Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.125 OF 2018

1. M/s. Ganindu Milk and Milk Products Pvt. Ltd. A Company incorporated under the relevant provisions of the Companies Act, 2013, through its Director Dnyndeo Ganpati Salunkhe, major in age, occupation business, having registered address at Plot No.48, Kundaim Industrial Estate, Kundaim, Tal. Ponda, District North Goa.

2. Dnyndeo Ganpati Salunkhe, major in age, occupation business, having office at Plot No.39, Sector J/Phase-IV, Parvati Co-operative Industrial Estate, Yadrav 416145, Tal. Shirol, District Kolhapur.

3. Smt. Varsha Anand Shinde, major in age, occupation business, having office at Plot No.39, Sector J/Phase-IV, Parvati Co-operative Industrial Estate, Yadrav 416145, Tal. Shirol, District Kolhapur. ….. Petitioner.

Versus

1. The State of Goa, through Police Inspector, CBI/ACT, North Goa Police Station, Panaji, Goa.

2. Central Bureau of Investigation, Anticorruption Bureau,

North Goa Police Station,
Panaji, Goa.

3. State Bank of India,
through its Dy. General Manager,
(B and O) Shri Suyash,
major in age, Occupation service,
having its registered office at
Santa Inez, Panaji, Goa 403 001.

4. M.P. Rajgopalan,
major in age, occupation service,
having office at Santa Inez,
Panaji, Goa 403 0011.

5. Surender Prasad,
major in age, occupation service,
having office at Santa Inez,
Panaji, Goa 403 001.

6. Pramod Kumar Surolia,
major in age, occupation
Chartered Accountant,
having office at 301,
I Wing, Neelkamal,
Chincholi Phatak,
Malad (W), Mumbai – 64.

7. M/s. Shree Perfect-tech Solutions Pvt. Ltd.
A Company incorporated under
the relevant provisions of the
Companies Act, 2013
having its registered office at
33, Surve Service Premises
Co-operative Society Ltd.
1st Sonawala Cross Road,

Goregoan, (E), Mumbai 63,
through its authorised officer.

8. M/s. AMPM Commodities Pvt. Ltd.
A company incorporated under the relevant provision of the Companies Act, 2013 having its registered office at 523, Marathon Max, Link Road, Mulund (W), Mumbai 80
through its authorised officer. ...... Respondents.

Mr. Shekhar Jagtap, with Mr. Vibhav Amonkar, Advocate for the Petitioner.

Mr. S. R. Rivankar, Special Public Prosecutor for Respondent Nos. 1 and 2.

Mr. S.N. Joshi, Advocate for Respondent No.3.

Coram : M.S. Sonak & Prithviraj K. Chavan, JJ.

Reserved on : 15/01/2019.

Pronounced on : 18 January 2019.

ORDER: (Per M.S. Sonak, J.)

Heard Mr. Jagtap, the learned Counsel for the Petitioner, Mr. Rivankar, the learned Special Public Prosecutor for Respondents No.1 and 2 and Mr. Joshi, the learned Counsel for Respondent No.3.

2. The Petitioners challenge an FIR, RC No.027/2018/ A/0002 registered with the Central Bureau of Investigation (CBI),

Anticorruption Bureau (ACB), North Goa Police Station, mainly on the ground that the complaint, on the basis of which, such an FIR came to be registered has a predominantly civil profile and, therefore, the very invocation of the provisions of the criminal law, constitutes an abuse of the criminal process of the Court.

3. Mr. Jagtap, the learned Counsel for the Petitioners took us through the FIR, the complaint, as well as other material placed by the Petitioners on record, to submit that even if the allegations in the complaint/FIR are taken on their face value, the same discloses no offences punishable under Section 120-B, read with 420 of the Indian Penal Code or Section 12(2), read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

4. Mr. Jagtap submits that this is a simple case of the Petitioners obtaining loans from the State Bank of India (SBI) through the regular banking channel. He submits that the loan came to be sanctioned on the basis of proper documentation submitted by the Petitioners. He submits that there are no allegations of forgery, in so far as such documentation is concerned. He submits that merely because there may have been defaults in repayment of such loan amounts, mainly for the reasons beyond the control of the Petitioners, it cannot be said that the Petitioners have committed any criminal offence, as alleged or otherwise. He submits that the entire

objective of registering the FIR and threatening to launch criminal prosecution against the Petitioners is to pressurise the Petitioners into giving up their claims/defences in the civil dispute between the Petitioners and the SBI. Mr. Jagtap submits that this is a clear intention of abuse of the criminal process and, therefore, this Court, by invoking its jurisdiction under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure (Cr.P.C.) must intervene and quash the FIR registered against the Petitioners.

5. Mr. Jagtap submits that the SBI has already initiated proceedings before the Debt Recovery Tribunal (DRT) against the Petitioners. He submits that the SBI has even entered into compromises with some persons/entities concerned with loan transactions in question. He submits that there is absolutely no basis to even suggest that no machinery was purchased by the Petitioners from the loans advanced by the SBI. He submits that there is documentation from the Customs Department, which establish that the machinery was indeed imported by the Petitioners by effecting payments from the loans obtained by the Petitioners from the SBI. He submits that there is no material on record to back the allegation that some second hand machinery was purchased or acquired by the Petitioners. For all these reasons, Mr. Jagtap submits that this is a fit case to quash the FIR and halt any further proceedings, at least

against the Petitioners.

6. Mr. Jagtap submits that the material on record, at the highest, suggests the complicity of Shri Pramod Kumar Surolia (Respondent No.6) in the entire transaction. Mr. Jagtap submits that there is voluminous material available on record to establish that the Petitioners are the victims and not the beneficiaries of the acts of omission and commission on the part of Shri Pamod Kumar Surolia. Mr. Jagtap submits that far from colluding with Shri Pramod Kumar Surolia or benefiting from his acts of omission and commission, the Petitioners have suffered severe prejudice and, therefore, the Petitioners have themselves initiated both, civil and criminal proceedings against Shri P.K. Surolia. Mr. Jagtap submits that in such circumstances, to allege that the Petitioners conspired with Shri P.K. Surolia or some officers of the Bank, is too far-fetched story to warrant any acceptance.

7. Mr. Jagtap submits that in this case, there are no allegations that the Petitioners acted with any dishonest or fraudulent intention even at the stage of seeking loans from the SBI. Mr. Jagtap submits that this is one of the essential ingredients of Section 420 of IPC. He submits that in absence of any such allegation or any material in support of such allegation, the offence under Section 420 of IPC can never be said to be made out. For all these reasons, Mr.

Jagtap submits that the FIR deserves to be quashed and the criminal prosecution against the Petitioner be halted, forthwith.

8. In support of the aforesaid submissions, Mr. Jagtap relies upon the following decisions :

(1) Central Bureau of Investigation SPE, SIU (X), New Delhi vs. Duncans Agro Industries Ltd. Calcutta [1]

(2) Alpic Finance Ltd. vs. P. Sadasivan & Anr.[2]

(3) Umraodevi Sawatraj Golecha & anr. vs. State of Maharashtra and anr. [3]

(4) Zandu Pharmaceutical Works Ltd. And ors. vs. Mohd. Sharaful Haque and anr.[4]

(5) Uma Shankar Gopalika vs. State of Bihar and anr.[5]

(6) Inder Mohan Goswami and anr. vs. State of Uttaranchal and ors.[6]

(7) All Cargo Movers (India) Pvt. Ltd. and ors. Vs Dhanesh Badarmal Jain and anr.[7]

(8) Dalip Kaur and ors. vs. Jagnar Singh and anr.[8]

(9) Rajib Ranjan and ors. vs. R. Vijaykumar [9]

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1 (1996) 5 SCC 591
2 (2001) 3 SCC 513
3 2004 0 Cr.L.J. 521
4 (2005) 1 SCC 122
5 (2005) 10 SCC 336
6 (2007) 12 SCC 1
7 (2007) 14 SCC 776
8 (2009) 14 SCC 696
9 (2015) 1 SCC 513

(10) Vesa Holdings Pvt. Ltd. and anr. vs. State of Kerala and ors.[10]

(11) Lovely Salhotra and anr. vs. State of (NCT of Delhi) and another[11]

(12) Ramesh Dahyalal Shah vs. The State of Maharashtra & ors.[12]

(13) *International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and ors. vs. Nimra Cerglass Technics Private Limited and anr.*[13]

9. Mr. S. R. Rivankar, the learned Special Public Prosecutor submits that the complaint in the present case discloses the commission of offences as set out in the FIR. He submits that the scope for interference in such matters is extremely limited and the powers under Section 482 of Cr.P.C. to quash the FIRs must be sparingly exercised. He points out that in the present case, there is material on record to suggest that the Petitioners, with dishonest and fraudulent intentions, applied for and secured loans of crores of rupees from the SBI, with an intention of cheating the Bank. He points out that the materials on record suggest that no machinery was imported, but rather a second hand machinery was procured and passed off as new machinery. Ultimately, even this machinery was transferred to the third parties. The amounts, which were indicated as paid towards the purchase of the machinery, ultimately found their

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10 (2015) 8 SCC 293

11 (2018) 12 SCC 391

12 Cri. Apppln. No.613 of 2016 decided on 6-12-17

13 (2016) 1 SCC 348

way back into the coffers of the Petitioners themselves, though in the accounts of the entities established and controlled by them. Mr. Rivankar points out that these fraudulent transactions were effected with the collusion and connivance of the Bank officials who have also been styled as accused in the FIR in question. Mr. Rivankar submits that issues of fraud and cheating which are involved in the present matter bear no civil profile as contended by Mr. Jagtap. He submits that merely because the SBI may have initiated civil proceedings to recover the loan amounts, that, by itself, does not wash away or dilute the criminality of the transactions which led to the registration of the FIR. Mr. Rivankar relies on the decisions in the case of *Mrs. Rupan Deol Bajaj & anr. vs. Kanwar Pal Singh Gill and anr.*[14] and in the case of *State of Haryana and ors. vs. Ch. Bhajan Lal and ors.*[15] to urge that this Petition may be dismissed.

10. Mr. Joshi, the learned Counsel appearing for the SBI Respondent No.3 supports the contentions raised by Mr. Rivankar and submits that this Petition deserves to be dismissed. He relies on a decision of the Supreme Court in the case of *MEDCHL Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd. and ors.*[16] to submit that a mere fact that an offence was committed during the course of a commercial transaction, that, by itself is not sufficient to quash a

14 1995 (6) SCC 194

15 1992 Supp 1 SCC 335

16 (2000) 3 SCC 269

complaint. He submits that the Court has to see whether on fact situation “civil profile” outweighs the “criminal outfit”. Mr. Joshi submits that the facts in the present case clearly establish that the criminal outfit far outweighs the civil profile. On this ground, Mr. Joshi also submits that this Petition may be dismissed.

11. The rival contentions now fall for our determination.

12. In the *State of Haryana and ors. vs. Ch. Bhajan Lal and ors.,* the Hon'ble Apex Court has laid down the following guidelines, when it comes to the exercise of extraordinary powers under Article 226 of the Constitution of India or inherent powers under Section 482 of Cr.P.C. in relation to quashing of an FIR. :

> *“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information*

report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to

spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

13. Similarly, in *Mrs. Rupan Deol Bajaj & anr. vs. Kanwar Pal Singh grill and anr.* (supra), the Apex Court has held that the High Court, at the stage of quashing of the FIR or the complaint, is not justified in embarking upon upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. Of course, as has been pointed out in *Bhajan Lal's* case, an FIR or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion.

14. Therefore, the contentions of Mr. Jagtap will have to be examined on the touchstone of the aforesaid parameters laid down by the Hon'ble Apex Court in relation to the exercise of powers under Article 226 of the Constitution of India and Section 482 of Cr.P.C. when it comes to quashing of the FIR or complaint.

15. In the present case, the allegation against the Petitioners is that they conspired with some Bank officials, as well as others in order to cheat the SBI in an amount of Rs.39.41 crores, plus unapplied interest and other charges. The FIR, as well as the complaint, allege that the Petitioners held out that they seek to set up Ultra Heat Temperature Plant, and for this purpose, applied for loans of cores of rupees to the SBI. The intention of the Petitioners was to fraudulently divert and misappropriate the loan funds and thereby caused loss to the SBI and corresponding wrongful gain to themselves. The complaint/FIR alleges that in terms of the loan conditions, the UHT machinery was to be supplied by M/s. Shree Perfect Tech Solutions Pvt. Ltd. (SPTS), Thane and for this purpose, the Petitioners secured and disbursed an amount of Rs.20.00 crores. However, neither was any land at Tembhurni or Ichalkaranji acquired, nor any UHT machinery was set up and the amount was diverted to M/s. AMPM Commodities Pvt. Ltd. in which the Petitioners had a stake/interest, as a result of which an amount of Rs.20.00 crores was virtually pocketed by the Petitioners fraudulently and misappropriated. The complaint/FIR indicates that complicity of Bank officials M.P. Rajgopalan and Surender Prasad, was also noticed. The complaint/FIR states that there was totally laxity in processing, pre-sanction inspection, appraisal, disbursal and post-sanction follow ups, which enabled the Petitioners to defraud the Bank to the extent of crores of rupees. There are allegations that

there was total laxity on account of collusion and conspiracy even to post-sanction process. Further, the payments were released without usual verification, in order to assist the Petitioners and defraud the SBI. Based upon all such allegations, the Complaint/FIR states that the Petitioners have, *inter alia,* committed offences punishable under Sections 120-B, read with Section 420 of IPC and Section 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act 1988.

16. The FIR/Complaint, which is a part of the record (Exhibit -'AC' – 224 of the Paper Book), also indicates the detailed modus operandi alleged to have been adopted by the Petitioners in collusion and connivance with the Bank officials. The complaint makes a specific reference to the forensic audit report carried out by the Forensic Auditors M/s. KPMG and the reports submitted by the Forensic Auditors. The complaint refers to the Forensic Audit to explain as to how M/s SPTS was used as a conduit for diverting the loan proceeds to M/s. AMPM and in this manner, crores of rupees meant for purchase of plant and machinery were misappropriated by the Petitioners. The complaint explains the nature of interest held by the Petitioners and their Chartered Account Pramod Kumar Surolia in M/s. SPTS, as well as group of companies of the Petitioners. The complaint also adverts to linkage between the Petitioners and M/s. AMPM.

17. As held by the Apex Court in *Rupan Deol Bajaj and another* (supra), at the stage of exercise of jurisdiction under Article 226 of the Constitution of India or under Section 482 of Cr.P.C., there is no question of embarking upon an enquiry as to the genuineness of the allegations made in the complaint which has resulted into the registration of the FIR. Besides, in the present case, we find that there is certainly *prima facie* material in support of the complaint and, further the complaint itself *prima facie* discloses the commission of offences like under Sections 420 and 120-B of IPC and under Section 13 of the Prevention of Corruption Act, 1988. Therefore, this cannot be said to be a case where the allegations in the complaint, if taken on the face value, do not disclose the commission of any offence.

18. Mr. Jagtap's contention that the complaint has a predominantly civil profile, also cannot be accepted in the facts of the present case. The circumstance that the SBI may have initiated proceedings before the DRT for recovery of the loan amounts or that the SBI may have entered into compromises in civil proceedings relating to recovery of the loan amounts with some of the persons liable to repay the loan, does not change the character of the complaint so drastically as to render the entire dispute as a civil dispute. The material on record in fact establishes that criminal

outfit clearly outweighs the civil profile, if any, in the present matter. Therefore, following the principles laid down in *MEDCHL Chemicals & Pharma (P) Ltd.* (supra), there is really no case made out to interfere with the FIR or to quash the FIR. As noted earlier, in *MEDCHL Chemicals & Pharma (P) Ltd.* (supra), the Apex Court has held that the Courts should be very circumspect, cautious and careful of quashing of FIRs in exercise of the inherent powers under Section 482 of Cr.P.C.. Mere fact that the offence was committed in the course of commercial transactions is, by itself, not at all sufficient to conclude that the transaction has civil profile and on such basis to quash the complaint.

19. Mr. Jagtap did contend that it is permissible for this Court to look into the admitted documents referred to by the complaint as some other legal proceedings or to ascertain the contractions of statements of the complainant in other legal proceedings, so as to evaluate the legality of the accusations made. In the present case, however, there is *prima facie* material on record to back the allegations made in the complaint. In particular, the Forensic Auditors M/s. KPMG have submitted a report explaining the modus operandi as adopted by the Petitioners and the Bank officials. On the face of such material, it cannot be said that this is a case where the Petitioners did not, right at the inception, have any dishonest or fraudulent intention to seek illegal gains or cause any

wrongful loss to the SBI. There is, *prima facie,* material in the present case to infer the dishonest intention to cheat and therefore, the decision in the case of *Dalip Kaur and ors.* (supra) relied upon by Mr. Jagtap can also be of no assistance to the Petitioners.

20. In the case of *Dalip Kaur and ors.* (supra), the Apex Court had held that the fraudulent and dishonest intention must exist from the very inception when the promise or representation was made. Non-refunding of amount of advance which results in simply a breach of contract, cannot constitute cheating or criminal breach of trust. The fact situation in the present case is quite different. Therefore, there is no case made out to interfere with the FIR or to quash the FIR.

21. In *Vesa Holdings Pvt. Ltd. and anr.* (supra), the Apex Court found that non-payment of consultancy fees to the complainant Consultant did not amount to cheating under Section 420 of IPC. In these circumstances, the process came to be quashed. As noted earlier, the fact situation in the present case is entirely different.

22. In *Nimra Cerglass Technics Private Limited and anr.* (supra), the Hon'ble Supreme Court drew distinction between cheating and breach of contract. It was held that it would be

dependent upon the intention of the accused at the time of alleged inducement. In the present case, there is *prima facie* material to suggest that the intention of the Petitioners was dishonest at the very inception. The material on record establishes that this is not a case of mere breach of contract.

23. In *Duncans Agro Industries Ltd. (supra),* the Apex Court has held that where the act constitutes both, civil and criminal wrong, even offence of cheating is *prima facie* constituted, compromise decree passed in civil proceedings can be taken as compounding of the offence of cheating. In the present case, there has been no compromise between the SBI and the Petitioners in the civil proceedings before the DRT. Besides, in the present case, the Bank officials themselves have been charged with the offence of conspiracy. In *Duncans Agro Industries Ltd.* (supra), no action was taken against the erring officers despite allegations made against them in the FIR. It is in these circumstances that the Apex Court held hat the High Court was justified in quashing the complaint. As noted earlier, the fact situation in the present case is completely different and, therefore, even the said decision can be of no assistance to the Petitioners.

24. In *Alpic Finance Ltd.* (supra), on facts, the Apex Court found that the complaint did not disclose element of deception or

fraud or dishonest inducement or willful misrepresentation in the entire transaction. However, the Apex Court has clearly held that merely because a remedy by way of a civil suit is available, that, by itself, cannot be an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of the offence alleged.

25. In *Umaraodevi Sawatraj Golecha & another* (supra), the learned Single Judge of this Court came to the conclusion that the transactions in question were entirely of civil nature and it is on the basis of these findings, the criminal proceedings were quashed. There is no scope to record any such finding in the present case.

26. Ruling in *Ramesh Dahyalal Shah (supra)* and connected matters, is clearly dependant upon the peculiar fact situation prevalent in such matters. The fact situation prevailing in such matters is quite different from the fact situation prevailing in the present case.

27. In *Uma Shankar Gopalika,* (supra) the Apex Court came to the conclusion that the complaint disclosed no offence, either under Section 420 or under Section 120-B of IPC. In the fact situation of the present case, no such inference arises. As noted earlier, there is *prima facie* material on record to indicate the

commission of offences. The allegations, if taken on the face value, certainly make out a case regarding commission of offences as alleged in the FIR/complaint.

28. In *Zandu Pharmaceutical Works Ltd. and another* (supra), the Apex Court held that in exercise of powers under Section 482 of Cr.P.C. the High Court should not assume the role of a trial court and embark upon an inquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of evidence on record. If, on consideration of the allegations in the light of the material on record, the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, the proceedings cannot be quashed. In the present case, except for bare allegations that the proceedings are mala fide, there is absolutely no material to substantiate the same.

29. In *Inder Mohan Goswami and anr.* (supra), the Apex Court held that inherent jurisdiction under Section 482 of Cr.P.C., though wide, has to be exercised sparingly, carefully and within great caution. Such jurisdiction has to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the court exists. While exercising the said power, Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise

the accused. However, such power not to be exercised to stifle a legitimate prosecution.

30. The attempt by the Petitioners to distance themselves from Mr. Promod Kumar Surolia, their own Chartered Accountant, also cannot form the basis for quashing of the FIR or the complaint. At least, *prima facie,* there is no material to indicate that the Petitioners were victims because of the acts of commission and omission by Mr. Pramod Kumar Surolia, and not the beneficiaries. In any case, these are all matters which can be examined in the course of the trial.

31. In *Lovely Salhotra and anr.* (supra), the Apex Court has held that FIR can be quashed in part. The ruling would apply in case the Petitioners were able to make out a case requiring exercise of such power qua them.

32. For all these reasons, we are satisfied that this is not a case to exercise our jurisdiction under Article 226 of the Constitution of India or under Section 482 of Cr.P.C. and quash the FIR registered against the Petitioners. This Petition is, therefore, required to be dismissed and is, hereby, dismissed.

33. Before we part, we make it clear that the observations in this Judgment and Order are only for the purpose of examining

whether any case was made out to quash the FIR. Therefore, none of the observations in this Judgment and Order are to be used to prejudice the Petitioners in the matter of their defences.

34. This Petition is, accordingly, dismissed. There shall be no order as to costs.

Prithviraj K. Chavan, J. ***M.S. Sonak, J.***