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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 18.01.2017**

% **<u>W.P.(CRL) 3267/2016</u>**

MALCKOM N DESAI & ORS ..... Petitioners

Through: Mr. Sudhir Nandrajog, Senior Advocate along with Mr. Nikhil Goel, Mr. Ashutosh Ghade & Ms. Surya Rajappan, Advocates.

versus

GOVT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Richa Kapoor, ASC and Ms.Mallika Parmar & Ms.Seema Patnaha, Advocates along with Inspector Parveen Kumar, Cyber Cell/EOW, for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>VIPIN SANGHI, J. (OPEN COURT)</u>

1. The present petition has been filed to seek quashing of FIR No. 87/2016 dated 10.06.2016 under Sections 420/ 120-B/ 34 IPC and Sections 4/ 5/ 6 of PC & MCSB Act, registered by EOW Delhi and the proceedings arising therefrom, and in the alternative, compound the offence as against the petitioners.

2. The case concerns – what is claimed to be, a Multi-Level Marketing (MLM) Company called Vihaan Direct Selling Private Limited (*hereinafter* 'the Company'/ 'accused Company'), accused of cheating and fraud by running a money circulation scheme through an unauthorized and faulty business module. Petitioners No. 1 and 2 are current shareholders of the Company, while the Petitioner No. 3 and 4 are ex-directors of the Company.

3. The petitioners submit that the business carried on by the Company, in short, is that products of different kinds are allegedly sold through independent contractors known as "Independent Representatives" (IRs), who are enrolled as part of the company, allegedly, without collection of any deposit, fee or money for same. These IRs are given authority to deal with consumers and sell the products of the company to third parties. Depending upon the value of products sold and number of persons referred by such IRs who, in turn, buy products of the company, and also depending upon the value of products sold by the referred IRs, commission is paid to the IRs.

4. The petitioners submit that information about the nature of the business of the company is available on its web site. The agreements with the IRs are in the nature of independent contracts, which are also available on its website. Every agreement which the Company enters into with every purchaser, contains a clause disclosing the refund policy of the company. Anybody who is unhappy with the product sold by the Company can seek refund within a period of 30 days, upon which the money is refunded. It is further submitted that the company had complied with all the necessary statutory registrations. Permissions/ registrations were obtained from over 20 authorities. The Company has returned nearly 90 Crores to those

customers who were unhappy with its product. The Company has also paid direct and indirect taxes to the tune of Rs. 292 Crores for the financial year beginning from 2013 till the last financial year.

5. The case of the petitioners is that the present allegations are in relation to the alleged misrepresentations made by some Independent Representatives of the Company, and not by the Company and the petitioners in particular. The aforesaid FIR is registered pursuant to a complaint dated 4.3.2016 made by the second respondent, in which four persons are named as accused, namely (a) Vihaan Direct Selling India Private Limited, (b) Mr. Himanshu Aggarwal, (c) Ms. Anita Jaggi and (d) Ms. Kanika. The amount involved as shown in the FIR, is to the extent of Rs. 6.5 Lakhs.

6. The case of the complainant in the FIR is that the complainant was approached by his friend called one Mr. Himanshu Aggarwal who is an "Independent Representative" of the accused Company for a business opportunity and upon enquiry, Himanshu Aggarwal, the second accused informed the complainant that this is an E-Commerce business. He specifically denied that the business opportunity provided by the said company was that of Network Marketing. On 29.11.2015, accused 2 to 4, as named in the FIR met the complainant requiring him to invest Rs. 6.5 Lakhs. It was also represented to the complainant that without payment of money the company website could not be accessed by him. It is the version of the complainant that since he was not able to arrange Rs. 6.5 Lakhs, he did not want to opt in. However, after representation by one of the named accused that he could join with whatever amount he has arranged, the former handed

over Rs. 4.5 Lakhs to the named accused on 4.12.2015, and another cheque of Rs. 2 Lakhs in name of co-accused was also handed over on 8.12.2015. After payment of the said amount the complainant realised that it was a network marketing company. Consequently, he demanded back his money from the named accused and was informed that he could only get it back by earning commission which is given if new members are brought in. The complainant claimed that a new email id was registered by the accused persons on their portal through which the products were purchased by using his money in the name of one Anita Jaggi at her address. It is then alleged that the complainant wrote to QNET worldwide and got a refund of Rs. 1 Lac. Other refunds were allegedly refused on the ground that he had demanded them after 7 days of purchase of products. Further, refund of Rs. 21,000/- in cash was given by one the named accused, Mr. Himanshu Aggarwal. The complainant also learnt that the said group previously operated MLM scheme in India under the name of Gold Quest International Pvt. Ltd. against which action was initiated by Government of India in 2009. This resulted in closing of operations of the said company after duping lakhs of people.

7. Subsequent to the aforesaid complaint dated 04.03.16 of Mr. Anuj Jain and 15 other complainants, a preliminary inquiry was conducted. The contents of the same have been reproduced later along with that of the status reports relied upon by the prosecution.

8. The submission of Mr. Sudhir Nandrajog, learned senior counsel for the Petitioners is that, the Petitioner Nos.1 & 2 are the shareholders, and Petitioner Nos.3 & 4 are the ex-directors of the accused Company. The

shareholders are based out of Mumbai and have absolutely no role to play in day to day affairs and management of the Company. Petitioner No.4 had resigned from directorship as far back as on September 2013, while Petitioner No.3 also resigned as a Director in 2014. Mr. Nandrajog submits that no allegations have been made against the petitioners in their personal capacity. The complainants do not claim to have been induced, misrepresented or defrauded by the petitioners. The misrepresentations, if any, were allegedly made by the Accused Nos. 2 to 4 and that to at least 6-8 months before the registration of the FIR and, therefore, neither the ex directors (having resigned much before the alleged offence), nor the shareholders can be held responsible.

9. Mr. Nandrajog, submits that this is the fifth set of complaints made against the petitioners - either through the Independent Representatives, of the accused company or others. The petitioners have, in numerous pleadings filed before different courts- namely, Bangalore, Mumbai, Telangana, Andhra Pradesh, as also before the Supreme Court, disclosed as to how these complaints are motivated at the behest of business rivals.

10. Mr. Sudhir Nandrajog avers that shareholders or ex-directors of a company cannot be held vicariously liable for an offence allegedly committed by that company. He places reliance on the ***Maksudv. State of Gujarat,*** (2008) 5 SCC 668, wherein the Supreme Court, *inter alia*, observed:

> "*The Penal code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company.*

The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety , would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegation which would attract the provisions constituting vicarious liability."

11. He also placed reliance on the decision of the Supreme Court in ***Sunil Bharti Mittal vs. Central Bureau of Investigation,*** (2015) 4 SCC 609, wherein in Para 44 the Supreme Court observed:

"*When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In* ***Aneeta Hada****, the Court noted that if a group of persons that imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company*".

12. Mr. Nandrajog submits that Petitioner Nos.1 & 2, being mere shareholders of the company, are investors in the company. Their interest is restricted to receiving a share in profits of the company by way of dividends

to the extent of their shareholding in the company. He further submits that shareholders are not the signatories of the financial statements of the company and are not concerned with the day-to-day administration of the company.

13. Mr. Nandarjog further submits that there is no question of inducement by the petitioners to anyone, much less the complainant, as the petitioners have not enrolled themselves as IRs of the Company. All the products of the petitioner are displayed on the Company's website and any person while making a purchase can go through all the details of the products on offer and make an informed choice. Only thereafter an order is placed by the IR/customer on the website. The payment is made through credit card/debit card/demand draft and subsequently the product is delivered to the customer. If the customer is not satisfied with the product delivered, he/she has an option to return the product within 30 days and seek a full refund as per the Company's refund policy. On account of such transparent business procedure, Mr. Nandrajog submits that there could be no intention to defraud anyone, or cause wrongful loss to the customers and, therefore, no dishonest act is said to have been committed by the petitioners and no case of cheating is made out against them.

14. On the other hand, learned Additional Standing Counsel (ASC) for the State Ms. Richa Kapoor has extensively read and relied upon the two status reports dated 30.11.2016 and 16.01.2017. She submits that the complainant, Mr. Anuj Jain, who invested like 15 other complainants lost monies ranging between Rs.1.5 Lakhs to Rs.10 Lakhs each, have complained that QNET India company is involved in money circulation

schemes through another company Vihaan Direct Selling India Limited i.e. the accused company, trapping the general public on the pretext of starting an e-commerce business and later on forcing them to make more members in the MLM scheme so as to recover their investment. The Status Reports revealed that fraud is being committed by the Malaysia Based company which was earlier banned in India and now operating in another name i.e. under the name of Vihaan Direct Selling India Ltd. The EOW, Mumbai is already investigating against this company in a case registered in 2013.

15. Ms. Kapoor submits that during investigation more victims have come forward and given their complaints. So far more than 65 complaints have been received and are being investigated. She states that the complainant was induced by the accused persons to pay an amount of Rs. 4.50 lakhs which was paid through a cheque and one of the accused, as per the complainant, had filled the name of Vihaan Direct Selling India Pvt. Ltd./accused Company in the given cheque. She submits that the investigation shows that the complainant was called by the accused persons for training at Kalkaji Delhi in a hotel where around 20-25 clients/new members were also present with an organizer, named as Vrishad. They were then informed to keep a record of 500 near and dear persons who could be a part of the said MLM scheme. When the complainant said he could not give false assurances, the complainant was given his portfolio ID and a login id password. Complainant later learnt of fraud cases being registered against the QNET Company (predecessor of present accused company), so he asked for his money to be returned. Ms Kapoor states that the investigation shows that the e-mail, "*anujjain.biz@gmail.com"* was created by the IRs without

the complainant's consent, and this email address was used for the purchases made by the IRs in his name. The email was later changed and was used in the portal so that he could not get any information regarding any purchases being made by the IRs, and further disabling him to apply for a refund.

16. The status reports reveal that the in some of the purchase confirmation receipts, which have also been brought on record by Ms. Kapoor, the shipping address of the complainant has been displayed as "*K-47 Jangpura Ext Delhi 110014* ***British Virgin Is***.*,*" for the purchase of some products, while some products are shown to be shipped at an address in Dubai showing his contact number as "971555532884" and address as "*c/o Srinivasan Raghavan Flat No.204 building no.R-444 near 7 days* ***Super Market Karama Dubai UAE***". A perusal of these receipts show that orders have been placed using the email id "*anujjai.,biz@gmail.com*" which, as aforementioned, has not been created by the complainant. Further, two watches, one vacation package and two Cristal pendants have been shown as purchased by the complainant, which was without his instructions. He, along with other complainants/victims have never received or been given anything as specified in the purchase orders so far.

17. The status reports states that a perusal of the recorded statements of other victims; the emails received by them; and screenshots of the web portal showing purchases made by these victims, discloses a common Modus Operandi adopted by the accused persons to trap people to invest money. The Modus Operandi of QNET or Vihaan Direct Selling (India) Pvt. Ltd. adopted in recruiting new persons in these companies, as provided in the status reports and explained by Ms. Kapoor, , in effect, is as follows:-

A. A person known to the victim calls him/her and mentions about a business, that he/she has recently got which promises a good return. He/she tries to create the victims interest in the said business. Another call is made to the victim, within a gap of 2-3 days, saying that from the last conversation it appeared that the victim is interested, and that there is an opportunity in the said business.

B. The victim is further asked about his availability to arrange a business meeting at a 5 star hotel/coffee shop with the senior partners who happen to be in the city on certain dates. The date is finalized and the victim is asked to arrive in formals along with his resume. A general hype and build-up is created about the said meeting and the persons who are to be present at the meeting.

C. On the victim's arrival at the venue specified, his friend/acquaintance further exaggerates about the person he/she is to meet and makes the victim wait for some time. The senior partner eventually enters and starts a conversation with the victim. He tries to get to know about the victim and brain-washes him completely. The partner does not speak of the business but creates an image that the victim is the person who they are looking for. All in all, they make the business appear as a money making business which promises the victim returns in crores. The victim is also told that this opportunity has come his way, only because of his friend/acquaintance.

D. The victim is quoted an investment amount ranging from Rs.50,000/- to Rs.10,00,000/- depending upon the information they have regarding him. Once the victim joins the business, he is informed of the chain system and is given a task to make/get more members under the MLM scheme. The victim is told that he shall be entitled to a commission depending upon the members he gets to join in the said scheme.

E. Some vacation packages are shown as purchased against the money invested by the victim. However, those are not ordered by the victim and never delivered to the victim. Delivery is, in actuality, shown to some unknown addresses/ fake addresses, and in some cases even phone numbers or email addresses displayed are fake to avoid the victim from being informed. On paper, there exists a refund policy in the agreement with the victim - for thirty days, and victims are informed only after the period of 30 days so that he loses his right to claim any refund.

F. Subsequently, the victim is forced to make more members and to get investment from more members, in order for him to recover his money. Once the victim is involved in such a transaction, he either has to cheat others the same way as he got cheated and trapped to recover his money by earning a commission, or he has to forget about recovering his money.

18. Ms. Kapoor submits that after examination of other victims who were trapped by IRs of QNET/Vihaan Direct Selling (India) Pvt. Ltd., it was found that Vihaan is the Indian franchise of QNET Ltd. Hong Kong. She submits that Vihaan Company and QNET are acting in connivance with

each other to cheat and defraud the public at large. She relies on the domain names "*www.qnetindia.in*" and "*www.qnetindia.net*" which were registered through the domain name providing company "Net4India" in the name of the accused company, and not QNET Ltd. On investigation, Net4india provided the address details of the company which applied for the said domain names as:- " *QNETINDIA, Srinivas Venka, Unit No.S02, 22nd floor WTC Bengaluru Brigrade Gateway Campus, 26/1 Dr Rajkumar road, Malleshavaram West Bengaluru, Karnataka, Ph-9901530200, e-mail id srinivas_venka@rediffmail.com & indiatransview@gmail.com*. Ms. Kapoor submits that Srinivas Rao Venka, as aforementioned, is one of the accused herein. Ms Kapoor further submitted that the accused Company had applied for renewal of the aforesaid domain names. The IP address used for this purpose has been revealed to be the address of the accused Company i.e.:- " *VIHAAN DIRECT SELLING (INDIA) PVT LTD, 2nd floor NO.2352/2 DOLPHIN HENNUR, MAIN ROAD KACHARAKANAHALLI KASABA, BANGALORE-43, KARNATAKA, Contact person : VIPIN JOSE, Email: vipin.jose@qnetindia.in, Phone:9900060577."*

19. Ms. Kapoor submits that investigation of the bank account details of the accused company shows that it was opened very recently on 18.12.2015 and within a span of six months, about Rs.56 crores was found to be deposited in this account. She submits that it has also been learnt that there are several other bank accounts of the accused Company as well. Ms. Kapoor states that the accused Company has been incorporated by its promoters/ shareholders, since the fraud and cheating committed by their companies had been unearthed, and they could not carry out their fraudulent

activities in the name of the erstwhile company. The petitioners accused thus incorporated the accused company to carry on the same fraudulent activities under a different outfit. She submits that the accused Company belongs to a QI group of companies functioning in Malaysia which happened to be working in India earlier through one company called "Goldquest International Pvt Ltd" in Chennai registered in 2001. She submits that a number of complaints were received against the said company which lead to the registration of an FIR, further leading to closing of the business of Goldquest. This subsequently led to the formation of another company called "Questnet Enterprises India Pvt. Ltd." at the same address of Goldquest in Chennai in 2005. The directors of Goldquest were made directors in Questnet Enterprises. The status reports show that it was alleged that these directors have been involved in Money Circulation schemes only, though camouflaged as a business, and more than 32,000 complaints have been filed against the company, Questnet Enterprises. It is further revealed that an investigation was ordered by the Ministry of Corporate Affairs (MCA) against the two abovementioned companies through SFIO (Serious Fraud Investigation Office under MCA) which filed a 500 page report recording the Multi Level Marketing and Pyramid Marketing schemes floated by the said companies. These companies had enrolled around 2,39,484 individuals out of which about 2,20,000 persons had allegedly lost their money. Thus, now Vihaan is the next company which is being used by QI Group Malaysia to endorse and promote their fraud in India as the earlier companies, Goldquest and Questnet Enterprises have been prosecuted. The accused company has been receiving investments amounting to Rs. 1 lakh to

Rs.10 lakhs - camouflaged as a business showing purchase of various products, mostly in the form of travel packages.

20. Ms. Kapoor submits that the petitioners, Michael Ferreira, Malckom Desai, Magaral Balaji and Vanka Srinivas Rao are all associated with QNET since long back. Petitioners Nos. 1 & 2, Malckom Desai and Michael Ferreira were earlier IRs (Independent Representative) of Questnet Enterprises (India) Pvt. Ltd., while Petitioner Nos.3 & 4, Vanka Srinivas Rao and Magaral Balaji were officers in the same company Questnet Enterprises (India) Pvt. Ltd. She submits that considering their long relationship with QNET, accused Michael Ferreira and Malckom Desai formed another company in the name of Vihaan Direct Selling (India) Pvt. Ltd. holding 100% stake in the said company, (Michael Ferreira having a 80% share holding while Malckom Desai having the remaining 20% shareholding). Petitioner Nos.3 & 4 were made Directors, for the period 14-12-2011 to 23-09-2013 and 13-8-2013 to 23-09-2014 respectively, of the accused Company. Ms Kapoor submits that by virtue of this relationship, and positions occupied by the Petitioners with QNET and Vihaan, the petitioners have full knowledge and control over the activities of the accused Company, and are directly involved in the fraud, with an intention to cheat the general public.

21. The petitioners are also involved in a case of cheating in FIR No.316/2013 dated 16-08-2013 u/s 420/120-B IPC and Sections 3,5,6 of the Prize Chits and Money Circulation (Banning) Act, 1978 which is being investigated by EOW, Mumbai. The petitioners had applied for anticipatory bail in the said FIR which the Bombay High Court rejected vide its order

dated on 6th May 2016. Further, the petitioners applied for anticipatory bail to the Supreme Court which was dismissed and they were directed to surrender before the concerned court. Ms. Kapoor submits that a transfer application was moved in the Sessions Court MPID, Mumbai which was allowed and the petitioners were transferred from Taloja Jail, Mumbai to the Court of CMM/New Delhi District after issuance of transfer warrants. Subsequently the FIR No.87/2016 (subject FIR) was registered at the EOW, Delhi.

22. Ms. Kapoor submits that an FIR is not an encyclopaedia of all the relevant facts, but is only an instrument to set the criminal machinery in motion. The fact that the FIR does not contain the names of the petitioners does not mean that the petitioners have no role to play in the aforesaid fraudulent transaction. The investigation is still at its nascent stage and is being conducted to establish the complete nexus between all those involved. The aspect of money laundering - in and outside the country, and the petitioners' specific involvement in the same is also being investigated. She states that the writ petition should be dismissed since the accused persons/petitioners are not only the beneficiaries of the fraudulent earnings, but also the brain behind the business.

23. Mr. Nandrajog, in his rejoinder, submits that the status reports relied upon by the State contain no material evidence to establish the alleged direct inducement made by the petitioners to the victims. He submits that entrustment is a mandatory requirement before an offence of cheating can be established. He reiterates that the petitioners are not direct beneficiaries of the said schemes. He submits that the petitioners were IRs of Questnet

which has now closed its operations, and not Vihaan. He admitted that the petitioners were promoters of Vihaan - holding a 100% stake in the company, but submitted that the people involved in the execution of the MLM scheme were the IRs and not the promoters. The promoters were not responsible for the working out of the scheme. Thus, the mismanagement of the said scheme has been done at the behest of the IRs, and the petitioners cannot be held liable for the same.

24. Having heard the learned senior counsel for the Petitioners as well as the learned ASC and perused the FIR and the status reports on record, I am not inclined to quash the FIR in question and the criminal proceedings arising therefrom at this stage, in light of the facts of the present case and the materials unearthed so far during the investigation conducted till now.

25. The case involves a multi-victim scam. It appears that cognizable offence of cheating is made out by the complainants/ victims against the accused Company and its IRs. The modus operandi of the accused – as explained; the purchase confirmation receipts brought on record; the earlier proceedings instituted against the earlier Avatar of the accused Company promoted by the same beneficiaries/ promoters prima facie indicate that offences of cheating, dishonest inducement and criminal breach of entrusted property has been made out.

26. As per the facts brought on record, it is not disputed that the accused company come s from the same stable as QNET Ltd. In fact, a perusal of the QNET Policies and Procedure which have been produced on record by the petitioners states that "*The Company (Vihaan Direct Selling (India) Pvt.*

Ltd.) is a franchisee of QNet Ltd. (Hong Kong) for the distribution of QNET products within the territory of India". Further, the status reports reveal that Vihaan and QNET Ltd. are associated with companies called QuestNet Enterprises and Goldquest International. These companies have further been stated to have a common business module like that of the accused Company. The petitioners herein, admittedly, have been the IRs in QuestNet and are now involved in the accused Company as either promoters/ shareholders or directors of the accused Company. They have been involved in floating the said MLM scheme. These facts indicate the probability of the petitioners having knowledge of the alleged fraudulent transactions being undertaken through the IRs of the accused Company and of being direct or indirect beneficiaries of the same. The IRs are enrolled and then tutored/ trained into trapping others into the money circulation scheme. The IRs have no option, but to – unwittingly, fall in line and carry out the fraudulent scheme of the company. It also prima facie appears that the scheme floated and operated by the accused is only a money circulation scheme and not a MLM scheme, since no actual products or services appear to have been sold or delivered to the customers. This is evident from the modus operandi adopted by the accused in providing incorrect/ fictitious addresses and phone numbers. Pertinently, the accused have not even claimed that goods/ services have been delivered at such fictitious addresses.

27. The petitioners were IRs of the company Questnet Enterprises which was also prosecuted and has currently terminated its operations. The same petitioners have founded Vihaan Direct Selling (India) Pvt. Ltd. which is accused of cheating and dishonestly inducing victims to invest monies in a

fraudulent business by camouflaging it as an e-commerce business. Such facts further strengthen the possibility that the petitioners having a nexus with such fraudulent transactions.

28. Mr Nandrajog has submitted that the evidence collected through investigation does not establish inducement of the victims by the petitioners in the alleged fraudulent transactions. It is well established that this Court, while exercising jurisdiction under Section 482 of the CrPC or Art. 226 of the Constitution of India cannot enquire into the veracity of the statements and evidence brought on record by the investigation to establish the involvement of the accused persons in the offence.

29. In ***State of A.P. vs. Golconda Linga Swamy and Anr.,*** (2004) 6 SCC 522, the Supreme Court, while setting aside the order of the High Court of Andhra Pradesh quashing the FIR, observed:

> "*7. .....When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death..........*"

30. The Supreme Court also considered the scope of this Court's jurisdiction under Section 482 of the Code to quash the FIR. The Supreme Court held that the said power should be exercised sparingly, and that too in the rarest of rare cases. The Supreme Court further observed that:

> "*8. ....The inherent power should not be exercised to stifle a legitimate prosecution. 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 or 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......................It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case 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 cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is malafide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.................* "

31. The petitioners No.1 and 2 are the primary beneficiaries, and petitioner Nos.3 and 4 were, at the relevant time, at the pinnacle of the accused Company, and were maintaining positions due to which they were in charge of and responsible for the functioning of the Company. Their role and involvement in the alleged offence has to be ascertained. The investigation is still ongoing, and it cannot be said at this stage that nothing has been, or can be unearthed against the petitioners. In my view, quashing the subject FIR at this nascent stage would thwart the unravelling a huge multi victim scam which has affected hundreds of innocent investors and robbed them of their hard earned savings. It would also send a very wrong signal – not only to the petitioners, but to the society at large.

32. For all the aforesaid reasons, the present petition is dismissed. It is, however, made clear that the observations made in this order on the merits of the case, are prima facie in nature, and made only for the purpose of the present discussion and the same shall not come in the way of either party at any stage of the proceedings.

VIPIN SANGHI, J

JANUARY 18, 2017