. 98 (S.C)

adjudicatory function of the judiciary to determine whether an offence has been committed.

Similarly in "***V.K. Murugan v. State***[12]" the Madras High Court while dealing with identical case held as follows:

> "This petition under S. 482 of Crl. P.C. contains a very curious prayer that I should quash, by invoking S. 482, Crl. P.C, the F.I.R. which has been registered by the respondent who is the Inspector of Police, Virudhunagar. The decision in Kurukshetra University, v. State of Haryana will apply to the facts of the case now before me. In the case now before me only an F.I.R. has been lodged. It is for the police to investigate into it. At this stage the petitioner cannot ask for the F.I R to be quashed. This petition is therefore dismissed."

The High Court in exercise of its inherent powers under Section 482 Cr.P.C. cannot quash the F I.R., more so when the police had not even commenced the investigation and no proceeding at all is pending in pursuance of the said F.I.R. as held in "***Durai Raj v. State Represented by the Sub-Inspector of Police***[13]".

As per the principles culled out from the law declared by various Courts referred above, there is direct interdict on the powers of this Court to interfere with the investigation by exercising power under Section 482 of Cr.P.C.

In "***State of Bihar v. J.A.C. Saldanha***" (referred supra) the Apex Court held that adjudicatory functions of the judiciary to determine whether an offence has been committed, commences only on cognizance of the offence being taken by the court. Now at this stage to exercise the powers vested with this Court under Section 482 Cr.P.C. cannot be resorted to especially when the matter is being actually investigated into and that it is also the

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[12] 1980 T.N.L.J. 158
[13] 1980 L.W. Cri. 36

case of the respondent that a prima facie case has been made out with respect to the petitioner herein. Under these circumstances, bearing in mind the principles laid down by the Supreme Court in the above decisions, this Court has to exercise its power sparingly in exceptional circumstances to quash the proceedings.

In "***Eastern Spinning Mills and Virendra Kumar Sharda v. Rajiv Poddar***[14]" the Apex Court expressed displeasure for granting injunction. Few facts of the judgment are relevant at this stage. The High Court in the proceedings before it filed by the accused, an injunction order was passed by the High Court by which investigating police officers are restrained from taking any step or any action or conducting investigation in pursuance of two F.I.Rs lodged by the complainant therein. The Apex Court while deciding legality of such order held that the order had the effect of interfering and staying investigation of offences by investigating officer performing statutory duty under the Cr.P.C. It is absolutely unnecessary to make reference to the decision of the Court and they are legion which have laid down that save in exceptional case where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences. And frankly such is not the case. This is a routine case where information of an offence or offences has been lodged, investigation commenced, search and seizure followed and the suspects arrested.

The High Court of Madras also expressed similar view in "***Munuswamy vs. Sub Inspector of Police, Peralam Police***

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[14] AIR 1985 SC 1668

Station, East Thanjamr District[15]" and held that such power cannot be exercised to quash the proceedings since it amounts to interference with the investigation.

The Apex Court in "***State of H.P. v. Pirthi Chand***[16]" and "***State of Orissa v. Saroj Kumar Sahoo"*** (referred supra) while deciding the powers of the High Court under Section 482 of Cr.P.C. the Division Bench of the Apex Court discussed about the powers of the High Court by referring the principles laid down in "***State of Haryana v. Bhajan Lal***[17]" and "***Mrs.Rupan Deol Bajaj v. Kanwar Pal Singh Gill***[18]" held that in deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered the FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence

[15] 1982 – LW (Crl) 149
[16] (1996)2 SCC 37
[17] 1992 Supp (1) SCC 335
[18] 1996 Crl.L.J.381

is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance, process of criminal is availed of in laying a report or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.

It was further held that when investigating officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise of inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilize the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organized commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection, care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk.

In "***Babubhai Jamnadas Patel v. State of Gujarat***[19]" the Apex Court while referring to the principles laid down in

[19] 2009 (3) ACR 3033 (SC)

"***M.C.Abraham v. State of Maharashtra***[20]" held that that while investigation is in progress, the Court cannot direct the Investigating Agency to submit a report in accord with the Court's own view. In the facts and circumstances of the said case, this Court observed that it was open to the Magistrate, to whom the report is submitted by the Investigating Agency after a full and complete investigation, to either accept the same or to order a further inquiry. As far as the High Court is concerned, it could give directions for prompt investigation, but it could not direct the Investigating Agency to submit a report that is in accord with its views and that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the Investigating Agency.

The Apex Court in "***State of Haryana v. Bhajan Lal***" (referred supra) considered the scope of both Sections 154 and 156 of Cr.P.C. and the powers of the Court to interdict the investigation and laid down certain guidelines to be followed by the Courts and in fact the said judgment is being followed by all the Courts till date. Even according to the principles laid down in the above said judgment, the core of the Sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the

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[20] (2003) 2 SCC 649

investigating agencies over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

Police have Under Section 154(1) of the Code a statutory duty to register a cognizable offence and thereafter Under Section 156(1) a statutory right to investigate any cognizable case without requiring sanction of a Magistrate. However, the said statutory right to investigate a cognizable offence is subject to the fulfillment of a prerequisite condition, contemplated in Section 157(1). The condition is that the officer in-charge of a police station before proceeding to investigate the facts and circumstances of the case should have "reason to suspect" the commission of an offence which he is empowered Under Section 156 to investigate. What is the meaning of “reason to suspect” is not analyzed anywhere. But in “***State of Haryana v Bhajan Lal***” (referred supra) the Apex Court held in paragraph Nos.42 to 46 analyzed the word “reason to suspect” based on the dictionary meanings. With reference to language used in Section 41 (a) and (g) of the Code the words “reason to suspect” are apparently clear, plain and unambiguous. Considering the context and the object of the procedural provision in question, the Apex Court is of the view that only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be understood only in common parlance.

Thus, the Apex Court concluded that the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the First Information Report as well in the Annexure, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise. If that principle is applied to the present facts of the case as laid down in ***"State of Haryana v Bhajan Lal"*** (referred supra), the Investigating agency is not required to look into genuineness of the allegations made in the report and the annexure needs no consideration. If the investigating officer, based on the allegations made in the report satisfied that there is reason to suspect commission of offence, the investigating agency can proceed with the investigation and collect entire evidence, but the powers of the Court are limited and only when the investigating agency is not proceeding with the investigation as per the procedure, the Magistrate may issue necessary directions as referred above. Thus, it mean that the Court has no jurisdiction to interdict the investigation taken up by the police, by exercising power under Section 482 of Cr.P.C. if the police are proceeding to investigate in accordance with the power conferred on them by the statute but keeping in mind the personal liberty of a citizen. Therefore, while investigating into the offence the investigating agency is incompetent to exercise unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom.

In view of the law declared by the Apex Court, the Code conferred limited power on this Court to interfere with the investigation taken up by the investigating agency i.e. if the investigating agency is not proceeding in the lines of power conferred on it by Code, but not otherwise. In such case, it is improper to exercise power under Section 482 of Cr.P.C. to interdict the investigation.

In view of the law declared by the Apex Court in various judgments referred supra, the Court cannot exercise its unfettered power to quash the F.I.R. at its inception and more particularly when no investigation is commenced. Therefore, it is difficult for me to exercise power under Section 482 of Cr.P.C. to quash the proceedings at this stage.

Learned counsel for the petitioner contended that the F.I.R. does not disclose commission of any cognizable offence and police ought not to have proceeded against the petitioner for the offences referred supra and the petitioner complied with guidelines formulated by Government of India referred above, thereby the proceedings have also to be quashed.

The complaint is only an intimation to the police about the commission of cognizable offence to set the criminal law into motion, the complaint need not contain minute particulars since it is not an encyclopedia of facts. Merely because the allegations in the complaint are not sufficient to constitute offence, the proceedings cannot be quashed as it is only an information to the police about the occurrence of commission of cognizable offence, even if the petitioner allegedly followed the guidelines referred above, the investigating agency has to confirm the same only during investigation and not at this stage. I am sure, if the investigating agency finds that the petitioner followed the guidelines issued by Government of India, will file negative final report under Section 173 (2) of Cr.P.C.

As per the Judgment rendered in ***"Lalita Kumari v. Government of Uttar Pradesh***[21]***"*** when a report was lodged with the police, the police are bound to register the crime and bound to proceed further if the allegations made in the report disclosed commission of cognizable offence.

Earlier to ***"Lalita Kumari v. Government of Uttar Pradesh"*** (refereed supra) in "***State of Haryana v. Bhajan Lal"*** (referred supra) also made it clear that when an information is received by police about commission of cognizable offence, the Station House Officer is bound to register the case and proceed to investigate into the offence. Even the question of malafide on the part of the complainant is not a ground since it is premature. In the same judgment, the Apex Court expressed its view in clear terms that the question of malafides on the part of the complainant with a view to wreck vengeance on the accused and with a view to spite him due to private and personal grudge and the complainant dishonestly making such allegations are liable to be proceeded

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[21] (2014) 2 SCC 1

under Sections 182, 211 and 500 I.P.C. and also liable for damages. But malafides attributed to the complainant alone cannot form a ground to interdict the investigation. Since arriving at such conclusion before commencement of investigation is only a pre-mature stage. The evidence has to be gathered after thorough investigation and place before the Court, on the basis of which alone the Court can come to the conclusion one way or the other on the plea of malafides. If the allegations are bereft of truth and made maliciously, sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available and the Apex Court rejected the contention of the counsel therein for quashing the proceedings at the stage of investigation. If those principles are applied to the present facts of the case, even according to the learned counsel for the petitioners, investigation is not completed.

In view of the law declared by various Courts referred supra, I find no ground to quash the proceedings and if the petitioner is apprehending that he is likely to be arrested in connection with cognizable offence, they may approach the appropriate Court for grant of pre-arrest bail, but this Court, now, under Section 482 of Cr.P.c. cannot exercise power under Section 438 of Cr.P.C. granting pre-arrest bail, indirectly. Thus, there is nothing wrong in registration of crime based on the allegations made in the report lodged by the complainant and it is not an abuse of process of law.

In view of my foregoing discussion, I find no substance in the contentions of the learned counsel for the petitioner. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. However, if the investigating agency finds that there is material to attract the commission of any cognizable offence punishable with imprisonment for less than 7 years, follow the procedure laid down under Section 41-A of Cr.P.C and guidelines formulated by the Apex Court in ***"Arnesh Kumar v. State of Bihar and another*[22]*"*.** No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.11.2017
Ksp

[22] (2014) 8 SCC 273