

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.845 OF 2004

- | | | | |
|----|-------------------------------------|---|--------------------|
| 1] | Manipal Soubhagya Nidhi Ltd. |] | |
| | Manipal House, Manipal-576 119, |] | |
| | State of Karnataka. |] | |
| | |] | |
| 2] | Shri K. K. Pai, aged about 83 years |] | |
| | Manipal House, Manipal, |] | |
| | Karnataka |] | |
| | |] | |
| 3] | Mr. T. Narayan Pai, |] | |
| | aged about 64 years, |] | |
| | Manipal House, Manipal |] | |
| | Karnataka. |] | |
| | |] | Petitioners. |

Versus

- | | | | |
|----|-------------------------------------|---|--------------------|
| 1] | Shri Ramesh Prabhu |] | |
| | Through Polymer Products |] | |
| | having his office at Plot No. H-32, |] | |
| | M I D C, Shivaji Nagar, |] | |
| | Satpur, Nashik |] | |
| | |] | |
| 2] | The State of Maharashtra |] | Respondents. |

ALONG WITH
CRIMINAL WRIT PETITION NO.846 OF 2004

- | | | | |
|----|-------------------------------------|---|--------------------|
| 1] | Manipal Soubhagya Nidhi Ltd. |] | |
| | Manipal House, Manipal-576 119, |] | |
| | State of Karnataka. |] | |
| | |] | |
| 2] | Shri K. K. Pai, aged about 83 years |] | |
| | Manipal House, Manipal, |] | |
| | Karnataka |] | |
| | |] | |
| 3] | Mr. T. Narayan Pai, |] | |
| | aged about 64 years, |] | |
| | Manipal House, Manipal |] | |
| | Karnataka. |] | |
| | |] | Petitioners. |

Versus

- | | | |
|----|-------------------------------------|---------------------|
| 1] | Shri Nagesh Prabhu |] |
| | Through Polymer Products |] |
| | having his office at Plot No. H-32, |] |
| | M I D C, Shivaji Nagar, |] |
| | Satpur, Nashik |] |
| | |] |
| 2] | The State of Maharashtra |]..... Respondents. |

ALONG WITH
CRIMINAL WRIT PETITION NO.847 OF 2004

- | | | |
|----|-------------------------------------|---------------------|
| 1] | Manipal Soubhagya Nidhi Ltd. |] |
| | Manipal House, Manipal-576 119, |] |
| | State of Karnataka. |] |
| | |] |
| 2] | Shri K. K. Pai, aged about 83 years |] |
| | Manipal House, Manipal, |] |
| | Karnataka |] |
| | |] |
| 3] | Mr. T. Narayan Pai, |] |
| | aged about 64 years, |] |
| | Manipal House, Manipal |] |
| | Karnataka. |]..... Petitioners. |

Versus

- | | | |
|----|-------------------------------------|---------------------|
| 1] | Shri Rajendra Prabhu |] |
| | Through Polymer Products |] |
| | having his office at Plot No. H-32, |] |
| | M I D C, Shivaji Nagar, |] |
| | Satpur, Nashik |] |
| | |] |
| 2] | The State of Maharashtra |]..... Respondents. |

ALONG WITH
CRIMINAL WRIT PETITION NO.848 OF 2004

- | | | |
|----|---------------------------------|---|
| 1] | Manipal Soubhagya Nidhi Ltd. |] |
| | Manipal House, Manipal-576 119, |] |
| | State of Karnataka. |] |

- | | | |
|----|-------------------------------------|---------------------|
| 2] | Shri K. K. Pai, aged about 83 years |] |
| | Manipal House, Manipal, |] |
| | Karnataka |] |
| | |] |
| 3] | Mr. T. Narayan Pai, |] |
| | aged about 64 years, |] |
| | Manipal House, Manipal |] |
| | Karnataka. |] |
| | |]..... Petitioners. |

Versus

- | | | |
|----|-------------------------------------|---------------------|
| 1] | Ms. Pranita Wagle, |] |
| | Through Polymer Products |] |
| | having his office at Plot No. H-32, |] |
| | M I D C, Shivaji Nagar, |] |
| | Satpur, Nashik |] |
| | |] |
| 2] | The State of Maharashtra |]..... Respondents. |

ALONG WITH
CRIMINAL WRIT PETITION NO.849 OF 2004

- | | | |
|----|-------------------------------------|---------------------|
| 1] | Manipal Soubhagya Nidhi Ltd. |] |
| | Manipal House, Manipal-576 119, |] |
| | State of Karnataka. |] |
| | |] |
| 2] | Shri K. K. Pai, aged about 83 years |] |
| | Manipal House, Manipal, |] |
| | Karnataka |] |
| | |] |
| 3] | Mr. T. Narayan Pai, |] |
| | aged about 64 years, |] |
| | Manipal House, Manipal |] |
| | Karnataka. |] |
| | |]..... Petitioners. |

Versus

- | | | |
|----|-------------------------------------|---|
| 1] | Shri S G Hegde, |] |
| | Through Polymer Products |] |
| | having his office at Plot No. H-32, |] |
| | M I D C, Shivaji Nagar, |] |
| | Satpur, Nashik |] |
| | |] |

2] The State of Maharashtra

]..... Respondents.

Mr. M K Kocharekar for the Petitioners in all the Petitions.

Mr. A R Patil, APP for the Respondent/State.

CORAM : S. S. SHINDE J.

Reserved on : 18th June 2019

Pronounced on : 10th October 2019

COMMON JUDGMENT :

1 The above group of Petitions have been filed by the Petitioners, who are original Accused Nos.1 to 3, challenging the order of issuance of process dated 17/12/1999, order dated 11/09/2001 rejecting their discharge applications and, the order dated 17/01/2003 dismissing their Revision Applications. Respondent No.1 herein are the original complainants who have filed separate complaints against the Petitioners in the Court of Chief Judicial Magistrate, Nashik. It is submitted across the bar that the facts involved in all the above Writ Petitions are similar. In all the Writ Petitions the Petitioners are same and, Respondent No.1 – original complainants are different who have filed separate Criminal Complaints against the Petitioners. Respondent No.1 – original complainants have filed separate Criminal Complaints against the Petitioners for the offences punishable under Sections 403, 405, 406, 419, 420, 425, 426 r/w 34 of the Indian Penal Code. In Writ Petition No.845 of 2004 the Criminal Complaint No. is 270 of 1999, in Writ Petition No.846 of 2004 the Criminal Complaint No. is 271 of 1999, in Writ Petition No.847 of 2004 the

Criminal Complaint No. is 268 of 1999, in Writ Petition No.848 of 2004 the Criminal Complaint No. is 269 of 1999, and in Writ Petition No.849 of 2004 the Criminal Complaint No. is 152 of 1999. Therefore, by consent of the learned counsel for the parties, all the Writ Petitions are heard together and being disposed of by this common judgment, and Writ Petition No.845 of 2004 is treated as a lead matter.

2 This Court (Coram : A S Aguiar, J) by order dated 03/09/2004 has already issued Rule in all the Writ Petitions.

3 All the Writ Petitions take an exception to the order of issuance of process dated 17/12/1999 passed by the learned Magistrate, 3rd Court, Nashik in the aforesaid criminal cases and, the order dated 17/12/2003 passed by the learned IInd Ad-hoc Addl. District Judge, Nashik in the Revision Applications filed by the Petitioners against the order dated 11/09/2001 passed by 5th Jt. Civil Judge, Junior Division & JMFC Nashik rejecting their discharge applications.

4 The facts giving rise to filing of Writ Petitions, can in brief, be stated as under :-

The Complainants are employed with M/s. Polymer Products, Satpur, Nashik. The Petitioners are arraigned as Accused Nos. 1 to 3 along

with other accused in the Criminal Cases filed by the Complainants. Petitioner No.1 is Original Accused No.1, Petitioner No.2 is Original Accused No.2 and Petitioner No.3 is Original Accused No.3. Petitioner No.1 is a public limited company. Petitioner No.1 Company is conducting and running various types of deposit schemes while Petitioner Nos.2 and 3 were the Chairman and Managing Director of Petitioner No.1 Company respectively. It is alleged in the Complaints that the whole affairs of Petitioner No.1 company are controlled, supervised and regulated by Petitioner Nos.2, as also the appointments, terminations, settlements and other police decisions are taken by the Petitioner Nos.2 and 3 for and on behalf of Petitioner No.1 company. Original Accused No.4 is the present Branch Manager who is looking after the business activities and all other financial activities of Nashik Branch of Petitioner No.1 Company. Original Accused No.5 was the Branch Manager during the period 1997-98, who was appointed by Accused Nos.2 and 3. Original Accused No.6 was controlled, regulated, supervised and authorized by Accused Nos.1 to 3. The complainants learnt that the proprietor of M/s. Polymer Products have also invested and deposited huge amount with Accused No.1 Company. It is alleged by the complainants that original accused No.5 used to visit their premises for soliciting and promoting deposit scheme of Accused No.1 Company. The complainants deposited an amount of Rs.19,000/- each by cash with accused No.5 for fixed deposit in Sowbhagya Nidhi Cash Certificate Scheme. Accused No.5 after receiving the cash issued acknowledgment receipt of Rs.19,000/-,

and assured that the original certificates will be issued after receipt of the same from the Head Office. The complainants thereafter continuously followed up the matter with Accused No.5, however, on every occasion Accused No.5 has given some excuses. In the month of March 1998, Accused No.5 in the capacity of Branch Manager of Accused No.1 Company, has given in writing that he has received Rs.95,000/- in total from the complainants, however, he has failed to deposit the said amount in the books of account of the Company. Thereafter on 16/03/1998 the Complainants issued letter to Accused No.1 Company. In spite of the said letter, Accused No.1 Company neither initiated action against Accused No.5 nor did it issued certificates to the complainants. Even Accused No.1 Company did not reply the letters, reminders, fax, messages sent by the complainants. Thereafter on 02/04/1999 the complainants issued legal notice to all the Accused. According to the complainants, it was the duty of Accused Nos.1 to 4 to verify the records of the Company and issue certificates to the complainants and to recover the amount from Accused No.5 who has falsely misappropriated the amounts and cheated the complainants. It is the case of the Complainants that Accused Nos.1 to 4 are equally liable and responsible like Accused No.5 for misappropriation of the amount and cheating the complainants, as they were all aware of the facts and circumstances since March 1998. According to the complainants, the act on the part of all the Accused in withholding and utilizing the amount by Accused No.5 with the consent and knowledge of Accused Nos.1 to 4 and

without refunding the amount to the complainants and also not issuing certificates to the complainants amounts to criminal offence. It is the case of the complainants that Accused No.5 acted as an authorized agent of Accused No.1 Company with the consent, authority and knowledge of Accused Nos.2 and 3. The Accused Nos.1 to 4 replied the notice on 29/06/1999 and denied the receipt of the amount from the complainants. It is stated in the complaints that by the said reply notice Accused Nos.1 to 4 informed that Accused Nos.1 to 4 are taking action against Accused No.5 for his wrongful acts done by him during the course of employment. Therefore the Complainants have filed the Criminal Complaints against all the accused for the offences punishable under Sections 403, 405, 406, 419, 420, 425 and 426 r/w 34 of the Indian Penal Code.

5 It appears that on the basis of the allegations made in the aforesaid complaints and after recording statements of complainants, the learned Magistrate by order dated 17/12/1999 issued a process against the Petitioners and other Accused. The Revision Applications filed against the said order came to be dismissed by the Sessions Judge, Nashik, by order dated 14/09/2000 and confirmed the order of issuance of process against the Accused.

6 Thereafter on 29/03/2001 the Petitioners filed applications under

Section 245(2) of the Code of Criminal Procedure seeking discharge before the learned Magistrate. It is the case of the Petitioners that Accused No.5 has never deposited the amounts of the Complainants with Accused No.1 Company and the amount collected by Accused No.5 from the complainants is with Accused No.5, and it is Accused No.5 who has misappropriated the said amount. Accused No.5, by letter dated 07/02/2001 addressed to the Complainants, admitted that Accused No.5 utilized the said amount for his personal purpose and requested time to refund the amounts. According to the Petitioners, by the said letter Accused No.5 has admitted his guilt. It is stated that the complainant did not make out a prima facie case against the Petitioners. Therefore Petitioners prayed for their discharge from the offences.

7 The learned Magistrate after hearing the learned counsel for the parties and perusing the material on record, found that all the Accused are liable for the affairs of the Company, and prima facie case is made out against Accused Nos. 1 to 3 i.e. the Petitioners herein. The learned Magistrate, therefore, by order dated 11/09/2001 rejected the discharge applications of the Petitioners.

8 The Petitioners, being aggrieved by the order dated 11/09/2001 passed by the learned Magistrate, preferred Revision Applications before the Court of 2nd Ad-hoc Additional District & Additional Sessions Judge, Nashik.

The learned Additional Sessions Judge, by order dated 17/01/2003 dismissed the Revision Applications of the Petitioners. Hence these Petitions.

9 Heard the learned counsel for the Petitioners and the learned APP for the Respondent/State. The learned counsel for the Petitioners submits that the charge against the Petitioner is groundless and the material produced by the complainants discloses that the Petitioners are unnecessarily roped into the case. He submits that, Accused No.5, by letter dated 07/02/2001 addressed to the complainants, has admitted to have accepted the money from the complainants and utilized the said amount for his personal use, and he has given undertaking to that effect. It is submitted that the said undertaking given by Accused No.5 absolves Accused No.1 Company and its office bearers from any responsibility about the money of the complainants. It is further submitted that Petitioner Nos.2 and 3, being the office bearers of Accused No.1 Company, cannot be held responsible for the activity when they were not the office bearers of the company at the relevant time. It is also submitted that the Petitioners nowhere connected for the alleged offences and no role is attributed to them. Petitioner No.2 has resigned on 25/06/1998 from the Chairmanship of Accused No.1 Company and, in the year 1999 the complainants have filed the complaints. The reply sent to the legal notice dated 03/04/1999, the Petitioners informed the complainants that Petitioner Nos.2 and 3 are no more chairman or director of Accused No.1 company, and,

Accused No.5 has not deposited any amount collected from the complainants with the Accused No.1 company. It is submitted that Accused No.5 has committed the alleged offence in individual capacity and he has admitted in the written undertaking that he received Rs.95,000/- from the complainants but failed to deposit the said amount in the books of account of the company, and therefore, there is no question of attributing vicarious liability. It is further submitted that the alleged offence has been committed by Accused No.5 when Petitioner Nos.2 and 3 were not the office bearers of Petitioner No.1 company and after the resignation of Petitioner No.2, and therefore they are not directly responsible for any liability or act committed by Accused No.5. It is submitted that Petitioner No.1 is a legal entity, and as per the general principle of criminal law that a crime is not committed unless the person committing it has mens-rea. In support of his contention, the learned counsel for the Petitioner sought to place reliance on the judgment of the Supreme Court in the matter of Maksud Saiyed v/s. State of Gujarat and others¹. He therefore prays that writ petitions may be allowed.

10 On the other hand, the learned APP for the Respondent/State submits that the impugned orders passed by the Court below are well reasoned orders and needs no interference. He therefore prays that the writ petitions may be rejected.

¹ (2008) 5 SCC 668

11 The Petitioners have filed the application for discharge under Section 245(2) of the Criminal Procedure Code before framing the charge against them. Section 244 and Section 245 of the Criminal Procedure Code relate to discharge of accused. In this context it would be apt to reproduce the said provision which is as under :-

244. Evidence for prosecution.

(1) When, in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. When accused shall be discharged.

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

In view of the provision of Sections 244 and 245 of Code of Criminal Procedure

the accused who are seeking discharge have to point out that there is no ground and/or material produced by the complainants against them which ex-facie discloses that the accused are unnecessarily roped into the case. Considering the aforesaid provision, the stage of discharge comes after the prosecution leads evidence on the complaint filed against the accused. Therefore the Petitioners who are seeking discharge have to point out before the Court that there is no ground to frame charge against them and the material produced by the complainants is not sufficient to rope the Petitioners into the case. Therefore the Petitioners have filed application before the learned Magistrate for discharge on the ground that Accused No.5 has given undertaking to the complainants that he has accepted the money from the complainants and utilized the same for his personal use, and therefore, in view of the said undertaking given by Accused No.5, Petitioner No.1 Company and its office bearers need to be absolved from the responsibility of the amount of complainants.

12 A question that is posed by way of the above Writ Petitions before this Court is, whether the Petitioners are entitled for discharge, firstly on the ground that at the time of alleged incident Petitioner Nos.2 and 3 were not office bearers of Petitioner No.1 Company and therefore they cannot be held responsible for the activity of the company, and secondly, whether Accused Nos.1 to 4 can be held equally liable for the alleged offence of

misappropriation of amount and cheating committed by Accused No.5.

13 In the context of the aforesaid question, it is necessary to revisit the facts of the case. Admittedly, the complainants entered into the alleged transaction on 20/02/1997. Petitioner No.2 has resigned on 25/06/1998. The complaints filed in the year 1999. It appears that Petitioner Nos.2 and 3 were the chairman and director of Petitioner No.1 company when the process of depositing the money under the said Scheme run by Petitioner No.1, was started. As indicated herein above, the fact that Accused No.5 was appointed by Petitioner Nos.2 and 3 as the Branch Manager of Petitioner No.1, and the work assigned to Accused No.5 was to solicit and promote the deposits scheme conducted by Petitioner No.1 Company, was not disputed by the Petitioners. It is also not in dispute that Accused No.5 in the capacity of Branch Manager collected amount of Rs.19,000/- from each of the five Complainants i.e. total amount of Rs.95,000/- as and by way of fixed deposit in Sowbhagya Nidhi Cash Certificate Scheme. Accused No.5 also passed and acknowledge the receipt of Rs.19,000/- in favour of the complainants. However, Accused No.5 did not issue the certificates on the pretext that the said certificates will be issued after receipt of the same from the Head Office of Petitioner No.1 Company. Accused No.5 gave in writing that in the capacity of the Branch Manager of Petitioner No.1 Company he has received Rs.95,000/- from the Complainants and he has failed to deposit the said amount in the cash book of

the Petitioner No.1 Company. Thereafter complainants sent reminders and legal notice to all the Accused. The complainants also requested Accused Nos.1 to 4 to verify the records of the company and issue certificates. Accused No.5 being an employee of Petitioner No.1, the complainants also requested the Petitioners to take action against him for his wrongful acts done during the course of his employment. However, no action has been taken against Accused No.5. Though it is the defence of the Petitioners that Accused No.5 accepted the money from the complainants in his individual capacity and therefore the undertaking given by Accused No.5 absolves the Petitioners from penal liability, it is specifically stated by the Complainants that Accused No.5 used to visit their premises to solicit and promote the deposit scheme of Petitioner No.1 Company and the Complainants gave the amount to Accused No.5 in good faith in the capacity of Branch Manager of Petitioner No.1. It is clear from the averments of the complaints that the amount handed over to Accused No.5 by the complainants not in his personal capacity but as an employee of Petitioner No.1 Company. It can be said that the undertaking given by Accused No.5 has been given on behalf of Petitioner No.1 and its office bearers in the capacity of its employee, and not in his personal capacity, and therefore, Petitioner No.1 and its officer bearers cannot be absolved from penal liability because Accused No.5 collected the amount in the name of Company. It is required to be noted that the said scheme was floated by Petitioner No.1 company on the basis of which the complainants were deceived and induced to pay the amount to

Accused No.5. Considering the allegations in the complaints, it cannot be said that the Petitioners are not responsible for the act of inducing the complainants to pay money to Accused No.5. The learned Additional Sessions Judge has rightly come to a conclusion that the allegations against the accused company and its office bearers cannot be said to be groundless, and therefore, the undertaking given by Accused No.5 is required to be tested on basis of evidence that has to be produced during trial to find out its evidentiary value. The learned Additional Sessions Judge has rightly recorded the finding that at this stage it cannot be said that Accused Nos. 1 to 3 are not concerned with the activity of Accused No.1 in view of the said undertaking.

14 Now coming to the next submission of the learned counsel for the Petitioners that Petitioner Nos. 2 and 3 were not the office bearers of Petitioner No.1 Company and therefore they cannot be held responsible for the activity of the company. The complainants have specifically alleged that Petitioner Nos.2 and 3 i.e. original Accused Nos. 2 and 3 were made party to the complaints in the capacity of Chairman and Managing Director of the company respectively. Accused Nos.4 and 5 were made party in the capacity of Branch Manager and Ex-Branch manager respectively of Manipal Finance corporation Limited. It is also specifically alleged by the Complainants that Accused No.4, who was acting as Manger of Manipal Finance Corporation Ltd, has accepted the money from them for the scheme floated by Accused No.1 – Manipal Showbhaghya

Nidhi Ltd. It appears that the pamphlet, on which receipt of the amount was given to the complainant by Accused No.5, discloses that Manipal Finance Corporation Ltd is a associate Company of Accused No.1 Manipal Showbhaghya Nidhi Ltd. Accused No.5 has mentioned in the undertaking given to the complainants that he is the manager of the said Manipal finance Corporation Limited. It is therefore prima facie proved that Accused No.5 was collecting the money for the scheme floated by Accused No.1 in the capacity of Branch Manager of said Manipal Finance Corporation. It is revealed from the perusal of material on record that Accused No.2 was the Ex-chairman of Accused No.1. According to Petitioner No.2, he has resigned from the Chairmanship of Company on 25/06/1998 and the complaints filed by the Complainants in the year 1999. However it is important to note at this stage that the date of receipt of Rs.19,000/- each collected from the complainants by is 20.02.1997. It means the process of collecting money under the scheme floated by Accused No.1 started in 1997. Therefore, it cannot be said that though Petitioner No.2 has resigned in 1998 and complaint filed in 1999, he was not concerned with the transaction which has been started in 1997, when admittedly he was the chairman of Accused No.1 company. It is also stated in the application for discharge that Accused No.3 has no concern with Accused No.1 as he was the Managing Director of the said Manipal Finance Corporation Limited. From the Annual Reports produced by the Accused before the Courts below, it is disclosed that Petitioner No.2 i.e. Accused No.2 was the Chairman

of Accused No.1 Company for the financial year 1996-97 and 1997-98, and in the Application Exhibit 15 in Criminal Case No.152 of 199 Accused No.3 was shown as Managing Director Manipal Finance Corporation Ltd. On the basis of the facts flowing from the documents produced on record so also considering the allegations made in the complaints, the learned Additional Sessions Judge has recorded a finding that Accused No.1 – Manipal Showbhaghya Nidhi Ltd and the said Manipal Finance Corporation Ltd are operating hand in glove. Whether Accused No.2 was not the Chairman of Accused No.1 company or Accused No.3 was the Managing Director of Manipal Finance Corporation Ltd at the relevant time, and they are not concerned with Accused No.1 is the fact that has to be proved in the trial by producing appropriate evidence by the parties. At this stage it is not proper to come to a conclusion that there are no grounds in the complaints against the Petitioners. The learned Additional Sessions Judge therefore did not deem it appropriate to interfere with the order passed by the learned JMFC and accordingly dismissed the Revision filed by the Petitioners.

15 A useful reference could be made to the recent judgment of the Supreme Court in the matter of *Sau Kamal Shivaji Pokarnekar*² wherein the Supreme Court has taken a view that quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. Paragraphs 4, 5, 6 and 9 of the said

² AIR 2019 SC 847

Judgment are relevant and the same are reproduced herein under for the sake of ready reference :-

- 4 The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.
- 5 Quashing the criminal 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 cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.
- 6 Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.
- 9 Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order

passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.”

(underlines added)

In another Judgment in the case of MMTC Ltd and Another v/s. MEDCHL Chemicals and Pharma (P) Ltd. and another³ the Supreme Court in paragraph 17 thereof has observed as under :-

“17 There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the Respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the Petitions filed by them, the High Court could not have concluded that there was no existing debt or liability.”

16 Therefore it is clear that when there is a prayer for discharge and/or for quashing criminal proceedings at the stage of issuance of process/summons/notice, the relevant consideration is, whether the averments

³ (2002) 1 SCC 234

in the complaint attract the ingredients of the alleged offences and consequently, whether the alleged offences are disclosed or otherwise. In the facts of present case, it is abundantly clear that if the allegations made in the complaints are taken on its face value and read in its entirety, the same would prima facie indicate that the alleged offences are disclosed.

17 In the facts of the present case, the reliance placed by the learned counsel for the Petitioners on the judgment in Maksud Saiyed's case (supra) is misconceived.

18 Considering the allegations made in the complaints and the material produced on record, which prima facie indicates that the said scheme was floated by Petitioner No.1 company on the basis of which the complainants were deceived and induced to pay the amount to Accused No.5 as the representative of Accused No.1. Accused No.5 accepted the money from the complainants under the said scheme on behalf of Accused No.1. it appears that in reply dated 29/06/1999 to the notice of the complainants, the Petitioners have informed the complainants that Accused Nos.1 to 4 are taking necessary actions against Accused No.5 for his wrongful acts done by him during the course of employment. Considering the contents of the said reply as also the undertaking given by Accused No.5, prima facie it cannot be said that Accused No.1 Company and its office bearers have no concern with Accused No.5 and,

they can be absolved from any responsibility about the money of the complainants. Considering the allegations in the complaints, it cannot be said that the Petitioners are not responsible for the act of inducing the complainants to pay money to Accused No.5. It is required to be noted that the Complainants have given the amount to Accused No.5 as a trustee of Accused No.1 to invest the amount appropriately and return the same along with the benefits under the said Scheme. On the basis of the material produced on record, the Trial Court has come to a conclusion that, prima facie case is made out against the accused, and the learned Additional Sessions Judge did not deem it to interfere with the order of learned Magistrate.

20 In the light of aforesaid discussion and considering the allegations made in the complaints, the material placed on record and the reasoning assigned by both the Courts below, it would not be possible to interfere with the orders of the Courts below. There are concurrent findings recorded by both the Courts below as against the Petitioners. There is no warrant to interfere with the concurrent findings recorded by the Courts below. No fault can be found with the findings recorded by the Courts below. There is no perversity, illegality and infirmity in the orders passed by the Courts below. There is prima facie satisfaction recorded by both the Courts below against the accused as regards framing of charge. I do not find any reason to interfere with the orders passed by both the Courts below. The Writ Petitions are accordingly dismissed.

Rule in all the Writ Petition is accordingly discharged. All contentions raised on merits are kept open for being agitated before the Trial Court. It is made clear that the observations made herein before are prima facie in nature and are confined to the adjudication of the present Petitions only.

21 Whether the present Petitioner Nos. 2 and 3 were the office bearers of Petitioner No.1 company at the relevant time or not, whether they can be held responsible for the activity of the company or not, and whether Accused Nos.1 to 3 can be held equally liable for the alleged offence of misappropriation of amount and cheating committed by Accused No.5 or not, all these aspects will have to be decided only during trial after giving an opportunity to the parties to lead evidence in that regard. In the peculiar facts of the present case, it is desirable that the concerned Court shall expedite the hearing of the proceedings and take it to the logical ends as expeditiously as possible, however, on their own merits and in accordance with law, uninfluenced by the observations made herein above.

[S.S. SHINDE, J.]