HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WP No.21487 of 2018

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 1st respondent in registering multiple FIRs based on the complaints lodged by members of the consortium-banks on the same allegations of fraud and misrepresentation, as being illegal, arbitrary, contrary to the provisions of the Code of Criminal Procedure and un-constitutional and consequently direct the 1st respondent to club all the complaints into one single case, in the interest of justice.

2. Facts briefly stated are:- the petitioner a registered company *viz.,* "Leonia Holistic Destination", represented by its managing director, claims to be one of the finest themed destination at Bommarasapet village, Shamirpet mandal, near to the city of Hyderabad, with the concept of providing a unique and fully integrated leisure and health experience, established four hotels, villa resorts, international convention, sporting facility, indoor and outdoor banqueting venues, an award winning wellness spa and meditation centre,

restaurants, etc. The petitioner also received many accolades to its credit for its diversified activities.

3. Owing to circumstances beyond its control and may be the growth has been sluggish, but, according to the petitioner allegedly due to non-fulfilment of the exemptions and concessions promised by the successive Governments, devised through Tourism Policy, 1998, GO.Ms.No.6, dated 18- 12-1998 and GO.Ms.No.10, dated 25-09-2009, the petitioner could not generate revenues adequate to defray the loans given by the consortium-banks. Successive applications of the petitioner to re-schedule the loans, to provide opportunity of corporate debt restructuring or the opportunity of one time settlement did not evoke any positive response from the consortium-banks.

4. On the premise that the petitioner cheated and defrauded the consortium of banks, the lead banker, being the Bank of Baroda, represented by its Deputy General Manager, Corporate Financial Services Branch, Hyderabad, lodged a criminal complaint dated 19-02-2015 to the 1st respondent-Central Bureau of Investigation, Bank Securities and Fraud Cell. In the said complaint, the Bank of Baroda, the lead

banker, among the consortium of banks, made allegations against the petitioner, they are;

i) firstly; that in a survey conducted on 30-10-2013 by the Surveyor, Shamirpet Revenue Mandal, Ranga Reddy District, a report was submitted to the effect that the hotels of petitioner consisting of 265 rooms and 903 rooms each, were being constructed in Sy.No.388 and not in Sy.No.389 of Bommaraspet village, Shamirpet Mandal, Ranga Reddy District, and that the same is contrary to representations made by the petitioner for the sanction of loans and, therefore, the petitioner cheated the bank.

ii) secondly; that the petitioner suppressed the fact of dividing the said landed property of Ac.1.15 guntas in Sy.No.389 into 6 individual plots and having already sold the plots, claimed them as belonging to the petitioner and created charge by mortgage on 08-01-2010 by depositing the title deeds of the landed property; and

iii) thirdly; while seeking sanction of loan of Rs.75 crores for the purpose of expansion of 318 roomed hotel into 903 roomed hotel, the petitioner submitted fabricated letters purported to be issued by the HMDA as if it approved construction of 18 floors, while permission was accorded for only 13 floors and that the same was identified during verification by the Bank in May, 2014, but the loan was accorded believing the representation of the petitioner that the *company has permission for construction of 18 floors. It was, therefore, alleged that the petitioner misled and cheated the banks by submitting forged documents.*

5. Based on the said complaint lodged by the Bank of Baroda, a case in FIR No.02/2015, dated 23-02-2015 ***(1st FIR)*** was registered and is pending on the file of XIV Addl. Chief Metropolitan Magistrate for CBI Cases, Nampally, Hyderabad.

6. While so, another lender-bank *i.e.* Indian Overseas Bank, represented by its Chief Regional Manager, Hyderabad, made complaint dated 14-02-2017 to the 1st respondent purportedly repeating the self same allegations against the petitioner and based on which the 1st respondent, registered a case in FIR No. 05/2017, dated 16-02-2017 ***(2nd FIR).*** The petitioner and other promoters, feeling aggrieved by the action of the 1st respondent in summoning him and others for investigation and in registering 2nd FIR, on the basis of the complaint given by Indian Overseas Bank, notwithstanding the earlier complaint given by the lead banker i.e. Bank of Baroda, which contains the self same allegations as the one in the 2nd FIR, filed Crl.P.No.6473 of 2017 and batch to quash the 2nd FIR registered at the instance of the consortium-banker i.e. Indian

Overseas Bank, on the premise that registration of multiple FIRs relating to the same offence cannot be maintained. This Court by order dated 08-09-2017 dismissed the said criminal petition and batch.

7. While things stood thus, another banker of the consortium-State Bank of India-2nd respondent herein (erstwhile State Bank of Mysore) lodged a complaint dated 17-04-2018 with the 1st respondent. According to the petitioner the 2nd respondent has only reproduced the contents the of 1st complaint made by the lead banker, Bank of Baroda, and except stating that the petitioner has committed fraud and cheating, no separate or fresh/or additional allegations are made in the complaint of the 2nd respondent. But, mechanically, the 1st respondent based on the complaint of the 2nd respondent, registered a case in FIR No.10 of 2018, dated 20-04-2018, impugned in this writ petition ***(3rd FIR)***.

8. The grievance of the petitioner is that registration of multiple FIRs on the basis of allegations which are essentially the same in all the complaints is nothing but abuse of the process of law and; hence seeks for clubbing of all complaints into one case. Hence, this writ petition.

9. Counter affidavit is filed by the 1st respondent, *inter alia,* stating that based on the complaint lodged by the Assistant General Manager of 2nd respondent-SBI bank against the petitioner and other promoters that the petitioner and others fraudulently availed term loan of Rs.10 crores for construction of a hotel complex on the land in question, but the land in question was already mortgaged to the lead banker, it was also divided into plots and sold and this fact was not revealed to the 2nd respondent bank, thus the petitioner has misled the 2nd respondent-bank. It is also stated that the petitioner misrepresented to the bank as if it had permission from the HMDA for construction of 18 floors, when in effect permission was accorded only for 13 floors, thereby the petitioner defrauded the 2nd respondent bank by diverting funds and constructed multi-storied hotel building in a land not mortgaged to the 2nd respondent bank and thereby cheated the bank. That the petitioner owes an outstanding amount of Rs.7,97,21,951/- to the 2nd respondent bank and it caused wrongful loss to the bank, but wrongful gain to itself. That the complaint lodged against the petitioner by the 2nd respondent bank constitutes a distinct offence arising out of a distinct

cause of action and it is not the same incident as alleged by the petitioner. That as *prima facie* case is made out against the petitioner and others, a case in FIR No.10 of 2018 was registered and investigation is under progress.

10. Reply affidavit is filed by the petitioner to the counter averments made by the 1st respondent. It is stated that registration of multiple FIRs in respect of the same offence cannot be maintained and the 2nd respondent bank being a member of consortium of banks, inasmuch as the lead banker has already filed a complaint and charge sheet has also been filed, the other members of the consortium-banks, if they have any additional information or material in respect to the allegations, they can supply to the 1st respondent or produce in the Court of law, but cannot make complaints on the same set of allegations resulting in registration of multiple FIRs. The petitioner has also denied the various other allegations made in the complaints by the consortium of banks.

11. Sri D. Prakash Reddy, learned senior counsel appearing for the petitioner made submissions *viz.,* i) that the consortium of banks including the 2nd respondent-bank with a view to lend amounts to the petitioner, formed into consortium

and in consortium financing, several banks finance a single borrower and there is a common documentation, joint inspection by the banks and the bank which takes a higher risk in terms of grant of maximum loan, will act as an intermediary between the consortium-banks and borrower; ii) that in light of registration of FIR being FIR No.02/2015, dated 23-02-2015 based on the complaint lodged by the lead banker, any subsequent information made orally or in writing in relation to the same offence has to be treated as statements falling under Section 162 CrPC; iii) that any further information being received by the investigating agency in respect of the same offence/occurrence in such a situation the course open for the investigating agency is to conduct further investigation, but not register multiple FIRs; iv) that in the instant case, the nature of transaction being "consortium banking" and not "multiple banking," the transaction through "consortium banking" cannot be treated as "multiple banking" as there is no separate documentation with each of the consortium banks; v) that the allegations of fraud and misrepresentation made against the petitioner and others relates to the same transaction, all offences can be clubbed and tried together & vi) that the consortium of banks represented by the lead banker having filed 0A being OA No.164 of 2015 before the Debt Recovery Tribunal, Hyderabad, without pursuing the same, for reasons unknown made frivolous complaints to the 1st respondent causing irreparable damage to the reputation of the petitioner and excruciating mental agony to the promoters. In support of his contentions, learned senior counsel relied on the rulings of the Supreme Court and this Court, the application of the ratio laid down therein or otherwise will be considered hereinbelow.

12. *Per contra*, Learned standing counsel appearing for the 1st respondent submitted that based on the complaints lodged by the consortium of banks, each case has been investigated independently by registering separate FIRs and in two cases charge sheets have also been filed. It is stated that though loan was obtained by the petitioner through consortium of banks, each of the banks have advanced different quantum of amounts and the transaction with each of the banks is individual and, therefore, the offence alleged against the petitioner is not “same offence” but it is “same kind of offence” as distinguished by the Supreme Court in ***STATE OF***

JHARKHAND vs. LALU PRASAD YADAV.[1] It is also stated that the petitioner committed same kind of offence involving different banks during different period with the same kind of *modus operandi,* as such, each of the acts of the petitioner constitutes a different and distinct offence and consequently separate FIRs have been registered based on the written complaints of different banks.

13. Having noted the facts of the case and having heard learned counsel for the parties, the point that arose for consideration is whether in the background of pleadings registration of multiple FIRs against the petitioner and its promoters can be maintained or all cases have to be clubbed into one single case treating them as off shoots of the same offence?

14. The petitioner obtained loan from four banks through a consortium set up, the lead banker being the Bank of Baroda. In consortium set up of financing, several banks advance loans to a single borrower. It is understood that in consortium financing, there would be common documentation, joint inspection of the site of the borrower and follow-up action of

[1] (2017 (8) SCC 1)

documents verification and the entire loan amount sought to be advanced is divided among those consortium of banks. The bank which advances highest amounts of loan to the borrower will act as a lead banker and also acts as an intermediary between the consortium of banks and the borrower. As stated above, in the instant case, the lead banker is Bank of Baroda and at its instance criminal proceedings were set in motion and a case in FIR No.02/2015, dated 23-02-2015 was registered. Second complaint was lodged by the Indian Overseas Bank based on which FIR No.05/2017, dated 16-02-2017 was registered. Similarly, third complaint was registered by the 2nd respondent–SBI bank based on which FIR No.10 of 2018, dated 20-04-2018, was registered. It is to be seen that the petitioner and its promoters are borrowers of different banks of the consortium. Admittedly, the quantum of amounts advanced by each of the consortium of banks is also different and the nature of transaction is different. It is true that all the amounts advanced by the consortium of banks were sanctioned to the petitioner-company, but they are advanced for different purposes. The Supreme Court in a plethora of judgments held and clarified the position of law with regard to multiple FIRs, cross complaints and second FIR, and propositions are laid down that law does not prohibit registration and investigation of two FIRs in respect of the same incident having different version of events.

15. In ***RAM LAL NARANG vs. OM PRAKASH NARANG***[2], the Supreme Court considered a case wherein two FIRs had been lodged. The first one formed part of a subsequent larger conspiracy which came to the light on receipt of fresh information. Some of the conspirators were common in both the FIRs but the object of conspiracy in both the cases was not the same. The Supreme Court while considering the question as to whether investigation and further proceedings on the basis of both the FIRs was permissible held that no straitjacket formula can be laid down in this regard. The only test whether two FIRs can be permitted to exist was whether the two conspiracies were identical or not. After considering the facts of the said case, the Court came to the conclusion that both conspiracies were not identical. Therefore, lodging of two FIRs was held to be permissible.

[2] AIR 1979 SC 1791

16. In ***T.T. ANTONY vs. STATE OF KERALA***[3], the Supreme Court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the Court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer In-charge under Section 158 CrPC and all other subsequent information would be covered by Section 162 CrPC for the reason that it is the duty of the investigating officer not merely to investigate cognisable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the investigating officer has to file one or more reports under Section 173 CrPC. Even after submission of the report under Section 173(2) CrPC, if the investigating officer comes across any further information pertaining to the

[3] (2001) 6 SCC 181

same incident, he can make further investigation, but it is desirable that he must take the leave of the Court and forward the further evidence, if any, with further report or reports under Section 173(8) CrPC. In case the officer receives more than one piece of information in respect of the same incident involving one or more than one cognizable offences such information cannot properly be treated as an FIR as it would, in effect, be a second FIR and the same is not in conformity with the scheme of the CrPC.

17. In ***UPKAR SINGH vs. VED PRAKASH***[4], the Supreme Court considered the proposition laid down in ***T.T. Antony's case*** (3 supra) and explained that the judgment in the said case has not excluded the registration of a complaint in the nature of a counter case from the purview of the Code. What had been laid down by this Court in the aforesaid case is that any further complaint by the same complainant against the same accused, subsequent to the registration of a case, is prohibited under the CrPC because an investigation in this regard would have already started and further the complaint against the same accused will amount to an improvement on

[4] (2004) 13 SCC 292

the facts mentioned in the original complaint, hence, will be prohibited under Section 162 CrPC. However, this rule will not apply to a counter complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident. Thus, in case, there are rival versions in respect of the same episode, the investigating agency would take the same on two different FIRs and investigation can be carried under both of them by the same investigating agency and thus, filing an FIR pertaining to a counter complaint in respect of the same incident having a different version of events, is permissible.

18. In ***RAMESHCHANDARA NANDLAL PARIKH vs. STATE OF GUJARAT***[5]***,*** the Supreme Court re-considered the rulings on the subject matter including the case law in ***T.T. Antony's case*** (3 supra) and held that in case the FIRs are not in respect of the same cognizable offence or the same occurrence giving rise to one or more cognizable offences nor; are they alleged to have been committed in the course of the same transaction or the same occurrence as the one alleged in the 1st FIR, there is no prohibition in accepting the 2nd FIR.

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[5] (2006) 1 SCC 732

19. In ***NIRMAL SINGH KAHLON vs. STATE OF PUNJAB***[6], the Supreme Court considered a case where an FIR had already been lodged in respect of the offences committed by certain individuals. Subsequently, the matter was handed over to the Central Bureau of Investigation (CBI), which during investigation collected huge amount of material and also recorded statements of large number of persons and the CBI came to the conclusion that a scam was involved in the selection process of Panchayat Secretaries and a 2nd FIR was lodged by the CBI. The Supreme Court concluded that the matter investigated by the CBI dealt with a larger conspiracy and, therefore, the investigation has been on a much wider canvass and held that 2nd FIR was permissible and required to be investigated.

20. In ***BABUBHAI vs. STATE OF GUJARAT,***[7] the Supreme Court has approved the registration of more than one FIR in respect of same acts committed on the ground that the Police is required to register the FIR on the basis of the information provided and that *"where the version in the 2nd FIR is different and they are in respect of the two different incidents/crimes,*

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[6] (2009) 1 SCC 441
[7] (2010) 12 SCC 254)

the 2nd FIR is permissible". In this ruling the Supreme Court has considered the scope of Section 154 CrPC and the litmus test to maintain the 2nd FIR. At paras 20 and 21 of the decision it was held thus:-

> ***"20.*** *Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 CrPC is a very important document. It is the first information of a cognizable offence recorded by the officer in charge of the police station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the first information report will be statements falling under Section 162 CrPC.*
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> ***21.*** *In such a case the Court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in*

> *respect of the two different incidents/crimes, the second FIR is permissible."*

21. In ***AMITBHAI ANIL CHANDRA SHAH vs. CBI,***[8] it was observed that even after filing of charge sheet, if the investigating officer comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally. Thus there can be no second FIR and consequently, there can no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

22. The decision of this Court in ***AKBARUDDIN OWAISI vs. GOVERNMENT OF AP***[9], relied on by learned senior counsel, relates to filing of multiple complaints is relatable to the theory of "same offence." This Court observed that permitting such a practice can be controlled as it causes tremendous harassment and prejudice to the accused. The ratio laid down in the said decision is based on theory of "same offence" but not the "same kind of offence".

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[8] (2013) 6 SCC 348
[9] (2013) 6 SCC 348

23. In ***AWADESH KUMAR JHA vs. STATE OF BIHAR,***[10] the Supreme Court observed that there can be no second FIR in the event of any further information being received by investigation agency in respect of the same offence are same occurrence, or same transaction giving rise to one or more of offences for which charge sheet has already been filed by the investigating agency. Recourse available with the investigation agency in the said situation is to conduct further investigation.

24. In ***CHIRAG M. PATHAK vs. DOLLYBEN KANTILAL PATEL,***[11] the Supreme Court was of the view that when facts disclose *prima facie* cognizable case and also disclose remarkable identity between the two FIRs, as if the first FIR is filed second time, with no change in allegations then the Court may, in an appropriate case, consider it proper to quash the 2nd FIR.

25. The Supreme Court in a latest decision in ***P. SREEKUMAR vs. STATE OF KERALA,***[12] which considered ***Upkar Singh v Ved Prakash***'s case (4 supra) as also ***T.T. Antony's case*** (3 supra), had observed thus:-

[10] (2016) 3 SCC 8)
[11] (2018) 1 SCC 330)
[12] (2018) 4 SCC 579

*"Be that as it may, if the law laid down by this Court in **T.T. Antony's**, is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences."*

26. Reverting back to the facts of the case, the petitioner and its promoters availed loan facilities from the consortium of banks. Inasmuch as the transactions from the consortium of banks are different and the loan agreements and amounts lent by the banks are different, though they constituted as a consortium, led by lead banker Bank of Baroda, it cannot be gain said that multiple complaints lodged by the consortium of banks are offshoots of the same transaction. The allegations made by each of the bank with regard to specific transaction involving fraud and misrepresentation have to be investigated into. It is more so in the light of the report of the 1st respondent-CBI that role of some of the officials of the consortium banks is not ruled out in the alleged fraud played on the banks by the petitioner and its promoters.

27. The ruling of the Supreme Court in ***STATE OF JHARKHAND vs. LALU PRASAD YADAV*** (1supra) wherein a

distinction has been made of the "same offence" with that of "same kind of offence" and has given in categorical finding that if "same kind of offence" was committed multiple times, each time constitutes a separate offence. In the instant case, the petitioner and its promoters alleged to have committed "same kind of offence" involving different banks with same kind of *modus operandi* and hence the acts of the petitioner and its promoters constitute a different and distinct offence and consequently multiple FIRs are maintainable based on the written complaints of the consortium of banks. Though the transaction was through consortium of banks and appraisal of the project may be common, it would be only for procedural convenience of the lending banks, but each of the aggrieved bank of the consortium lodged a written complaint in respect of fraud played on them insofar as the amounts advanced by it and; in such a situation the principle of double jeopardy, as envisaged in Article 20 (2) of the Constitution is in-applicable to the case of the petitioner. It is settled proposition of law that the scope of civil and criminal proceedings and the standard of proof required in both the matters is different and distinct. Whereas in civil proceedings matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt." In a given case, civil proceedings and criminal proceedings can proceed simultaneously maintained. (*see* ***DEVENDRA vs. STATE OF UTTAR PRADESH***[13] & ***P. SWAROOPA RANI vs. M. HARI NARAYANA.***[14] The case on hand is not an exception and mere pendency of the proceedings in OA filed by the consortium of banks will not absolve the petitioner and its promoters of the penal provisions. The Crl.P.No.6473 of 2017 and batch filed by the petitioner and its promoters to quash FIR No.05/2017 ***(2nd FIR)*** was dismissed by this Court, relevant portion thereof, reads as under:-

"As discussed above, the accused in F.I.R.No.05 of 2017 of Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore are different from the F.I.R.No.02 of 2015. In both the complaints, there is only two common accused. All the more, in F.I.R.No.02 of 2015, the transaction covered by the present complaint was not investigated into though made an allegation against the accused therein about the commission of fraud against the respondent No.2 herein. Therefore, on the principle of sameness, the Court cannot quash the proceedings by exercising power under Section 482 of Cr.P.C. Even as per the principles rendered in various prospective pronouncements of Apex Court referred supra, 2nd F.I.R. is maintainable in certain circumstances, which I stated above. Consequently, the contention of the counsel for the petitioners cannot be sustained, which is based on "Babubhai v. State of Gujarat " "Awadesh Kumar Jha AliasAkhilesh Kumar

[13] (2009) 7 SCC 495
[14] (2008) 5 SCC 765)

Jha v. State of Bihar" "T.T.Antony v. State of Kerala" (referred supra) and the judgment of this Court rendered in "Akbaruddin Owaisi v. Government of A.P." (referred supra) as the principle laid down in " T.T.Antony vs. State of Kerala " was distinguished by the Full Bench of Apex Court in "Upkar Singh vs.Ved Prakash" (referred supra). Therefore, on the ground of "sameness" I am unable to quash the proceedings in F.I.R.No.05 of 2017 on the file of Central Bureau of Investigation, Bank Securities and Frauds Cell, Bangalore."

28. In the circumstances, the relief sought in writ petition is devoid of merits and is accordingly dismissed. Needless to observe that all the three FIRs referred to above are registered by the 1st respondent-CBI and in two of the three FIRs (1st and 2nd FIRs), charge sheets have already been filed and all the three matters are pending on the file of the same Court, it is expedient that all the three cases be taken up simultaneously and decided together. Miscellaneous petitions if any pending shall stand disposed of in these matters. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 11-12-2018
NRG

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.21487 of 2018

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Dated: 11-12-2018

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