

HONOURABLE JUSTICE G. SRI DEVI

WRIT PETITION Nos. 5449 and 7950 of 2019

COMMON ORDER:

Since the issue raised in both the Writ Petitions is one and the same, they are being disposed of by this common order.

Writ Petition No.5449 of 2019 is filed seeking a Writ of Certiorari calling for records in respect of F.I.Rs., vide F.I.R.No.870 of 2018, dated 10.09.2018 of Banjara Hills Police Station, Hyderabad; F.I.R.No.866 of 2018 dated 26.10.2018 of Kukatpally Police Station, Hyderabad; F.I.R.No.293 of 2018 dated 01.11.2018 of Humayunnagar Police Station, Ranga Reddy District; F.I.R.No.10 of 2019 dated 07.01.2019 of Chandrayanagutta Police Station, Hyderabad and Crime No.170 of 2018 of Central Crime Station, Hyderabad, respectively, and declare that the registration of the said F.I.R.s as illegal, arbitrary, unconstitutional, violative of principles of natural justice, fundamental rights and against the provisions of the Companies Act, 2013 since respondent Nos.1 to 10 have no authority to register the said F.I.R.s in view of the provisions of Section 212 (2) and sub-Sections 6 and 8 of Section 435 and Section 436 of the Companies Act, 2013; the arrest of the 2nd petitioner by the police in respect of the aforesaid crimes amounts to illegal detention and consequently sought for directions to respondents 1 to 10 to release the 2nd petitioner from Women Prisoners Jail, Chenchalguda, Hyderabad, forthwith; not to entertain any further complaint in

respect of the alleged offences relating to the petitioners' company which might be lodged by any investor of the 1st petitioner company; to withdraw the above complaints in the aforesaid F.I.Rs.; and to forward the complaints lodged by respondent Nos.12 to 15 to respondent No.11 (Serious Fraud Investigation Office) in terms of the Companies Act, 2013.

Writ Petition No.7950 of 2019 is filed seeking a Writ of Certiorari calling for records in respect of F.I.Rs., vide F.I.R.No.33 of 2019 dated 07.02.2019, F.I.R.No.40 of 2019 dated 16.02.2019 and F.I.R.No.53 of 2019 dated 01.03.2019 of Central Crime Station, Hyderabad, and declare that the registration of the said F.I.R.s as illegal, arbitrary, unconstitutional, violative of principles of natural justice, fundamental rights and against the provisions of the Companies Act, 2013 since respondent Nos.1 to 5 have no authority to register the said F.I.R.s in view of the provisions of Section 212 (2) and sub-Sections 6 and 8 of Section 435 and Section 436 of the Companies Act, 2013; the arrest of the 2nd petitioner by the police in respect of the aforesaid crimes amounts to illegal detention and consequently sought for directions to respondents 1 to 5 to release the 2nd petitioner from Women Prisoners Jail, Chenchalguda, Hyderabad, forthwith; not to entertain any further complaint in respect of the alleged offences relating to the petitioners' company which might be lodged by any investor of the 1st petitioner company; to withdraw the above complaints in the aforesaid F.I.Rs.;

and to forward the complaints lodged by respondent Nos.8 to 10 to respondent No.6 (Serious Fraud Investigation Office) in terms of the Companies Act, 2013.

Brief facts of the case are that the 2nd petitioner is the Managing Director of the 1st petitioner Company, which was incorporated under the Companies Act, 1956, dealing with Jewellery and articles of gold and investment from the investors in the company and as against the investment made by the investors, they would get 36% of the dividend on the invested amount. The 1st petitioner company is solvent, it has accepted the investments from the various investors and the same were received by the company through bank and the dividends and payments are usually made after the maturity through bank only to its investors and there is no provision for acceptance of the investment by way of cash under the Memorandum of Articles of the 1st petitioner company. Since for the last 15 years, the 1st petitioner company has been paying the dividends and the maturity amounts to the respective investors for which there are no complaints whatsoever. It is also stated that the 1st petitioner company also accepted the investment not only from all over India, but also from the investors of the other Countries and the 1st petitioner company has been successfully and honestly dealing with the investors. When the investment was made by the investors, the company issued certificate and enters with an arrangement comprising terms and conditions and accordingly the

lock-in period for such investment was one year and also two years and the dividends for the investments to be payable to the investors once in a month. It is also stated that many investors of the 1st petitioner company have earned more dividends than the actual capital amount which they invested with the company. It is stated that few months prior to filing of the complaints by the investors there was a delay for payment of the dividends due to the fact that there is some unexpected down flow in the market, as a result of which, the 1st petitioner company has decided to pay the dividends to its investors once in three months and the said factum has been intimated to the respective investors. In view of the delay in payment of dividends, some hyper-sensitive investors demanded for refund of the investment made by them with the 1st petitioner company. As per the arrangement and contracted terms and conditions, the investment cannot be refunded to its customers after the expiry of the lock-in period and the investors have to make an application as per the terms and conditions of the agreement entered with the 1st petitioner company and then only the investments will be refunded. But, some of the investors decided not to follow the terms of the agreement i.e., insofar as the people, who have invested are concerned, from Telangana only nine persons lodged complaints to the various police stations i.e., respondent Nos.6 to 10 in W.P.No.5449 of 2019 and respondent No.5 in W.P.No.7950 of 2019. It is also stated that on receipt of the said complaints, the aforesaid crimes came to be registered. In view of registration of aforesaid

crimes the news was spread over in other States of India and other investors lodged various complaints in various police stations in various States i.e., State of Andhra Pradesh, State of Karnataka, State of Maharashtra and State of Kerala etc. By virtue of the aforesaid false complaints, which were lodged and registered by the police, the 1st petitioner company is not able to function its day-to-day affairs as the Managing Director, who is the 2nd petitioner herein, was arrested on 15.10.2018 in Crime No.170 of 2018 and languished in Chenchalguda Jail. It is also submitted that no single pie has been misused by the 1st petitioner company nor any misappropriation has been done and it is functioning smoothly, but by virtue of lodging false complaints, the 1st petitioner company is not in a position to look after the day-to-day affairs and functions. It is also stated that the 2nd petitioner got bail in one case, and before releasing from the said crime, the police has shown her arrest in another crime under P.T. Warrant, which is quite contrary to Cr.P.C. It is stated that the bail has been granted to the 2nd petitioner in Crime No.170 of 2018 and even before her being released from the jail, the 2nd petitioner was once again arrested in other case, therefore, she was not in a position to come out from the jail for one reason or the other and the 2nd petitioner is not in a position to make any bail application in the case. It is also stated that the aim of the 1st petitioner company is social good and the income which was derived by the 1st petitioner company was used for the purpose of education, habitation, food and other basic necessities of orphan

Muslim girls and that scholarships were also given to the students, who are brilliant and belong to poor families. The 1st petitioner company is located at Hyderabad and 2nd petitioner is permanent resident of H.No.9-4-134/A/5/23/1, 5th Floor, HS Residency, Vali Colony, Golconda, Hyderabad, and she is a law abiding citizen, social worker and she has been working for the uplift of minority Muslim women and she is also the President of Madarsa-e-Niswan-Isha-Atul-Islam-Urdu, an Arabic Development Society. It is also stated that the 2nd petitioner launched a political party by name All India Mahila Empowerment Party in the State of Telangana, by virtue of good reputation in the Muslim Community. The existing Muslim leader, who belongs to political party AIMIM namely Asaduddin Owaisi, lodged a false complaint vide F.I.R.No.154 of 2012 dated 14.08.2012 on the file of the Additional Director General of Police, Law and Order, for the offences punishable under Sections 420 and 406 of I.P.C., and ultimately the police has filed a report stating that it is a false complaint. It is stated that if the party launched by the 2nd petitioner contest in the State General Elections in 2018, it would be an impediment to the AIMIM party and this would divide the votes between both the parties, in which event the said AIMIM party may be defeated. However, as against the said complaint, the 2nd petitioner filed a suit for defamation vide O.S.No.835 of 2017, which is pending before the Chief Judge, City Civil Court, Hyderabad. Therefore, the complaints, which were filed by respondent Nos.12 to 15 in W.P.No.5449 of 2019 and

respondent Nos.8 to 10 in W.P.No.7950 of 2019, with various police stations are not entertainable as the police have no jurisdiction to register the said complaints, investigate into the matters and to arrest the 2nd petitioner. All the complaints describe the company and investor relationship, therefore, if any investor has any grievance with regard to the investment made by him, he should have approached the appropriate and competent authority i.e., Registrar of Companies only and if assuming that any fraud has been done by the 1st petitioner company, the investor should have approached the Serious Fraud Investigation Office, therefore, the police has no authority to entertain and register the complaint, which fall under the purview of the Companies Act, 2013. Hence, the present writ petitions are filed aggrieved by the action of the police in registering the aforesaid crimes.

The Government Pleader for Home filed separate counters in both the writ petitions on behalf of the Police, stating that basing on the complaints received from the investors of the 1st petitioner company the aforesaid crimes have been registered. It is stated that during the course of investigation in the above criminal cases, about 262 victims/witnesses were examined and recorded their statements, wherein it was revealed that they have deposited an amount of Rs.18.00 Crores approximately in the companies of the 1st petitioner i.e., (1) Heera Gold Exim Private Limited, (2) Heera Retails Private Limited, (3) Heera Foodex Private Limited, (4) Heera Textiles

Private Limited and other companies of Heera Group, in a different types of schemes i.e., monthly and yearly maturity schemes. It is stated that number of notices were issued to the petitioners/accused to furnish the investors list, bank accounts, books of accounts, registers and other records, but the petitioners/accused never submitted any records to the investigation agency. It is also stated that the 1st petitioner/A1 is incorporated in 15 more companies i.e., (1) Heera Building Material Imports and Exports Private Limited, (2) Heera Gold Exim Limited, (3) Heera Hall Marking Centre Private Limited, (4) Heera Ice Drop Private Limited, (5) Heera Foodex Private Limited, (6) Heera Retail (Hyderabad) Pvt. Ltd., (7) Heera Haj Services Pvt. Ltd., (8) Heera Fin. Capital India Limited, (9) Heera News Media Private Limited, (10) Heera Textiles Limited, (11) Heera Developers (Hyd.) Pvt. Ltd., (12) Heera Medical City Private Limited, (13) Heera Foodex Private Limited, (14) Heera Gold Fabrics Private Limited and (15) HG Gold Private Limited, in which some companies are shell companies. There is no business and no returns have been submitted by the petitioners/accused since incorporation of the above said companies. Apart from that during the course of investigation, it is disclosed that the 1st petitioner and others diverted funds from one company to other companies, by violating their M.O.A. of companies for their wrongful gain, for which effect the above criminal cases have been registered, as the profits/dividends are not paid to the complainants. The contention of the 2nd petitioner/A2 that the 1st petitioner is doing business not

only from all over India and also in other Countries and paying dividends regularly to the investors is not correct. It is stated that the office of the 1st petitioner company is located at H.No.8-2-609/K, Road No.10, Banjarahills, Hyderabad, and other branch offices across India. The 1st petitioner company has appointed 181 Marketing Agents and about 2050 Direct Selling Agents across India and abroad and collected the investments in the form of deposits from people across India and abroad. The Heera group of companies introduced (4) types of schemes to induce the general public and collected deposits according to schemes, which are as under:

SCHEME PARTICULARS	PER UNIT				
	IND	AED	USD	SAR	KAD
Scheme-A Heera Gold Exim Pvt. Ltd.	25000	2000	500	2000	500
Scheme-E Heera Textiles Pvt. Ltd.	200000	15000	5000	15000	5000
Scheme-G Heera Foodex Pvt. Ltd.	20000	2000	500	2000	500
Scheme-F Heera Textiles Pvt. Ltd.	20000	1500	400	1500	400

It is also stated that as per the complainants/investors statements and other evidence collected during investigation, the 1st petitioner company has not paid the dividends, since June, 2018 till date. It is also stated that the petitioners/accused are operating the business across the Country and abroad, wherein number of criminal cases have been registered against the 1st petitioner and her companies and its Directors and others. The 1st petitioner/A1 and others have involved in eight cases in Telangana, three cases in

Andhra Pradesh, four cases in Karnataka, one case in Kerala and eight cases in Maharashtra. It is also stated that during the course of investigation, the investigating agency seized the following documents/material:

1. Copy of the digital data from server at Heera group main office, Banjara Hills, Hyderabad and also seized about 10,000 withdrawal application forms pertaining to investors, who applied for withdrawals of their amount totalling Rs.200 Crores approximately.
2. Seized the data server storage equipments at Kothaguda, Cyberabad, pertaining to Heera Group of Companies.
3. Seized the Investors Data (IBG List) at office of A-2 Bijju Thomas at Cochin of Kerala State and it reveals that there are about 1,72,000 investors and deposits Rs.5,600 Crores approximately, across India and abroad. The above seized data and material objects, have been sent to TSFSL, Hyderabad, for analysis and expert report, vide Nos. SFSL (TS)/10612/COM/420/18, dated 13.12.2018 and SFSL (TS)/2743/COM/80/19, dated 04.04.2019 which are pending.

It is also stated that during the investigation so far, more than 240 bank accounts were identified across India, pertaining to Nowhera Shaik (2nd petitioner), her companies, its Directors and others. On verification, only Rs.25.00 Crores approximately was found in the said bank accounts and the same were frozen under Section 102 of Cr.P.C. Apart from, several foreign bank accounts pertaining to the said Nowhera Shaik (2nd petitioner) and her companies were also identified. In this regard to ascertain the details of foreign

accounts/deposits, letters were addressed to the Enforcement Director, Income Tax Department, Serious Fraud Investigation Office and Reserve Bank of India, for information about foreign accounts and analyse the large data, for taking the investigation further. It is also stated that so far 81 properties have been identified pertaining to Nowhera Shaik (2nd petitioner) and her companies, its Directors and others in the States of Telangana, Delhi, Andhra Pradesh, Maharastra, Kerala and Karnataka. The market value of the said properties is approximately Rs.213.00 Crores. Proposals have been sent to Government of Telangana for attachment of properties under Section 3 of the Telangana Protection of Depositors of Financial Establishments Act, 1999 to safeguard the interest of the investors and the same are awaited. It is also stated that the 2nd petitioner and other accused together criminally conspired with each other and advertised through various modes like online print and electronic and social media (YouTube, Facebook, Twitter, H-News Web Channel etc.), in order to attract the customers to join in the schemes by making false representations. As Managing Director of 15 Heera Group of Companies operating across India and abroad, the 2nd petitioner has falsely stated that all these companies have been registered as per law, given assurances that they are running their businesses as Halal Policy on Islamic religious law in assets management, real estate, securities, stocks, bonds, shares and mutual funds. To gain the confidence of the customers they pay profits/returns for few months initially by circulating the

depositors' money. Later they defaulted to give profits, any returns or principal amount to the depositors even after submitting the withdrawal application forms by the investors. All those deposited amounts have been diverted to various shell companies and also used to purchase the properties on the names of directors, including Managing Director, company's name and their relatives. It is also stated that the accused persons colluded with some others and trying to sell those properties clandestinely in order to make wrongful gain even after registration of the criminal cases against the petitioners 1 and 2 and others. The allegation of the petitioners that on the complaint of Asaduddin Owaisi, a case in Crime No.154 of 2012 was registered against the 2nd petitioner and ultimately police filed a report as 'false complaint' is incorrect and the said case is still under investigation. It is also stated that the contention of the petitioners that police authority have no jurisdiction to investigate into the matter is without any legal basis and even as per Section 212 (17) (b) of the Companies Act, 2013, there is no bar for investigation of offences by any agency under different law other than Companies Act. Further it makes it very clear that the Serious Fraud Investigating Office shall share any information with any investigating agency, including police authorities. Therefore, the police authority can proceed with the investigation for the offences under Sections 409, 406 and 420 read with Section 34 of the I.P.C., as well as Section 5 of the Telangana Protection of Depositors of Financial Establishments Act, 1999 and sections 3, 4, 5 and 6 of the

Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Further, Section 14 of the Telangana Protection of Depositors of Financial Establishments Act, 1999, states that the provisions of the said Act shall have over riding effect in any other laws. Therefore, viewed from any angle, the conduct of investigation by the police authorities is different and distinct with the different object in compliance with the offences, from the investigation conducted by the Serious Fraud Investigation Office under Companies Act. It is also stated that Section 2 (c) of the Andhra Pradesh Protection of Depositors of Financial Establishment Act, 1999, was amended in the year 2003, thereby bringing the companies under the purview of the Depositors Act, 1999. Thus, the investigation being conducted by the police is legally justified. It is also stated that the bail granted to the petitioners in Crime No.223 of 2018 of Nampally Police Station, was cancelled by this Court vide Criminal Petition No.11354 of 2018, dated 13.11.2018. It is also stated that the investigation in the above mentioned crimes are being conducted properly, fairly, impartial and efficiency in an unbiased manner, as a result of which, critical and crucial evidence has been seized. Further, in order to find out the flow of money and finances through non legal channels and for the purpose of forensic auditing, data analysis, deciphering of digital evidences etc., the investigating officer is regularly coordinating with the concerned departments. A detailed investigation is under progress monitored by higher officials. The public faith and confidence has been instilled by way of initiating

necessary legal process and progress in the investigation. It is also stated that there are about 1,72,000 investors having deposited a sum of Rs.5,600.00 Crores approximately across India and abroad. In order to protect the interest of the said victims, it is just and necessary to the police authorities to proceed with the investigation, otherwise the petitioners will be left off from the clutches of law. Since across India there are number of bank accounts opened and run by the petitioners, to get information of bank account statements to analyze the said accounts with regard to misuse of funds, it is consuming considerable time for investigation. The police authority has been conducting the fair and impartial investigation and strictly proceeding in accordance with law. Hence, the petitioners are not entitled to grant any relief.

Respondent Nos.11 and 16 in W.P.No.5449 of 2019, who are respondent Nos.6 and 7 in W.P.No.7950 of 2019, filed separate counters in both the writ petitions, stating that the Serious Fraud Investigation Office is an investigation agency under Ministry of Corporate Affairs, Government of India, which is established under Section 211 of Companies Act, 2013. The Central Government has powers to order an investigation into the affairs of a Company under Section 210 and 212 (1) of the Companies Act, 2013. It is stated that the Central Government (Ministry of Corporate Affairs) vide Order No. 04/08/2018/CL-II(SER), dated 27.03.2018, assigned investigation into the affairs of 14 companies of Heera Group to the

Serious Fraud Investigation Office under Section 212 (1) (d) of the Companies Act, 2013 and directed the Director of Serious Fraud Investigation Office, to decide such number of Inspectors, as he may consider necessary, for the purpose of investigation. The Director, Serious Fraud Investigation Office, in exercise of powers conferred under Section 212 (1) of the Companies Act, 2013, designated three officers as Inspectors to carry out the investigation into the affairs of 14 Heera Group Companies. The aforesaid investigation is presently continuing in terms of the provisions of the Companies Act, 2013. However, pending investigation into the affairs of the said companies, the petitioners herein sought, *inter alia*, calling for the records in respect of the F.I.R.s registered against them and declaring the registration of the said F.I.R.s as illegal, arbitrary, unconstitutional, violative of principles of natural justice and also violative of the fundamental rights of the petitioners and consequently release the 2nd petitioner from Women Prisoners Jail, Chenchalguda. It is also stated that in view of the legal position, the respondents are not in a position to comment on the various averments made in the Writ Petitions except that the investigation process is being carried out by the Inspectors appointed under the Companies Act, 2013. It is also stated that the F.I.R.s registered by various authorities under separate Acts may not be forwarded to the Serious Fraud Investigation Office as the jurisdiction of Serious Fraud Investigation Office is confined to offences related to Companies Act, 2013 only. Further, there is no bar under Section

212 (2) of the Companies Act, 2013 in respect of other agencies from proceeding with their respective investigations under various Acts. There are no merits in the writ petitions and the same are liable to be dismissed.

Respondent No.12 in W.P.No.5449 of 2019, filed counter stating that the 1st petitioner is a limited liability partnership firm incorporated in the year 2009 and the 1st petitioner company also incorporated as many as 17 companies and the petitioners have not made all those companies as parties in the writ petition. The above information clarifies that the 1st petitioner company has not filed their balance sheet and the petitioners are put to strict proof that the 1st petitioner company is solvent. Though the above companies are not made as parties in this writ petition, but the same companies are being investigated by the police in the respective crimes. Every company is an entity in itself, non-joinder of necessary parties is illegal. It is also stated that the ROC, Hyderabad, has initiated proceedings and filed C.C.No.113 of 2019 to C.C.No.130 of 2019 for not filing annual financial statements and statutory compliances as per Company Law, wherein warrants have also been issued against the petitioner companies for non-appearance either personally or through Counsel. It is also stated that the very incorporation of the Companies is in the year 2010 and onwards, as such the contention of the petitioners that they are paying the dividends for the last 15 years is contrary to the incorporation dates of the companies. It is

also stated that because of the movements of the petitioners due to their illegal acts even the Investors abroad have made complaints in their respective Countries and some of the Countries have approached the concerned Counsellor General of India and action is yet to be initiated. It is also stated that respondent No.12 filed an application for withdrawal of her investment on 07.07.2018, but the 1st petitioner company gave a letter fixing a schedule for withdrawal within 45 days from 07.07.2018 which is on or after 27.08.2018 and failed to keep up their side of commitment. It is also stated that on 31.08.2019, the petitioners forced her to accept and sign in an undertaking that they would return the money within two months and also not to approach the police regarding this issue and after constant threats and harassment they would not refund the money. As she has no other option, she lodged the complaint. It is also stated that almost all 26 F.I.R.s have been lodged throughout India against the 1st petitioner company represented by the 2nd petitioner. The said F.I.Rs are genuinely lodged by the innocent investors, who have been cheated in broad daylight at behest of getting high interests in the name of profits up to 36% to 40% per annum by luring gullible people of high returns contrary to public policies. The company is not solvent as stated in paragraph No.7 of the writ petition. It is also stated that the police have followed the due procedure while dealing with the cases. It is also stated that the 2nd petitioner has shown a tendency of using arm twisting tactics to foist false cases and she foisted a false F.I.R. against respondent No.14

vide Crime No.191 of 2010 for the offences punishable under Sections 354, 504 and 506 read with 34 of I.P.C., which has been closed as lack of evidence on filing of the final report. Further, the petitioner also foisted a false report of extortion against respondent No.14, which is also closed. The petitioner again filed Crime No.126 of 2017 under Section 384 and 509 of I.P.C., on the file of Navi Mumbai, Sanpada Police Station, who issued a notice under Section 41-A Cr.P.C., and after the investigation a report was filed that it is a false report. The police sought permission from the concerned Court to prosecute the 2nd petitioner for giving a false report. The petitioners also used social media through the Direct Cell Agents, Marketing Executives of Heera Groups to threaten respondent No.14, for which respondent No.14 lodged a case in Crime No.236 of 2018, Cyber Crimes, Hyderabad, for creating a false Face book account in the name of respondent No.14. Respondent No.14 also lodged complaints vide F.I.R. Nos.193 of 2018, 293 of 2018 and 106 of 2019. Respondent No.14 also filed W.P.No.3501 of 2019 seeking security and this Court directed respondent No.2 (Director General of Police, Telangana State) to provide security to respondent No.14. It is also stated that the Secretary of Heera Victims Association by name Saba Affreen, who has invested Rs.20,00,000/- is being actively maligned by the henchmen of the petitioners to deter her from participating in the case against the petitioners stating that she got married to respondent No.14, creating photographs with comments "Shadi Mubarak" on WhatsApp and to that effect she

lodged a case in Crime No.94 of 2019, for an offence punishable under Section 469 of I.P.C. It is also stated that the 2nd petitioner was enlarged on bail, but the said bail was cancelled by this Court in Criminal petition No.11354 of 2018. It is also stated that Telangana Protection of Depositors of Financial Establishments Act, 1999, has been amended in the year 2003 and as per the amendment the Companies are also included in the purview of the said Act as such the plea of the petitioners that it is a Company registered under Companies Act and does not fall under the purview of the Telangana Protection of Depositors of Financial Establishments Act, 1999 is incorrect. It is also stated that the petitioner is already enlarged on bail in all subject matter crimes and charge sheet also filed. The Writ is devoid of merits and is liable to be dismissed.

Respondent No.14 in W.P.No.5449 of 2019, who is the President of Heera Group Victims Association, also filed counter-affidavit reiterating the contentions made in the counter-affidavit filed by respondent No.12 in W.P.No.5449 of 2019. Apart from that, respondent No.14 also stated that another victim Dr.Aluru Shamsunnisa, working as a Gynaecologist in Riyadh, Saudi Arabia, also invested Rs.50,00,000/- in Heera Textiles on 23.07.2017 and after maturity, the amount was not refunded and she has come over to India and her statement was recorded by the police in Crime No.170 of 2018. Presently, as many as 10,000 applications are pending for withdrawal and more particularly Heera Textiles is not made as

party in this writ petition and contrary to that the petitioner is seeking bail against the company. It is also stated that he filed W.P.(PIL) No.33 of 2019 before this Court seeking CBI inquiry into this matter and the same is pending. It is also stated that the Writ Petition itself is infructuous as separate proceedings are already pending before the Serious Fraud Investigation Office at Corporate Bhavan, pertaining to the violations of Company Law. It is also stated that despite being in jail, the 2nd petitioner through her henchmen, is resorting to threaten respondent No.14 and the victims with dire consequences for approaching the Court of law for redressal of their grievances and it is clarified by the counter filed by the Police that the 2nd petitioner is tampering with evidence and not cooperating with the investigation, as such it is difficult for further investigations and filing of charge sheet. If the 2nd petitioner is released, there is every possibility that she may flee from the State and also attempt to tamper with evidence.

Heard Sri P.Venugopal, learned Senior Counsel appearing for Sri T.Sudhakar Reddy, learned Counsel for the petitioners in both the Writ Petitions; Sri T.Srikanth Reddy, learned Government Pleader for Home, appearing on behalf of the Police, Sri Namavarapu Rajeswara Rao, learned Standing Counsel appearing for Serious Fraud Investigation Office represented by its Director and Union of India; Sri Mir Masood Khan, learned Counsel appearing for Sri Syed Tousif Basha, learned Counsel for the

investors i.e., respondent Nos.12 and 14 in W.P.No.5449 of 2019 and proposed respondent No.11 in W.P.No.7950 of 2019 and Sri M.Sudheer Kumar, learned Counsel appearing for the proposed respondent No.17 in W.P.No.5449 of 2019.

It has been submitted on behalf of the petitioners that the language in Section 212 (2) of the Companies Act, 2013 is very clear that once the matter is ceased by the Serious Fraud Investigation Office in tune with the provisions of the Companies Act, 2013, no other Investigation Agency of the Central or any State Government shall proceed with the investigation in respect of an offence under this Act. Therefore, whether the State of Telangana was justified in registering cases against the petitioners for the alleged offences under Sections 406 and 420 of I.P.C read with section 5 of the Telangana Protection of Depositors of Financial Establishments Act, 1999. The Companies Act is a Central legislation, whereas the Telangana Protection of Depositors of Financial Establishments Act, 1999 is a State Legislation. Pitted against each other, the Central Legislation will prevail over the State Legislation. It is further stated that insofar as offences under Sections 406 and 420 of I.P.C. are concerned, the Constitutional Courts have time and again held that for a person to be convicted under Section 420 of I.P.C. the intention should be from the inception till culmination. As there is no breach of trust, Section 406 of I.P.C. is also not applicable. It is further submitted that the 1st petitioner is a Company incorporated under

the provisions of the Companies Act and the 2nd petitioner is its Managing Director. The 1st petitioner is doing its business since 1998 and it is confined only to Muslims. Under Muslim Law, the question of 'interest' does not arise. It is also stated that as per clauses 2, 14, 15, 19, 20, 21 and 22 of Heera Group Terms and Conditions, the membership is confined only to Muslims; payments are accepted only through bank, cash payment will not be entertained; members were strictly prohibited to handover cash to any HG Office/Executive/Person; withdrawal request shall be submitted as per the respective TCN's terms and conditions; HG TCN membership is deemed to be continued unless and until withdrawal request is submitted or else if HG terminates the membership; withdrawal amount will be remitted to the bank account of the members on any working day of related month along with the trading declaration as per eligibility. On reading of the aforementioned clauses, it can be culled out that the Company deals only with Muslims, who deal with the company on their own wish and volition without any coercion or undue influence and the Company sells Units to the Purchasers and pay the money only through Bank and the Unit will indicate the tenure and during the said tenure period, which is called as lock-in period, the Units will not be returned to the Unit Holder. It is only after the lock-in period expired and after submitting necessary papers, the amount was returned through bank only to the Unit Holder. During the currency of the Units, the Unit Holder would get 'dividend'.

It is also submitted that Section 127 of the Companies Act deals with the punishment clause for failure to distribute the dividends. Therefore, predominantly if the dividend is not paid, it is an offence punishable under the Companies Act. Once it is an offence punishable under the Companies Act, the question arises as to who should try and award the punishment. Section 435 of the Companies Act, envisages the Central Government to constitute a Special Court for providing speedy trial and Section 436 of the Companies Act deals with the offences that are triable by the Special Court. Dividend being a right to the Unit Holder, if not paid, is certainly an offence and Section 438 of the Companies Act states that Cr.P.C. is applicable. Some other provisions have significance rather bearing on the determination of the issue are Section 208 of the Companies Act. The Registrar or Inspector shall submit in writing to the Government, on receipt of the complaint and thereafter under Section 210 of the Companies Act, the Investigation would take place with regard to the Company affairs. Section 212 of the Companies Act, which is a lengthy Section and it is a self-contained Code, makes it clear that the investigation so done into the affairs should be done only by the Serious Fraud Investigation Officer and Section 447 of the Companies Act deals with the punishment for fraud.

It is also stated that on the basis of the complaints received by the Government of Telangana from the *de facto* complainants, the

Central Government directed the Director of Serious Fraud Investigation Office, to take action against the petitioners. Hence, the Serious Fraud Investigation Office is already ceased off the matter. A perusal of the orders passed by the Central Government coupled with Section 212 (2) of the Companies Act, it is clear that no other agency, except the Serious Fraud Investigation Office, has to look into the complaints. Therefore, the complaints are already under investigation and the Serious Fraud Investigation Office issued summons to the petitioner on 28.08.2018. Therefore, the State Government ought not to have registered the F.I.R.s basing on the complaints lodged by the Unit Holders, who have complained to the concerned authority under the provisions of the Companies Act, 2013. All the complaints are stereo type and it is nowhere mentioned in the complaints that whether the amount due to them is outside the lock-in period or whether it is within the lock-in period. In view of the provisions of the Companies Act, State of Telangana has no authority or empowerment to register the F.I.R.s and the State is denuding from its powers to entertain the said complaints. It is submitted that the root cause for the episode is that the 2nd petitioner started a political party by name "All India Mahila Empowerment Party" and the same was not to the liking of the existing Muslim Political Party in the State of Telangana i.e., M.I.M. It is also submitted that the petitioners filed O.S.No.507 of 2018 before the Chief Judge, City Civil Court, Hyderabad, against respondent No.14 in W.P.No.5449 of 2019 and obtained an

injunction order on 30.08.2018, restraining him and his servants and agents from making any false and defamatory statements or remarks against the petitioners in Face book or any other Media/Social Media during pending of the suit. The said order was passed before registration of any of the F.I.R.s, and the said injunction order is still subsisting.

Insofar as the Telangana Protection of Depositors of Financial Establishments Act, 1999 is concerned, it is stated that the petitioners have not committed any default nor they have done anything attracting Section 5 of the said Act. Section 5 of the said Act is applicable to financial establishments, who deal in finance business on a 'scheme' or on an 'arrangement'. Purchasing Units are neither under a 'scheme' floated by the Company or an 'arrangement'. The business activity of the petitioners is jewellery business and in the course of its jewellery business, Units are sold for a particular duration and post the duration period is over, they can seek for return of the value of the Unit, which they purchased. At any rate, having regard to the fact that the Serious Fraud Investigation Agency is ceased off the matter, Section 5 of the Telangana Protection of Depositors of Financial Establishments Act, 1999, itself is not applicable, as it is a State Legislation and the Companies Act is a Central Legislation. The unofficial respondents contended that a charge sheet was filed in one case. No charge sheet was served on the petitioners. It is also stated that if the 2nd petitioner is released

from jail, the petitioners would settle all the claims of the unofficial respondents and others, who are similarly situated as per the message convey to its share holders from the jail by giving declaration on 25.03.2019. According to the declaration made by the 2nd petitioner, the amounts of its share holders will be settled. All the properties and bank accounts were seized and even some of the staff members have been arrested. During the course of pendency of the Writ Petition, a charge sheet has been filed in one case. Since it is a continuation of the proceedings, the same has also to be set aside by this Court and all the complaints are to be transferred to the Serious Fraud Investigating Agency. It is also stated that the contention of the unofficial respondents that the other sister concern companies of the petitioners are not before this Court is falls to ground as there is nothing against the sister concern companies and they need not be made as parties in the writ petitions. It is also stated that the contention of the State that a single writ petition is not maintainable to quash more than one F.I.R., is a sheer technical objection, which is not tenable and liable to be rejected. In support of his contentions, learned Senior Counsel relied on the following citations.

***1. Neeraj Singal v. Union of India and others*¹**

***2. Rakesh Kumar Paul v. State of Assam*²**

***3. Vihaan Direct Selling (I) Pvt. Limited and others v. Union of India and others*³**

¹ (2019) CrL.L.J. 191

² (2017) 15 SCC 67

³ W.P.(CrL.) No.31 of 2017, Supreme Court

4. *Kalyani Mathivanan v. K.V.Jeyaraj and others*⁴
5. *Serious Fraud Investigation Office v. Rahul Modi and another*⁵
6. *Binod Kumar and others v. State of Bihar and another*⁶
7. *Indian Oil Corporation v. NEPC India Limited and others*⁷
8. *Anil Mahajan v. BHOR Industries Limited and another*⁸
9. *Satishchandra Ratanlal Shah v. State of Gujarat and another*⁹
10. *Anand Kumar Mohatta and another v. State (Govt. of NCT of Delhi) Department of Home and another*¹⁰
11. *Commercial Tax Officer, Rajasthan v. M/s. Binani Cements Limited and another*¹¹
12. *Raman Tech. & Process Engg. Co. and another v. Solanki Traders*¹²
13. *V.Y.Jose and another v. State of Gujarat and another*¹³
14. *Sunair Hotels Limited v. Union of India and another*¹⁴
15. *Satinder Singh Bhasin v. Government of NCT of Delhi and others*¹⁵
16. *Province of Bombay v. Kusaldas S.Advani and others*¹⁶

The Government Pleader for Home would submit that the 1st petitioner company represented by the 2nd petitioner, engaged 181 Marketing Executives and 2050 Direct Selling Agents across India and abroad and through them they have been inducing the customers and collected huge amounts in the form of deposits under various type of schemes from the gullible public by assuring profits

⁴ (2015) 6 SCC 363

⁵ (2019) 5 SCC 266

⁶ (2014) 10 SCC 663

⁷ (2006) 6 SCC 736

⁸ (2005) 10 SCC 228

⁹ CrI.A.No.9 of 2019, dt. 03.01.2019 Supreme Court

¹⁰ (2018) SCC Online SC 2447

¹¹ (2014) 8 SCC 319

¹² (2008) 2 SCC 302

¹³ (2009) 3 SCC 78

¹⁴ LPA 390/2017, C.M.Appl.19101/2017 and 32231/2017, Delhi High Court, dt. 07.01.2019

¹⁵ W.P.(CrI.) No.242/2019, dt. 6.11.2019, Supreme Court

¹⁶ 1950 AIR 222

up to 30% to 40% per annum. To gain confidence, they paid profits/returns for few months initially and later they defaulted to give profits. The deposited amounts have been diverted to various Shell companies and also purchased the properties in the name of Directors, 2nd petitioner, company's name and their relatives. It is also stated that after registration of criminal cases also, the accused persons colluded with some others and tried to sell those properties clandestinely in order to make wrongful gain. It is also submitted that as per Section 212 (2) of the Companies Act,, the Serious Fraud Investigating Office has got jurisdiction to investigate in respect of the offences under the Companies Act, 2013, but not otherwise. Therefore, the police authority has jurisdiction to investigate into the matters. It is also submitted that the investigation in the above mentioned crimes is being conducted properly, fairly, impartial and efficiently in an unbiased manner, as a result of which critical and crucial evidence has been seized. It is also submitted that there are about 1,72,000 investors having deposited a sum of Rs.5,600 Crores approximately across India and abroad. In order to protect the interest of the said victims, it is just and necessary to the police authorities to proceed with the investigation otherwise, the petitioners will be left off from the clutches of law. It is also submitted that writ petition is not maintainable as the prayer sought for is to quash more than one F.I.R. It is also submitted that charge sheets have been filed in some cases and as such the prayer has to be

amended. He relied on the judgment of the High Court of Delhi in *S.P.Gupta v. State*¹⁷.

The learned Standing Counsel appearing for the Serious Fraud Investigation Office and the Union of India, would submit that as per the directions of the Central Government, the Director, Serious Fraud Investigation Office, has appointed the Inspectors to carry out the investigation into the affairs of 14 Heera Group Companies and the same is **continuing** in terms of the provisions of the Companies Act, 2013. It is also submitted that the F.I.R.s registered for commission of offences punishable under Sections 406, 409, 420 and 506 of I.P.C., and Section 5 of the Telangana Protection of Depositors of Financial Establishments Act, 1999 and as per the provisions of the Companies Act, 2013 there is no bar to conduct investigation by separate agencies. It is also submitted that the F.I.R.s registered by various authorities under separate Acts may not be forwarded to the Serious Fraud Investigation Office, as its jurisdiction is confined to the offences related to Companies Act, 2013 only. Further, there is no bar under Section 212 (2) of the Companies Act, in respect of other agencies from proceeding with their respective investigations under various Acts.

Learned Counsel appearing for respondent Nos.12 and 14 in W.P.No.5449 of 2019 and proposed respondent No.11 in W.P.No.7950 of 2019 would submit that 26 F.I.R.s have been lodged

¹⁷ (2005) 119 DLT 214

throughout India against the 1st petitioner Company represented by the 2nd petitioner. It is further submitted that the Writ of Certiorari is not maintainable. It is further submitted that the Telangana Protection of Depositors of Financial Establishments Act, 1999 is a Special Act and therefore, it will override, rather prevail over the Central Legislation i.e., the Companies Act. It is also submitted that 262 victims were examined and they deposited approximately Rs.18.00 Crores. Respondent Nos.12 and 14 deposited huge amount in Heera Group and they received profits only till March, 2018. They came to know that with the money, which was invested by the public in general, the petitioners were prepping themselves to flee and they also came to know that the 2nd petitioner and Heera Group have acquired properties. He relied on the following citations.

1. *State of Haryana and others v. Bhajanlal and others*¹⁸
2. *Lalitha Kumari v. Government of Uttar Pradesh and others*¹⁹
3. *State of Bihar and another v. P.P.Sharma, IAS and another*²⁰
4. *Ajeet Singh v. State of Uttar Pradesh and others*²¹
5. *Prabodh Verma and others v. State of U.P. and others*²²
6. *Collector and others v. P.Mangamma and others*²³
7. *Ramesh Govindaram (dead) through LRs v. Sugra Humayun Mirza Wakf*²⁴

¹⁸ (1992) Supp(1) SCC 335

¹⁹ (2014) 2 SCC 1

²⁰ (1992 Supp (1) SCC 222

²¹ (2006) SCC Online All 1409

²² AIR 1985 SC 167

²³ (2003) 4 SCC 488

²⁴ (2010) 8 SCC 726

Sri M.Sudheer Kumar, learned Counsel appearing for the proposed respondent No.17 in W.P.No.5449 of 2019 would submit that believing the assurances and inducement made by the 2nd petitioner/A2 and other Directors of the 1st petitioner/A1 company, several innocent people have invested their hard earned money with Heera Group Companies. In the year 2014, the Marketing Executive of Heera Group of Companies, approached the proposed respondent No.17 stating that Heera Group is owning about 15 companies in India and abroad and running them with all legal permissions and induced him to invest in the said companies as Halal Policy on Islamic Religious Law in Assets Management, Real Estate Securities, stock bonds, shares, mutual funds etc. and assured of very high returns and believing the assurances made by the writ petitioners and the other Directors, he had invested huge amounts totaling to Rs.1,44,00,000/- under various cheques and the writ petitioners issued Unit Purchase Receipts for the amounts invested by him under different schemes and for different durations. Though the proposed respondent No.17 had requested for refund of the amount on 10.10.2018, but the writ petitioners failed to refund any amount till date, instead of paying they started threatening him with dire consequences. It is further submitted that the wife, son and daughter of the proposed respondent No.17 also deposited an amount of Rs.40,00,000/-, Rs.45,00,000/- and Rs.10,00,000/- respectively with the writ petitioners and the writ petitioners have diverted the said money for their personal gain.

A perusal of the record would show that due to its inability to pay dividends to investors, the 1st petitioner company has made certain arrangements with the investors. However, the political enemies and business competitors provoked and set up certain investors to make series of complaints against both the accused and different police stations have registered F.I.R.s under Sections 406, 409, 420 and 506 of I.P.C. and also under Section 5 of the Telangana Protection of Depositors of Financial Establishment Act, 1999 (as amended in 2003). The 2nd petitioner was arrested on 15.10.2018 and still she is in judicial custody. The learned Counsel for the petitioners submitted that where once she is released on bail in one case, the police are arresting her in another case and in this way, even though she being a woman is entitled for bail under Section 437 (2) of Cr.P.C., police with a *mala fide* intention preventing her release on bail. This is a clear violation of her fundamental right to live enshrined under the Constitution.

It is significant to note that the 2nd petitioner is in judicial custody for more than a statutory period of 60 days/90 days as the case may be and till now Charge Sheets are not filed. Therefore, the 2nd petitioner is entitled for a statutory bail and none of the penal provisions including Section 5 of the Depositors Act will not override the right to bail of the 2nd petitioner in view of the decision of this Court in **Avva Venkata Rama Rao and another v. State of**

A.P. rep. by its Public Prosecutor²⁵, but she has not applied for such bail which demonstrates that she is *bona fide*. Therefore, learned Counsel vigorously argued that the petitioners are not intending to escape from the legal process and they are ready to cooperate with the investigating agencies. What all his contention is that because all these violations are falling within the special law namely the Companies Act, 2013, the investigating agency under the said Act has to investigate into the offences or irregularities committed by the Company or the Directors. He would also submit that such kind of irregularities said to have been committed by a Company in its business affairs requires a special skill and knowledge including accounting, compliance with regulatory mechanisms like ROC, SEBI, RBI etc., and for doing such kind of skilful investigation, it is the Serious Fraud Investigator under the Companies Act is the appropriate agency and normal investigation by the police may not be able to do such investigation.

The contention of the learned Government Pleader for Home, is that under the pretext of a Corporate Veil, the 2nd petitioner has resorted to cheat the gullible people, collected multiple crores of money, played fraud on them and siphoned off those funds to foreign countries and if the investigation is completed, all these crimes committed by the accused will be unravelled. His further contention is that the Writ Petitions are intended to thwart the

²⁵ (2018) 2 ALD (CrI.) 447

investigation by the Police and there is nothing to be investigated by the Serious Fraud Investigation Department under the Companies Act.

Having regard to the above, the points that arise for consideration are:

1. Whether the offences alleged against the accused are falling within the purview of Serious Fraud Investigation under the provisions of Companies Act?
2. Whether the offences of similar nature, relating to the affairs of the Company if investigated into under different First Information Reports by Police would cause prejudice to the accused?
3. Whether the Court can direct investigation into the offences, registered under different F.I.Rs. but pertaining to similar/ same act of accused be transferred to one agency for effective investigation?

In all the F.I.Rs., the offences registered for investigation are under Sections 406, 409, 420 and 506 of I.P.C. and Section 5 of the Telangana State Protection of Depositors of Financial Establishments Act, 1999. It is stated in the affidavit that after news spread about the company, various complaints have been registered in different States like Andhra Pradesh, Karnataka, Kerala and Maharashtra under respective State enactments similar to Telangana State Protection of Depositors of Financial Establishment Act.

It is contended for the petitioners that the case does not attract any of the provisions of Indian Penal Code or Section 5 of the Telangana State Protection of Depositors of Financial Establishment Act. It was submitted that where the investor invested his money for a long time and was getting paid dividends regularly over a long period of time, merely because default is committed in one year or two due to financial crisis related to market conditions by the company cannot be treated as 'default' for the purpose of Section 5 of the Telangana State Protection of Depositors of Financial Establishment Act. In fact, the Telangana State Protection of Depositors of Financial Establishment Act is not applicable to a case where there is an arrangement between the Company/Financial Institution and the investor for repayment of deposit/investment. However, while considering similar position under Chit Funds Act, the Supreme Court in *Shriram Chits and Investment (P) Ltd. V. Union of India*²⁶, observed that "dealing in chit funds does not tantamount to money lending and the chit transaction is akin to a recurring deposit in a bank and the foreman of the chit is a trustee of the funds paid into the chit by the subscribers." Therefore, the instant case falls within the domain of Companies Act, 2013.

Further, the law is well settled by the Apex Court in its recent judgment that failure to repay a loan is not a criminal offence unless

²⁶ (1993) Supp. (4) SCC 226

there is a fraudulent intent. In *Satishchandra Ratanlal Shah v. State of Gujarat (9 supra)* the Apex Court observed as under:

“The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 of I.P.C., without there being a clear case of entrustment.”

It is further observed by the Apex Court that inducement and dishonest intention are necessary ingredients to attract the penal provisions of sections 415 and 420 of I.P.C.

On the other hand, the Companies Act, which is a special legislation dealing with the affairs of the Company envisaged a special crime and investigation under the caption ‘serious frauds’. Section 210 of the Companies Act, provides investigation into affairs of the company that may be initiated by the Central Government, or on the receipt of report of the Registrar or Inspector, or on the special resolution by the Company or in the public interest. It may also be initiated by order of Court or the Tribunal in any proceedings pending before it. To carry on the function of investigation, the Central Government may appoint one or more persons as Inspectors to investigate into the affairs of the company and to report to the Central Government.

Section 211 of the Companies Act provides that Serious Fraud Investigation Office shall be headed by Director and consist of such

number of experts from various fields namely, Banking, Corporate Affairs, Taxation, Forensic Audit, Capital Market, Information Technology, Law or such other fields as may be prescribed.

Section 217 of the Companies Act provided certain powers and procedure to the Inspectors including seizure, recording statements, discovery and production of documents and collection of evidence. Under Sections 218, 220, 221 and 222, the Act provided penalties, seizure of assets of the company, directors etc. and also for prosecution and sentence.

A careful perusal of the above provisions of Companies Act, 2013, demonstrates that the irregularities in conducting the business and affairs of the company would stand on a special category for investigation and that is the reason why experts in various fields of the Corporate Law are sought to be appointed as members of the team of investigators. It is evident that criminal acts under Sections 409, 410 and 420 of I.P.C. are general offences/crimes, whereas the case on hand falls within the offence relating to company affairs is falling within a special category that requires special kind of investigation unlike normal investigation into general offences under I.P.C.

This takes me to discuss as to what is the importance of investigation with reference to the rights of the persons accused of an offence. The law in this field is well settled by now that free and

fair investigation and also fair trial are enshrined in Articles 14, 21 and 39-A of the Constitution of India. It is the duty of the State to ensure that every citizen of the Country should have the free and fair investigation and trial. The preamble and the Constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore, such a right is a constitutional right as well as a fundamental right. Such a right equally be protected to the accused and to the victim depending upon the facts of the case. Therefore, such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would be violation of Article 14 of the Constitution of India.

In *Zahira Habibulla H. Sheikh v. State of Gujarat*²⁷ the Apex Court has observed as under:

“36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned.

There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz.

²⁷ (2004) 4 SCC 158

whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be tuning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

"An investigator is the kingpin of criminal justice delivery system" said the Supreme Court in *Amitbhai Anilchandra Shah v. CBI and another*²⁸. The principles governing fair investigation mutatis mutandis apply to fair investigation too. In *Azija Begum v. State of Maharashtra*²⁹ the Apex Court held as under:

"13. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing the rule of law and maintaining proper balance in law and order".

²⁸ (2012) SCC 254

²⁹ (2012) 3 SCC 126

In *Nirmal Singh Kahlon v. State of Punjab*³⁰ the Apex Court was pleased to observe that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. The observation of the Apex Court is as under:

“28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e., to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation.”

In *Subramanian Swamy v. C.B.I.*³¹ the Apex Court has ruled that any investigation into crime should be fair and should not be tainted. It has been further held that Rule of Law is a facet of equality under Article 14 of the Constitution of India. Considering the duty of an investigator to conduct a proper investigation, the Apex Court in *Manohar Lal Sharma v. Principal Secretary and others*³² made its observation that a proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences.

³⁰ (2009) 1 SCC 441

³¹ (2014) 8 SCC 682

³² (2014) 2 SCC 532

The Apex Court in the case of *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*³³ held as under:

“197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the Countries in the World. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime.”

The synopsis of the above law is that the investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

In *Sunair Hotels Limited v. Union of India and another* (14 *supra*) a Division Bench of Delhi High Court, held as under:

“62. In the Companies Act, 2013, however both Section 210 and Section 212 confer powers on the Central Government to order an investigation on almost similar grounds as enumerated in the three sub-clauses. An investigation under Section 210 can be conducted by investigating officers appointed by the Government, who derive their powers of investigation from Section 217. On

³³ (2010) 6 SCC 1

the other hand, it is important to note that the SFIO is a body comprising experts in the field of forensic audits, taxation, banking etc. Further, the SFIO derives its powers of investigation under Section 212 and has been given far greater powers to investigate the affairs of the company, rather than that would be available to investigations conducted under Section 210. For instance, when a case has been assigned to the SFIO, no other agency may investigate the affairs of the company and all files concerning the affairs of the company should be transferred to the SFIO. Further, certain offences if discovered in the course of an SFIO investigation, bail would only be made available at a much higher threshold than under Section 437 of the Criminal Procedure Code. The SFIO is also bestowed with greater powers of arrest. Upon completion of the investigation by the SFIO it must submit its report to the Central Government upon which the Government may direct it to initiate prosecution against the officers of the Company.”

In the background of the above legal position, the facts of the case are examined meticulously.

Therefore, it is obligatory on the concerned investigation agency to conduct honest, transparent and unbiased investigation and the petitioners will not have any objection for it. As the alleged violation of law under the Companies Act, if any, falls within the purview of Serious Fraud Investigation, in relation to fudging of accounts and siphoning off funds of the Company that fall within the violation of the provisions of the Companies Act, 2013 cannot be investigated by Police because, such investigation requires special

qualifications like, verification of balance sheet, company accounts and statements, Board resolutions, validity of Share purchase agreements, compliance with the regulatory requirements with Banks and Financial Institutions, SEBI and Registrar of Companies are vested with the absolute powers, competence and methodology for investigation into those special matters and not the normal police. If general Police investigates into a special offence, since they lacking expertise, as rightly argued by the learned Counsel for the petitioners that there is likelihood of ensuring prejudice to the accused. If that happens, the rule of law that State is under obligation to ensure unbiased and transparent investigation in furtherance of fair trial principle is abrogated.

Inspection of Books of Accounts, taken up in isolation, would not serve much purpose. Indeed, in the present form as provided for under the Companies Act, there is a danger that such inspections may be taken as a part of administrative routine. There would be a considerable expenditure of time and energy both on the part of the inspecting agency as well as the company without accomplishing much. Compliance with law cannot be enabled by a presumption of violation. Nor can it be ensured by physically checking of entities involved. If that were the case it would be practically impossible to enforce any legal system. The benefits of having an elaborate framework of statute and rules would be lost if law enforcing agencies are required to also physically inspect the subject entities to be confident that they are complying with it. Compliance should be

based on enlightened self-interest, requiring intrusion by law enforcement agencies only in limited, well established circumstances.

The High-Power Committee constituted by the Ministry of Corporate Affairs, Government of India, its report observed that normal police agency shall not be allowed to investigate violations of Company Law by the Corporates. The material observations are as under:

“The committee took note of the fact that corporate frauds were generally the result of very complex and intricate series of actions. It may not be easy for the law enforcement agencies at the State Government level to respond effectively to such situations in the absence of proper training and development of skills of the concerned law enforcing personnel for such investigations. The Committee recommends that the SFIO, set up by the Central Government, should serve as a Nodal Agency for development of such expertise and its dissemination to the State Governments, who may also be encouraged to set up similar organisations and provide requisite specialisation as a part of their action against economic offences. This would also enable better coordination in respect of prosecution of offences under IPC.”

This report highlights the importance of special kind of investigation into corporate frauds. As per sub-section (3) of Section 212 of the Companies Act, 2013, the investigation into the affairs of a company shall be conducted in the manner and by following the

procedure specified in Chapter XIV of Companies Act, 2013. The SFIO shall submit its report to the Central Government within the period specified in the order.

As per sub-Section (4) of Section 212 of the Companies Act, 2013, the Director, SFIO, shall cause the affairs of the company to be investigated by an investigating officer, who shall have the powers of the Inspector under Section 217 of the Companies Act, 2013.

As per sub-section (5) of Section 212 of the Companies Act, 2013, it shall be the responsibility of the company, its officers and employees, who are or have been in the employment of the company to provide all information, explanation, documents and assistance to the investigating officer as he may require for conduct of business.

As per sub-section (11) of Section 212 of the Companies Act, 2013, the Serious Fraud Investigation shall submit an interim report, if so directed by the Central Government.

As per sub-section (12) of Section 212 of the Companies Act, 2013, on completion of investigation, the SFIO shall submit the Investigation Report to the Central Government.

As per sub-section (17) (a) of Section 212 of the Companies Act, in case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government police authority, income-tax authorities having any information or documents in respect of such offence

shall provide all such information or documents available with it to the Serious Fraud Investigation office.

As per sub-section (17) (b) of Section 212 of the Companies Act, the Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

As per Section 212 (1) of the Companies Act, the Central Government may assign the investigation into the affairs of a company to the Serious Fraud Investigation Office –

- a) on receipt of report of the Registrar or Inspector under Section 208;
- b) on intimation of a special resolution passed by a company requesting an investigation into its affairs;
- c) in public interest;
- d) on the request of any Department of Central Government or State Government.

The Supreme Court in **Serious Fraud Investigation Office v. Rahul Modi (5 supra)** on similar circumstances with few differences explained the scope of SFIO in Para Nos.26 and 29, thus:

“26. Reading of the provisions of 2013 Act shows that certain Sections in Chapter XXIX prescribe punishment for offences such as fraud, false statement, false evidence and

withholding of property under Sections 447, 448, 449 and 452 respectively. The punishment for fraud involving an amount of at least Rs.10 lakhs or 1 per cent of the turnover of the Company, is imprisonment for a term which may extend to 10 years. The offence of fraud in relation to the affairs of a Company is considered to be a grave offence and the writ petitioners were allegedly guilty of such offence....

29. The very expression “assign” in Section 212 (3) of the Companies Act contemplates transfer of investigation for all purposes where after the original Investigating Agencies of the Central Government or any State Government are completely denuded of any power to conduct and complete the investigation in respect of the offences contemplated therein. The idea under sub-Section (2) is complete transfer of investigation. The transfer under sub-Section (2) of Section 213 would not stand revoked or recalled in any contingency. “

The Supreme Court, therefore, observed that any other investigation agencies before whom the offences falling within the purview of the Companies Act, are pending investigation, are under statutory obligation to assign (transfer) such investigation to the SFIO for proper investigation. In the reported case, the ‘transfer petitions’ are allowed by the Apex Court and granted conditional bail to accused with a direction to surrender before the SFIO/Special Court.

The underlying ratio of criminal jurisprudence is to protect the rights of not only the aggrieved but also of the accused. Where similar offences are registered in various police stations and they are

falling within the Companies Act (a special legislation) and normal police are investigating into the offences at various police station limits, this will lead to absurdity, confusion, conflict of views and consume long time. On the other hand, it will cause harassment to the accused besides humiliation as she will be forced to run from pillar to post every day during investigation. Therefore, in view of the legal position above, and without expressing any opinion whether all the F.I.Rs., registered by the Police under Indian Penal Code are attracted or not, this Court is of the view that ends of justice would be met if all the crimes are transferred to SFIO for investigation with the following directions:-

1. Respondent Nos.6 to 10 in W.P.No.5449 of 2019 and respondent No.5 in W.P.No.7950 of 2019, are directed to assign the investigation in the aforesaid crimes to SFIO, Hyderabad, by obtaining necessary orders from the State Government, if necessary;
2. The 2nd petitioner shall be released on her furnishing a personal bond for Rs.50,00,000/- (Rupees Fifty Lakhs) with two sureties to the like amount to the satisfaction of the Metropolitan Sessions Judge, Nampally, Hyderabad.
3. The 2nd petitioner shall deposit an aggregate amount of Rs.5,00,00,000/- (Rupees Five Crores only) before the Metropolitan Sessions Judge, Nampally, Hyderabad. The amount so deposited by the 2nd petitioner, the Metropolitan Sessions Judge, Nampally, Hyderabad, be invested in an appropriate interest bearing deposit scheme in a Nationalised Bank.

4. The 2nd petitioner is further directed to appear before the SFIO on or before 10.01.2020 and then the SFIO is at liberty to proceed with the investigation by obtaining a bond from her with sufficient sureties for further appearance during course of investigation by SFIO under the provisions of Companies Act, 2013.
5. After such appearance before the SFIO, the 2nd petitioner shall make all possible attempts to settle the claims of the concerned complainants/ informants, within a period of three months.
6. The 2nd petitioner shall extend full cooperation to the SFIO as and when necessary.
7. The 2nd petitioner shall not leave the Country without prior permission in writing from SFIO.
8. The 2nd petitioner shall not interfere with the investigation, intimidate or induce the investors and she shall co-operate with the SFIO.
9. The 2nd petitioner shall surrender her passport before the SHO, Central Crime Station, Hyderabad.
10. In future, if any person/persons make complaints to any Police Station in Telangana State regarding the same issue, the concerned police shall immediately register the F.I.R. and transfer the same to the SFIO for further investigation.
11. All the respondents are at liberty to seek further directions from this Court if they find any changed circumstances or reasons to alter, amend and modify the above directions.

12. If the 2nd petitioner fails to abide by any of the above conditions intentionally and if it is so established, not less than 50% of the amount deposited by her before the Metropolitan Sessions Judge, Hyderabad, in terms of this order, shall stand forfeited.

With the above directions, both the Writ Petitions are disposed of. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G.SRI DEVI

23.12.2019
gkv/Gsn





