IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE TWENTY SECOND DAY OF DECEMBER TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION NO: 3966, 3982 AND 4272 OF 2020

CRIMINAL PETITION NO: 3966 OF 2020

Between:

1. Ishoo Narang, S/o. V.S. Narang, aged about 50 years, Managing Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No. A-204, My Home Abhra, Madhapur, Hyderabad, 4th Floor. 500081 and also registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
2. Chandulal Patel, S/o. Harjivan Patel, aged about 53 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
3. Rudra Raju Srinivas Shah, S/o. R.V. Raju, aged about 51 years, Non-Executive Director, M/s. Kyori Oremin Limited, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
4. M/s. Kyori Oremin Limited, Hyderabad, represented by its Managing Director, Ishoo Narang, S/o. V.S. Narang, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.

...Petitioner/Accused No.1 to 4

AND

1. The State of Telangana, represented by its Inspector of Police, CBI/BS and FC, Bangalore (through the Special Public Prosecutor for CBI and ACB Cases, High Court for the State of Telangana, at Hyderabad).
2. Central Bank of India, represented by its Assistant General Manager, Corporate Finance Branch, Bank Street, Koti, Hyderabad - 500 095.

...Respondents/Complainants

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the compliant and investigation in FIR No. RC-11(E) of 2018 of CBI, BS and FC, Bangalore in so far as the petitioners are concerned.

I.A. NO: 2 OF 2020

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings including arrest and direction for production of documents which are in the custody of the petitioners in connection with/concerning FIR No. RC-11(E) of 2018 of CBI, BS and FC, Bangalore, on the compliant of the 2nd respondent, pending disposal of the quash petition.

I.A. NO: 3 OF 2020

Between:

The State of Telangana, represented by its Inspector of Police, CBI/BS and FC, Bangalore (through the Special Public Prosecutor for CBI and ACB Cases, High Court for the State of Telangana, at Hyderabad).

...Petitioner/Complainant/Respondent No.2

AND

1. Ishoo Narang, S/o. V.S. Narang, aged about 50 years, Managing Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No. A-204, My Home Abhra, Madhapur, Hyderabad, 4th Floor. 500081 and also registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
2. Chandulal Patel, S/o. Harjivan Patel, aged about 53 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
3. Rudra Raju Srinivas Shah, S/o. R.V. Raju, aged about 51 years, Non-Executive Director, M/s. Kyori Oremin Limited, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
4. M/s. Kyori Oremin Limited, Hyderabad, represented by its Managing Director, Ishoo Narang, S/o. V.S. Narang, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.

...Petitioners/Accused/Respondents

5. Central Bank of India, represented by its Assistant General Manager, Corporate Finance Branch, Bank Street, Koti, Hyderabad - 500 095

...Respondent-1/Respondent

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to vacate the stay granted on 15/09/2020 in CRLP. No. 3966 of 2020, in the interest of Justice.

CRIMINAL PETITION NO: 3982 OF 2020

Between:

1. Ishoo Narang, S/o. V.S. Narang, aged about 50 years, Managing Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No. A-204, My Home Abhra, Madhapur, Hyderabad, 500081 and also registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
2. Chandulal Patel, S/o. Harjivan Patel, aged about 53 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
3. Rudra Raju Srinivas Shah, S/o. R.V. Raju, aged about 51 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.
4. M/s. Kyori Oremin Limited, Hyderabad, represented by its Managing Director, Ishoo Narang, S/o. V.S. Narang, registered office at Flat No 101, GRC Residency, Khanamet, Madhapur, Hyderabad. 500081.

...Petitioner/Accused No.1 to 4

AND

1. The State of Telangana, represented by its Inspector of Police, CBI/ACB, Hyderabad (through the Special Public Prosecutor for CBI and ACB Cases, High Court for the State of Telangana at Hyderabad).

2. Bank of Maharashtra, represented by its Deputy General Manager and Zonal Manager, Stressed Asset Management Branch, H.No.4-3-448 to 460and 465 to 468, First Floor, Vinoothna Pittle's Majesty, Gopal Bagh, Near Bank Street, Koti, Hyderabad.

...Respondents/Complainants

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the complaint and investigation in FIR No. RC03520A0002, CBI/ACB, Hyderabad in so far as the petitioners are concerned.

I.A. NO: 3 OF 2020

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to direct the respondents to forthwith return the registered sale deeds/security documents of the petitioners in respect of which security interest was created by the petitioners while securing credit facilities from the 2nd respondent bank since the loan account is ready liquidated and no due certificate was issued by the 2nd respondent bank/ pending disposal of the quash petition.

I.A. NO: 2 OF 2020

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings including arrest and direction for production of documents which are in the custody of the respondents in connection with/concerning FIR No. RC0352020A0002, CBI/ACB, Hyderabad, on the compliant of the 2nd respondent, pending disposal of the quash petition.

CRIMINAL PETITION NO: 4272 OF 2020

Between:

1. Ishoo Narang, S/o. V.S. Narang, aged about 50 years, Managing Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081.
2. Chandulal Patel, S/o. Harjivan Patel, aged about 53 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081.
3. Rudra Raju Srinivas Shah, S/o. R.V. Raju, aged about 51 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081.
4. M/s. Kyori Oremin Limited, Hyderabad, represented by its Managing Director, Ishoo Narang, S/o. V.S. Narang, registered office at R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081.

...Petitioner/Accused

AND

1. Assistant Director, Enforcement Directorate, Government of India, Ministry of Finance, No.5-10-174, 3rd Floor, Shakar Bhavan, Basheerbagh, Hyderabad - 500 004.
2. Inspector of Police, Central Bureau of Investigation/BS and FC, Bengaluru (through Special Public Prosecutor for CBI and ACB Cases, High Court for the State of Telangana, at Hyderabad)
3. Central Bank of India, rep. by its Assistant General Manager, Corporate Finance Branch, Bank Street, Koti, Hyderabad - 500 095.

...Respondent/Complainants

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the complaint and investigation in ECIR/HYZO/03/2019/2420, 2421 and 2422, dated 11.08.2020 by the 1st respondent which is based on FIR RC-11(E) of 2018 of CBI, BS and FC, Bangalore and 3rd respondent, in the interest of justice.

I.A. NO: 1 OF 2020

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to dispense with the filing of the complaint copy in ECIR/HYZO/03/2019/2420, 2421 and 2422, dated 11.08.2020 for the present, in the interest of justice since the same is not made available to the petitioners by the 1st respondent despite conducting a search panchanama on 16.09.2020, pending disposal of the quash petition.

I.A. NO: 2 OF 2020

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings relating to the enquiry/investigation including arrest of the petitioners or issuing summons to the petitioner for appearance in ECIR/HYZO/03/2019/2420, 2421 and 2422, dated 11.08.2020, pending disposal of the quash petition.

I.A. NO: 3 OF 2020

Between:

Assistant Director, Enforcement Directorate, Government of India, Ministry of Finance, No.5-10-174, 3rd Floor, Shakar Bhavan, Basheerbagh, Hyderabad - 500 004

...Petitioner

AND

1. Ishoo Narang, S/o. V.S. Narang, aged about 50 years, Managing Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081.

...Respondent No. 1

2. Chandulal Patel, S/o. Harjivan Patel, aged about 53 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081.

...Respondent No.2

3. Rudra Raju Srinivas Shah, S/o. R.V. Raju, aged about 51 years, Non-Executive Director, M/s. Kyori Oremin Limited, Hyderabad, R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081.

...Respondent No.3

4. M/s. Kyori Oremin Limited, Hyderabad, represented by its Managing Director, Ishoo Narang, S/o. V.S. Narang, registered office at R/o. Flat No.101, Plot No.19/C, GRC Residency, Khanamet, Madhapur, Hyderabad - 500 081Inspector of Police, Central Bureau of Investigation/BS and FC, Bengaluru (through Special Public Prosecutor for CBI and ACB Cases, High Court for the State of Telangana, at Hyderabad)

...Respondent No.4

5. Inpector of Police, Central Bureau of Investgation/SB and FC, Bengaluru.

...Respondent No.5

6. Central Bank of India, rep. by its Assistant General Manager, Corporate Finance Branch, Bank Street, Koti, Hyderabad - 500 095.

...Respondent No.6

...Respondents

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to vacate the interim stay dated 19.10.2020 in CRL.MP 01 of 2020 in the above Criminal Petition No.4272 of 2020.

These Petitions coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri Vedula Venkata Ramana, Learned Senior Counsel for Sri D. B. Chaitanya, Advocate for the Petitioners and Sri B. Narasimha Sharma, Learned Standing Counsel for Respondent No. 1 and Sri K. Surender, leaned Special Public Prosecutor on behalf of the Respondent No2.

The Court made the following: COMMON ORDER

HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION Nos.3966, 3982 & 4272 OF 2020

COMMON ORDER:

All these Criminal Petitions, though relating to different crimes but concerning the same petitioners/accused and relating to similar nature of offences, have been considered together and are being taken up for disposal by way of a common order.

2. Crl.P.No.3966 of 2020 is filed to quash FIR No.11 of 2018 on the file of CBI, BS & FC, Bangalore. The petitioners are accused Nos.1 to 4 in the said crime. The offences alleged against them are under Sections - 409, 420, 467, 468 and 471 read with 120-B of IPC and also under Section - 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'Act, 1988').

3. The very same petitioners have filed Crl.P.No.3982 of 2020 to quash FIR No.RC0352020A0002 on the file of CBI ACB, Hyderabad. The petitioners are accused Nos.1 to 4 in the said crime. The offences alleged against them are under Section - 420 read with 120-B of IPC and under Section - 13 (1) (d) read with 13 (2) of the Act, 1988.

4. The very same petitioners have filed Crl.P.No.4272 of 2020 to quash the complaint and investigation in ECIR/HYZO/03/ 2019/2420, 2421 and 2422 on the file of Assistant Director, Enforcement Directorate, Ministry of Finance, Government of India,

Basheerbagh, Hyderabad. The petitioners are accused Nos.1 to 4 in the said ECIR.

5. Heard Sri Vedula Venkata Ramana, learned Senior Counsel representing Sri D. B. Chaitanya, learned counsel for the petitioners, Sri B. Narasimha Sharma, learned Standing Counsel for Enforcement Directorate and Sri K. Surender, learned Special Public Prosecutor for Central Bureau of Investigation.

6. **The allegations against the petitioners in FIR No.11/2018 on the file of CBI, BS & FC, Bangalore:**

i) The Central Bank of India is *de facto* complainant in the said complaint, dated 30.06.2018,

ii) Petitioner No.4 was incorporated on 14.09.2007 and was engaged in procuring coal from Indonesia for selling the same in domestic market and iron ore in Chinese market. Petitioner No.1 - accused No.1 along with others has floated petitioner No.4. Petitioner No.1 is the Managing Director of petitioner No.4. It also owned M/s. Jumbo Mining Limited, a Hyderabad based Mining and Ceramic Raw Material Export Company.

iii) Petitioner No.4 was recognized by the Government of India as a Star Export House and it became second largest Exporter from India for Ceramic Raw Material. The said M/s. Jumbo Mining Limited was sold to IMERYS, a Euro 6 Billion Company in the year 2007. Petitioner No.3 - accused No.3 is a promoter of RHI Clasil

Limited, a Joint Venture Refractory Unit and part of Euro 1.9 Billion RHI AG Group, Germany. He was proposed to be responsible for planning the long term strategy of petitioner No.4.

iv) Petitioner No.2 - accused No.2 has more than 2½ decades of experience in cement industry. He is also the promoter of M/s. CH Patel Agency, Hyderabad, which is engaged in high value cement trading business in India. Petitioner No.2's contacts in the trade have helped petitioner No.4 to establish many customers engaged in cement manufacturing.

v) Petitioner No.4 availed credit facilities from different banks including the Central Bank of India, the State Bank of India, the Bank of Baroda, ICICI Bank and the Bank of Maharashtra under multiple banking arrangements for the purpose of doing the business of trading of coal.

vi) The Central Bank of India alleged that petitioner No.4 viz., M/s. Kyori Oremin Limited along with its Directors, the other accused, have committed fraud and cheated the Bank and on account of their deliberate act and omission, caused wrongful loss to a tune of Rs.60.00 Crores approximately to the bank.

vii) In the year 2012, petitioner No.4 represented by petitioner Nos.1 to 3 have approached the Central Bank of India, the *de facto* complainant, for financial assistance and working capital requirement by way of cash credit hypothecation and letter of credit facilities

under the multiple banking arrangements. They have offered security for the facilities to be granted by the Central Bank of India. The details of the property are specifically mentioned in the complaint dated 30.06.2018. The details of loan and the personal guarantees offered by the petitioners were also specifically mentioned in the complaint.

viii) After assessing the requirements, the Central Bank of India has sanctioned an amount of Rs.20.00 Crores by way of cash credit hypothecation and Rs.40.00 Crores by way of letter of credit facility on 19.03.2012 on a pre-condition that other banks shall give no objection certificate for sharing the primary securities. On receipt of no objection certificate from other banks and after execution of necessary documents/creation of security, the Company started availing the loan facilities.

ix) Initially, petitioner No.4 maintained the cash credit account within the limits and adjusted the LCs on due date without any devolvement. Subsequently, during the year 2014, petitioner No.4 made a request for enhancement of limit from existing Rs.60.00 Crores to Rs.85.00 Crores and the same was sanctioned under the proposed consortium arrangement with the Central Bank of India as a lead bank. However, formation of consortium did not materialize due to non-tie-up of the assessed limits with other banks.

x) Stock audit was conducted by the Central Bank of India and the details of the same were specifically mentioned in paragraph - 10 of the complaint dated 30.06.2018. Internal audit and statutory audits were conducted and till September 2015, there has been no major adverse remark. Petitioner No.4 continued to enjoy the existing loan sanctioned limits of Rs.60.00 Crore with the bank. The company utilized the loan sanctioned limits fully under cash credit hypothecation and LC facilities. The terms of sanction conveyed to the petitioners herein and the same was acknowledged by them. However, the terms and conditions of the loan sanctioned were not complied with. The account was classified as Non-Performing Asset (NPA) on 30.09.2015 as per the guidelines of the Reserve Bank of India since petitioner No.4 failed to repay the loan over dues. The balance outstanding on the date of NPA is Rs.62.47 Crore. The fraud is registered with the Reserve Bank of India on 30.11.2016. The account has been declared as fraud on 30.11.2016 for the reasons specifically mentioned therein.

xi) The bank has decided to conduct forensic audit and the same was allotted to M/s. S.P. Rungta and Associates, Chartered Accountants, Mumbai, which in turn, conducted forensic audit and submitted its report on 13.10.2016 pointing out serious lapses including the lapse that petitioner No.4 has not followed the prudent accounting policy. The audited financial statements do not reflect true and fair view. The auditors have declared that the balances of

debtors/credits etc., are not reliable. Petitioner Nos.1 to 3 have not co-operated with the auditors in carrying the financial audit and not made available the books and records to assess the inventory position. Petitioner No.4 has not filed annual returns for the year 2013-14 and 2014-15. Petitioner No.4 does not adopt the prudent accounting policy to hide and prevent untrue and unfair financial position of the company. The said criminal fraud is evident and apparent from the books of the company.

xii) The Central Bank of India has conducted examination of staff accountability and found that three of its staff members are accountable for procedural lapses. With the said allegations, the Central Bank of India has requested the Superintendent of Police, CBI, Bangalore, to take action against the petitioners herein.

7. **The allegations against the petitioners in FIR No.RC0352020A0002 on the file of CBI ACB, Hyderabad**:

i) The Bank of Maharashtra is the *de facto* complainant in the said complaint, dated 29.02.2020. Petitioner No.4 availed loans from the bank including cash credit of Rs.5 cores and inland/foreign letter of credit of Rs.15.00 Crores. The same was enhanced to Rs.23.00 Crores on 01.01.2014.

ii) After running for about 1-2 years, petitioner No.4 posted loss for 2014-15 and started default in its payment obligations from May 2015. Petitioner No.4 could not meet the obligations under

letters of credit already established by the bank and bank has to repay it on behalf of petitioner No.4. With default persisting, the account finally slipped as NPA on 29.08.2015.

iii) A joint lenders forum was set up by all the lenders and forensic audit was conducted to ascertain the status of funds and irregularities if any. The auditors i.e., M/s. S.P. Rungta and Associates, have conducted forensic audit and submitted their report in October, 2016. In the report, it is specifically mentioned that petitioner No.4 did not provide all required documents and books of accounts for a meaningful audit under the pretext of books having been seized by IT authorities. Petitioner No.4 has written off receivables worth Rs.111.51 Crores during last three years. Purchase transactions under LC and corresponding sales transactions performed by the company are not genuine as physical movement of goods could not be established. Hence, diversion of funds was suspected. Thus, the auditors have specifically mentioned several lapses during the forensic audit and the details of the same are mentioned in the complaint dated 29.02.2020.

8. **The allegations against the petitioners in ECIR No.03/HYZO, dated 18.03.2019 on the file of Assistant Director, Enforcement Directorate, Ministry of Finance, Government of India, Basheerbagh, Hyderabad:**

i) Based on the complaint of loan fraud filed by the Central Bank of India, the Inspector of Police, CBI, BS & FC, Bangalore, has registered the above crime in FIR No.RC-11 of 2018. As per the

mandate of the Prevention of Money Laundering Act, 2002 (for short, PMLA), as they have invoked Sections - 120-B, 420 and 471 of IPC which are scheduled offences under PMLA, the Directorate of Enforcement initiated money-laundering investigation against the petitioners in File No.ECIR/HYZO/03/2019/2420, 2421 and 2422 under the PMLA.

ii) Accordingly, Assistant Director, Enforcement Directorate, Basheerbagh, Hyderabad, has issued summons under Section - 50 (2) (3) of the PMLA and directed petitioner Nos.1 to 3 to appear before him on 01.09.2020. He has issued the said summons only for the purpose of conducting investigation.

iii) According to him, the FIR issued by the Inspector of Police, CBI, BS & FC, Bangalore, at the stage of investigation. The CBI ACB, Hyderabad, has also issued another FIR i.e., FIR No.RC0352020A0002 against the petitioners on the complaint lodged by the Bank of Maharashtra. The allegations in the said FIR are serious in nature.

iv) Bank loan frauds are a scourge on Country's economy and Enforcement Directorate is duty bound to investigate all bank frauds in which there is loss of more than Rs.25.00 Crores to the banks. As per Section - 45 of the PMLA, all offences under the said Act are cognizable and non-bailable.

v) The PMLA deals with three aspects i.e., (i) Offence of Money-Laundering, (ii) Attachment, Adjudication and Confiscation and (iii) Summons, Searches and Seizures etc., Chapter III of the said Act deals with Attachment, Adjudication and Confiscation, Chapter V deals with Summons, Searchers and Seizures, etc., and Chapter VI deals with Appellate Provisions.

vi) After registration of ECIR, the Enforcement Directorate started collecting various documents including bank account statements, income tax returns, details of moveable/immovable properties in the names of the petitioners and other related persons, credit audit reports, stock audit reports, etc. On perusal of the said documents, it is found that, *prima facie*, there appears to be substantial case of fraud and diversion of loan amounts by the management of petitioner No.4. Investigation of the case is at very crucial stage and the Enforcement Directorate has conducted searches on the premises of the Directors of petitioner No.4 on 16.09.2020. Certain crucial and incriminating materials have been recovered. The allegations against the petitioners are of serious nature and are specific in nature and require a detailed investigation.

9. **Contentions of the Petitioners**:

(i) There is abnormal delay in lodging the complaints by both the banks.

(ii) The alleged forensic audit alleged to have been conducted by M/s. S.P. Rungta and Associates is behind back of the

petitioners and they have not given any opportunity to the petitioners.

(iii) Complaints were given on 30.06.2018 and 29.02.2020, but registration of FIRs was done on 03.07.2018 and 16.04.2020 respectively.

(iv) The ingredients of the offences alleged against the petitioners are lacking.

(v) Petitioner No.4 has availed One Time Settlement (OTS) as announced by the banks and the said OTS proposals were accepted by the banks as per the guidelines issued by the Reserve Bank of India. Thereafter, petitioner No.4 has paid the entire amount to the banks, in terms of the said OTS.

(vi) There is no complaint of violation of any of the guidelines issued by the Reserve Bank of India, while availing OTS by the petitioners.

(vii) The banks, having accepted the OTS proposals submitted by petitioner No.4 and received the amounts, cannot prosecute the petitioners by pursuing with the complaints already lodged.

(viii) The banks have already initiated proceedings under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act), after declaring the accounts of petitioner No.4 as NPA.

(ix) The petitioners have repaid the entire loan amount in accordance with OTS and the banks have also issued no objection certificates on 25.08.2020.

(x) The complaints lodged by the banks do not disclose commission of any criminal offence.

(xi) A loan transaction cannot be converted into a criminal prosecution since the bank loan is always supported with heavy surety and third party personal guarantees of the Directors also.

(xii) There are no specific allegations against petitioner Nos.1 to 3.

(xiii) Utilization of loan amount for a purpose other than for which it is sanctioned is not a matter on which the bank has any control.

(xiv) Lending of money by the bank is linked to the security of the guarantees.

(xv) As per the *panchanama* conducted by the Enforcement Directorate, no incriminating material was found in the house or office of the petitioners.

(xvi) The petitioners are ready to co-operate with the CBI and the Enforcement Directorate in concluding the investigation and enquiry.

(xvii) Reliance was placed on the principle laid down by the Apex Court in **Central Bureau of Investigation v. Sadhu Ram Singla**[1], **Indian Oil Corpn. v. NEPC India Ltd.**[2], **Satishchandra Ratanlal Shah v. State of Gujarat**[3] and **Gian Singh v. State of Punjab**[4].

(xviii) As per the principle laid down by the Apex Court in **Sadhu Ram Singla**[1], the prosecution by the CBI itself is

[1] AIR 2017 SC 1312
[2] (2006) 6 SCC 736
[3] (2019) 9 SCC 148
[4] (2012) 10 SCC 303

baseless and it is an abuse of process of law and hence, on the complaint of the CBI, registration of crime by the Enforcement Directorate under the provisions of the PMLA is again an abuse of process of law.

(xix) There is no basis much less proceeds of crime and hence, the provisions of the PMLA do not attract at all.

(xx) The investigation/enquiry by the Enforcement Directorate in ECIR/HYZO/03/2019/2420, 2421 and 2422 is again an abuse of process of law.

10. **Contentions of Enforcement Directorate**:

(i) Based on the complaint of loan fraud filed by the Central Bank of India and Bank of Maharashtra, the Central Bureau of Investigation has registered two crimes against the petitioners and the offences alleged are scheduled offences under PMLA. Therefore, the Enforcement Directorate has initiated money-laundering investigation in respect of the said bank loan fraud in File No.ECIR/HYZO/03/2019/2420, 2421 and 2422 under the provisions of the PMLA. It is only at enquiry stage.

(ii) Enforcement Directorate is duty bound to register a case and initiate PMLA investigation.

(iii) The allegations against the petitioners are serious in nature.

(iv) As per Section - 45 of the PMLA, all offences under the said Act are cognizable and non-bailable.

(v) The investigation is at very crucial stage and Enforcement Directorate has conducted searches and recovered certain crucial incriminating material.

(vi) There is immediate requirement of confronting the Directors of petitioner No.4 to the documents gathered during the investigation. For the said purpose only, the Enforcement Directorate has issued summons under Section - 50 of the PMLA directing petitioner Nos.1 to 3 to appear before it for the purpose of recording their statements and conducting investigation.

(vii) The petitioners, instead of appearing before the Enforcement Directorate, have filed the present Criminal Petitions under Section - 482 of Cr.P.C.

(viii) Reliance was placed on the decisions of the Apex Court in **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur v. State of Gujrat**[5] and **Suman Singh v. Sanjay Singh**[6] and also an unreported judgment of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **Dalmia Cement (Bharat) Limited v. The State of A.P., rep.by its Prl.Secretary, Rev. Department, Hyderabad**[7].

11. **Contentions of the Central Bureau of Investigation**:

(i) On the complaints received from Central Bank of India and Bank of Maharashtra, the CBI has registered the above said two crimes.

(ii) There are serious allegations against the petitioners even in the letters dated 21.09.2019 and 26.12.2019 issued by the Central Bank of India and 31.12.2019 issued by the Bank of Maharashtra, it is specifically mentioned that the OTS is being considered by the bank as a commercial decision and shall have no bearing whatsoever on the

[5] AIR 2017 SC 4843
[6] AIR 2017 SC 1316
[7] Judgment in W.P. Nos.36838 of 2014 and 31143 of 2015, decided on 29.02.2016

criminal cases/investigation, if any, being carried out by the CBI/Police and the same shall proceed as per the law.

(iii) It is also made clear that recovery of the loan taken by the borrower and the criminal action of the fraud committed by the borrower are two separate and distinct matters. It is also clarified that the compromise settlement shall relate only to the recovery proceedings and shall not in any way affect the criminal action taken, if any, which shall continue.

(iv) Therefore, having accepted the said OTS proposals and also the terms therein, now the petitioners cannot say that the complaints lodged by the above said banks is illegal and they are trying to criminalize the civil disputes.

(v) The petitioners have paid meager amounts by availing the benefits under OTS and there is allegation of misappropriation of Rs.140.00 Crores of public money by the petitioners which is an economic offence.

(vi) The said action of the petitioners is unjust enrichment of public money by the petitioners.

(vii) Investigation is pending.

(viii) Reliance was placed on the decisions of the Apex Court in **Central Bureau of Investigation v. Hari Singh Ranka**[8], **Central Bureau of Investigation v. Maninder Singh**[9], **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur**[5] and **Gopakumar B Nair v. Central Bureau of Investigation**[10].

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[8] 2018(1) RCR (Crl.) 336
[9] 2016(1) SCC 389
[10] 2014(2) SCC (Crl) 853

(ix) By placing reliance on the above said decisions, it is contended by the CBI that in the matter of economic offence, exercise of inherent power under Section - 482 of Cr.P.C., by the High Court is unjust.

CONSIDERATION OF THE COURT:

12. In view of the above stated rival contentions, the undisputed facts are as follows:

i) Petitioner Nos.1 to 3 are Managing Director and Directors respectively of petitioner No.4 Company.

ii) Petitioner No.4 Company has availed the credit facilities from different Banks including State Bank of India, Bank of Baroda, ICICI Bank and Bank of Maharashtra under multiple banking arrangements for the purpose of doing the business of trading of coal primarily.

iii) Petitioner No.4 failed to repay the loans within the time schedule, the petitioners have resorted to criminal activities, and as such, the accounts of petitioner No.4 in all the above said banks have been classified as NPA. The account of petitioner No.4 was declared as fraud account on 30.11.2016 by the Central Bank of India. The balance outstanding loan of petitioner No.4 with the Central Bank of India as on 30.06.2018 was Rs.62.47 Crores.

iv) A Joint Lending Forum of all the above said Banks was formed and it has decided to conduct a Forensic Audit of the accounts

of petitioner No.4 Company on the ground that the Directors of the said company have not co-operated with the bank officials by producing relevant documents for the purpose of conducting audit. Accordingly, the said Forensic Audit was entrusted to M/s. S.P. Rungta and Associations which has conducted Forensic Audit and submitted its report pointing out various lapses on the part of petitioners herein. The said lapses were specifically mentioned in the complaints dated 30.06.2018 and 29.02.2020 lodged by the Central Bank of India and the Bank of Maharashtra respectively.

13. The petitioners did not challenge the proceedings issued by the Banks declaring the accounts of petitioner No.4 Company as NPA and fraud accounts and, therefore, the said proceedings attained finality.

14. Petitioner No.4 has availed OTS facility offered by the Banks by submitting appropriate proposals. The said OTS proposals submitted by petitioner No.4 were accepted by the Banks and proceedings were issued informing petitioner No.4 about acceptance of the OTS. The amount to be paid and the time also specifically mentioned therein.

15. In the letter dated 31.12.2019 issued by the Bank of Maharashtra, it is specifically mentioned that the Competent Authority has approved the compromise proposal of petitioner No.4

Company for Rs.8.60 Crores under OTS in full and final settlement of the dues on certain conditions including the following condition:

> "OTS is being considered by the bank as a commercial decision and shall have no bearing whatsoever on the ongoing criminal case / investigation, if any or not known to the bank, being carried out by the CBI / Police and the same shall proceed as per law.
>
> The settlement agreed between the parties shall not in any way affect or construed as a settlement of on-going criminal case / proceedings pending in the Court against the borrower.
>
> No dues certificate will be issued on specific request of the borrower mentioning clearly therein that the dues are settled by mutually agreed settlement involving sacrifice on the part of the Bank."

16. In the letter dated 14.05.2020 issued by the Bank of Maharashtra, it is specifically mentioned that "sacrifice in ledger balance" is Rs.17.60 Crores.

17. It is also relevant to mention that the Central Bank of India in the letter dated 21.09.2019 informed petitioner No.4 that the Higher Authorities of the bank have sanctioned the offer to settle the account under OTS for Rs.17,95,00,000/- in full and final settlement of the dues on certain conditions including the following conditions:

> "OTS is being considered by the bank as a commercial decision and shall have no bearing whatsoever on criminal case / investigation, if any being carried out by the CBI / Police and the same shall proceed as per law."

In the No Dues Certificate dated 25.08.2020, the Central Bank of India has specifically reiterated the above said condition.

18. Vide letter dated 26.12.2019, the Bank of Baroda has informed the 4th petitioner company about sanction of compromise proposal on certain conditions including the following condition:

> "It is made clear that the recovery of loan taken by the borrower and the criminal action of the fraud committed by the borrower are two separate distinct matters. It is also clarified that the compromise settlement shall relate only to the recovery proceedings and shall not in any way affect the criminal action, if any, which shall continue.
>
> The settlement will not have any bearing whatsoever on the ongoing / future criminal cases / proceedings initiated / to be initiated by the bank and pending in the Courts against the borrower and that such compromise settlement will relate only to the recovery proceedings for dues outstanding. This should also form part of the consent terms to be filed with the Court / DRT."

19. It is relevant to mention that the 4th petitioner company has received the above said proceedings and sought revised OTS acceptance proposal in respect of one Bank, the same were issued and thereafter petitioner No.4 has paid amounts to the respective banks. Thus, the petitioners have accepted the terms and conditions of the respective banks while accepting the OTS proposals. They have not challenged / disputed any of the terms and conditions imposed by the

banks. Therefore, the petitioners now cannot contend that the *de facto* complainants *viz.*, the Central Bank of India and Bank of Maharashtra, having accepted the OTS proposals, having received the entire amounts cannot pursue criminal proceedings and cannot file complaints against the petitioners. Therefore, the contention of the learned senior counsel to the said effect cannot be accepted.

20. In **Sadhu Ram Singla**[1], the Apex Court had an occasion to deal with the case of compounding of offences under Section - 320 of Cr.P.C. against the company after accepting OTS, and after filing of charge sheet against the company for causing financial loss to the bank with criminal conspiracy. In the said case, the company has obtained loan from the bank and did not repay the same, and therefore, the account of the company was declared as NPA. On verification of the stocks, it was found that the company therein had fraudulently obtained higher credit limits on the basis of false and fabricated stock statements by forging the signatures. The law was set into motion and FIR was registered. During the pendency of the proceedings before the Court, a compromise was arrived at between the company therein and the bank under OTS. An application was filed by the company therein for compounding the offences under Section - 320 (2) of Cr.P.C. and the same was dismissed by the trial Court on the ground that Section - 427 read with Section - 468 of IPC is a non-compoundable offence.

21. Thereafter, they have approached the High Court of Punjab and Haryana invoking its powers under Section - 482 of Cr.P.C., for quashing the FIR and the resultant proceedings. The High Court of Punjab and Haryana quashed the criminal proceedings on the ground that the bank and the company therein have entered into a settlement and entire amount was paid. Then the matter was carried to the Apex Court. The Apex Court, by relying upon various judgments, held that law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, continuance of criminal proceedings would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties.

22. The said principle is not applicable to the facts of the present case, as the facts in the said case are distinguishable with the facts of the present case. As discussed supra, in the letters dated 21.09.2019, 26.12.2019 and 31.12.2019, both the banks have informed the petitioners that acceptance of OTS will not absolve the criminal proceedings and the criminal proceedings will go on and that both are different and distinct. The petitioners have accepted the said terms and conditions without any dispute. It appears that the said terms and conditions are not there in respect of the company in **Sadhu**

Ram Singla[1]. Therefore, the principle laid down by the Apex Court in the said case is not applicable to the facts of the present case.

23. The details of the loans availed from the lender banks under multiple banking arrangement, their book balance and OTS are as follows:

(in Rs. in Crores)

Name of the Bank	NPA amount (principal)	NPA with interest	OTS settlement amount	Net loss to the bank after the OTS
Central Bank of India	55.66	74.79	14.95	59.84
State Bank of India	29	41.84	14.75	27.09
Bank of Maharashtra	19.85	36.41	8.60	27.81
Bank of Baroda	14.96	29.58	15.80	13.78
ICICI Bank	14.71	59.31	4.84	54.47
Total	**134.18**	**241.93**	**61.94**	**182.99**

24. The above stated facts would reveal that it is a case of **"loan fraud"**. Petitioner No.4-company represented by petitioner Nos.1 to 3 has obtained loans and credit facilities from the above said banks in the manner stated supra. According to the banks, the petitioners have taken loan, purposefully defaulted in payment of loan, and in the end, get away by doing OTS with the banks, wherein they have paid only a small percentage of loan amounts due and thus caused undue loss to the banks while enriching themselves. According to the banks, the petitioners have caused them a massive loss of Rs.182.99 Crores. The said money ultimately belongs to the public/tax payers. Thus, *prima facie*, the petitioners have committed fraud not only against the banks, but also against the public in general.

Such economic frauds adversely affect the financial and economic well-being of the Nation and have implications which lie beyond the domain of a mere dispute between petitioner No.4 and the above said banks including Central Bank of India and Bank of Maharashtra. The mere fact that the banks which are already under stress to clear the NPAs from their books accepted the OTS, will not absolve the petitioners from criminal charges.

25. At the cost of repetition, it is relevant to mention that, in the above said letters, both the banks have specifically mentioned that acceptance of OTS proposals by the banks will not absolve the criminal liability of the petitioners. According to the banks, Central Bureau of Investigation and Enforcement Directorate, out of fear of facing punishment stipulated under the provisions of law, the petitioners have approached the banks with OTS proposals. The source of funds used by the petitioners for completing the OTS is also suspect and it is part of Enforcement Directorate's fund trial investigation. Petitioner No.4 has defaulted the credit facilities availed from 5 banks and caused huge losses to the banks despite the OTS and the details of the same are mentioned in the tabular form mentioned supra.

26. In all the above OTS, it has been found that all the banks were put to a total loss to a tune of Rs.182.99 Crores approximately. The Enforcement Directorate has initiated investigation/enquiry under

the provisions of PMLA since the offences alleged against the petitioners are scheduled offences under the said Act. There are serious allegations against the petitioners. Bank loan frauds are a scourge on our economy and therefore it is the duty of the Enforcement Directorate to investigate all bank frauds in which there is loss of more than Rs.25.00 Crores to the banks. The present case is not falling in any of the exceptions mentioned by the Apex Court in **State of Haryana v. Bhajan Lal**[11].

27. The Apex Court in **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur**[5] categorically held that economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

28. Similar principle was laid down by the Apex Court in **Gopakumar B Nair**[10]. In the said judgment, it was further held that the offences are certainly more serious. They are not private in nature. The charge of conspiracy is to commit offence under the Prevention of Corruption Act. The accused has also been charged for

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[11]. 1992 Supp. (1) SCC 335

commission of substantive offence under Section - 471 of IPC. Though the amounts due have been paid, the same is under private settlement between the parties. There is no acknowledgement on the part of the Bank of the exoneration of the criminal liability of the accused unlike the terms of compromise decree.

29. In view of the said principle, it is also relevant to point out that in the present case, the complainants' bank have specifically incorporated in the acceptance of OTS proposals terms and conditions that the acceptance of OTS will not absolve the criminal liability of the petitioners and OTS and criminal liability are different and distinct.

30. In **Hari Singh Ranka**[8], the Apex Court considered the affect of OTS and held that the OTS merely deals with the civil liability that too by making of payment of Rs.25.00 Crores whereas outstanding liability was Rs.44.00 Crores though it was submitted loss caused was approximately Rs.13.00 Crores. The amount which has been settled in OTS scheme cannot be legally sufficient to wipe out the criminal liability of the accused persons. The OTS could wipe off only the civil liability, but not the criminal one.

31. In the present case, it is specifically mentioned in the letter dated 14.05.2020 issued by the Bank of Maharashtra that the sacrifice in ledger balance is Rs.17.60 Crores. According to above said five banks, the total loss caused to the banks due to the criminal acts of the

petitioners herein, is Rs.182.99 Crores. The details of the same are specifically mentioned in the tabular form mentioned supra.

32. In **Maninder Singh**[9], the Apex Court held that the inherent powers of the High Court under Section - 482 of Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which the Court concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders is not allowed to continue, the entire community is aggrieved.

33. A Three-Judge Bench of Hon'ble Apex Court in **State of Madhya Pradesh v. Laxmi Narayan**[12] by referring to its various earlier judgments summarized the law for exercise of inherent powers to quash the criminal proceedings under Section - 482 of Cr.P.C. by

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[12]. (2019) 5 SCC 688

the High Court. It held that the High Court has to examine facts of each case on case to case basis including nature of offence, its impact on the society etc.

34. In **Gian Sing**[4], a Three-Judge Bench of the Apex Court laid down guidelines and also categories of cases in which power of High Court under Section - 482 of Cr.P.C. to quash criminal proceedings can be exercised. It held that in what cases power to quash the criminal proceedings or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of crime.

35. As stated above, there are serious allegations and the fraud alleged to have been committed by the petitioners is Rs.182.99 Crores. Therefore, according to this Court, it is not a fit case to exercise the inherent power of this Court under Section - 482 of Cr.P.C. to quash the criminal proceedings against the petitioners.

36. In **Satishchandra Ratanlal Shah**[3], the disputes arise out of a loan transaction between the parties, the attendant circumstances before lending loan were known to the loanee. In order to recover the loan, the Financial Institution had instituted a summary civil suit which was pending adjudication. While considering the said facts, the Apex Court held that in view of the breach of promise, agreement or

contract does not ipso fact constitute the offence of the criminal breach of trust contained in Section - 405 of IPC without there-being a clear case of entrustment. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this *mens rea* which is the crux of the offence.

37. But, whereas, in the present case, the accounts of the petitioner No.4 Company were declared as NPA and for the criminal activities resorted to by its Directors. The said accounts were identified as fraud accounts. The petitioners herein did not challenge the said proceedings and thus, the said proceedings attainted finality. The fraud played by the petitioners is specifically mentioned in the tabular form mentioned supra which is Rs.182.99 Crores and it is a loan fraud and it is an economic offence. Therefore, the said principle in **Laxmi Narayan**[12] is not applicable to the facts of the present case.

38. As discussed supra, there are serious allegations against the petitioners. M/s. S.P. Rungta and Associates has mentioned in its report about the lapses of the petitioners. The said lapses were specifically mentioned in the complaints dated 30.06.2018 and 29.02.2020. The account of petitioner No.4 in Central Bank of India was declared as fraud on 30.11.2016 and at paragraph No.14 of the complaint dated 30.06.2018, the Central Bank of India specifically

mentioned the details of the same. There are serious allegations that the funds of petitioner No.4 were diverted by petitioner Nos.1 to 3 for their personal needs. Petitioner No.4 has not filed financial statements for the years 2013-14 and 2014-15. Petitioner Nos.1 to 3, being the Managing Director and Directors of petitioner No.4 respectively have not co-operated with the auditors in carrying the financial audit and also have not made available the books and records to assess the inventory position. Therefore, Joint Lending Forum was formed by the Bankers, and in the meeting of the said Forum, the banks have taken a decision to conduct forensic audit and the same was entrusted to M/s. S.P. Rungta and Associates. Thus, *prima facie*, in all, petitioner No.4 has committed fraud to the tune of Rs.182.99 Crores and it is a wrongful loss to the public exchequer and it is tax payers' money. It is a loan fraud which is a serious fraud and there are serious allegations against the petitioners.

39. The Enforcement Directorate has issued summons under Section - 50 (2) of the PMLA, conducted searches on the premises of the Directors of petitioner No.4 and certain crucial and incriminating material has been recovered. Thus, there is an immediate requirement of confronting the Directors of petitioner No.4 to the documents collected during investigation. For the said purpose, the summons were issued to them for their appearance under Section - 50 (2) of the PMLA. The petitioners instead of appearing before the Authorized Officer of the Enforcement Directorate and co-operating with the

investigation/enquiry, filed the present Criminal Petitions seeking to quash the said summons.

40. Sri B. Narasimha Sharma, learned Standing Counsel for Enforcement Directorate, has produced copy of ECIR/HYZO/03/2019 in a sealed cover. This Court has perused the said ECIR, wherein it is specifically mentioned the above source of information, material received, place of occurrence of crime, details of accused, property initially suspected to be proceeds of crime and material of commission of offence and reasons to believe that an offence of Money Laundering has been committed and offence thereof. By mentioning the said facts, it is specifically mentioned in the ECIR that a *prima facie* case for an offence of money laundering under Section - 3 of PMLA and punishable under Section - 4 of the Act appears to have been made out. Therefore, the Enforcement Directorate has registered a case and is taken up for investigation under the provisions of the PMLA and the Rules made thereunder.

41. The investigation is an exclusively reserved for the Enforcement Directorate and it is collecting the evidence. Thereafter, Enforcement Directorate will follow the procedure laid down under Chapter - III of the PMLA i.e., Attachment, Adjudication and Confiscation. It will follow the procedure under Chapter - V i.e., Summons, Searchers and Seizures, etc. On completion of the same, including orders passed by the adjudicating authority, there is a

provision for filing appeal by invoking the procedure laid down under Chapter - VI of the said Act. According to the Enforcement directorate, instead of co-operating with the Investigating Officer of the Enforcement Directorate pursuant to the summons, the petitioners have filed the present Criminal Petitions under Section - 482 of Cr.P.C. and, therefore, the present petitions are not maintainable since ECIR cannot be equated with FIR.

42. In view of the above said submissions of the learned standing Counsel for Enforcement Directorate, it is relevant to refer to the definition of 'investigation' as per Section - 2 (na) of the PMLA, which includes all the proceedings under this Act conducted by the Director or by an authority authorized by the Central Government under this Act for the collection of evidence. Section - 2 (u) deals with proceeds of crime which means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property. Section - 3 of the PMLA deals with Offence of money-Laundering, as per which, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. Section - 5 deals with attachment of property involved in the money-laundering. Section - 44 of PMLA

deals with offences triable by Special Courts, and as per Section - 44 (1) (b), a Special Court may upon a complaint made by an Authority authorized in this behalf under this Act take cognizance of offence under Section - 3 without the accused being committed to it for trial.

43. A learned single Judge of High Court of Judicature at Hyderabad in **Dalmia Cement (Bharat) Limited**[7] had an occasion to deal with the scope of enquiry under the provisions of the PMLA, registration of crime, issuance of ECIR and also various provisions of the PMLA. By considering the submissions of the parties and also principle laid down by the Apex Court in various judgments, it was held that investigation under the provisions of the PMLA is only for the purpose of collecting evidence with regard to proceeds of crime in the hands of the persons suspected and their involvement, if any, in the offence under Section - 3 of the PMLA. It was further held that it could not able to equate ECIR registered by Enforcement Directorate to an FIR under Section - 154 Cr.P.C. The persons whom summons were issued under Section - 50 of the PMLA cannot be treated as they are accused at present.

44. In the said judgment, the principle laid down by the Apex Court in **Ramesh Chandra Mehta v. State of West Bengal [AIR 1970 SC 940]** was referred, wherein it was held that normally a person stands in the character of an accused when a first information report is lodged against him in respect of an offence before an Officer

competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial the offence, where a Customs Officer arrests a person and informs that person of the grounds of his arrest for the purpose of holding an enquiry into the infringement of the provisions of the Sea Customs Act which he has reason to believe has taken place, there is no formal accusation of an offence. In the case of an offence by infringement of the Sea Customs Act and punishable at the trial before a Magistrate there is an accusation when a complaint is lodged by an officer competent in that behalf before the Magistrate.

45. By referring to the same, it was further held that when an ECIR is lodged with the Directorate of Enforcement, there is no Magisterial intervention unlike an FIR and mere registration of ECIR against the suspects of offence under Section - 3 of the PMLA cannot go to mean that such persons are accused. The protection against testimonial compulsion as under Cr.P.C as well as under Article - 20 (3) of the Constitution of India would not be available as claimed by the petitioners therein.

46. Even in the present case also, ECIR was registered by the Enforcement Directorate basing on the case registered by CBI for the schedule offences under PMLA. They have conducted searches and seized documents from the premises of the petitioners. It has issued

summons under Section - 50 (2) of PMLA, directing the petitioners to appear before it for the purpose of recording their statements and to produce records as part of investigation and also to confront the documents collected by it during searches. The petitioners instead of co-operating with the Investigating Officer in completing the investigation filed the present petitions to quash the summons issued by the Enforcement Directorate. As held by High Court of Judicature at Hyderabad in **Dalmia Cement (Bharat) Limited**[7], the petitioners herein are not accused under PMLA and, therefore, protection against testimonial compulsion as under Cr.P.C. as well as under Article - 20 (3) of the Constitution of India could not be available to the petitioners herein.

47. In view of the said authoritative pronouncement of law, coming to the facts of the case on hand, as discussed supra, the Enforcement Directorate has initiated investigation under the provisions of the PMLA considering the fact that the offences alleged against the petitioners in both the FIRs registered by Central Bureau of Investigation are scheduled offences. The *modus operandi* adopted by the petitioners in availing the loans and getting the accounts NPA/fraud and availing OTS by paying meager amounts is specifically mentioned in the complaints dated 30.06.2018 and 29.02.2020.

48. The Enforcement Directorate has been investigating the present case like other cases where the company takes loan, purposefully defaults on the loans and in the end get away by paying OTS with the bank, where they pay only small percentage of the loan dues and thus cause undue loss to the bank while enriching themselves. It is at investigation stage. The petitioners have to co-operate with the Investigating Officer by appearing before him pursuant to the summons issued by the Enforcement Directorate.

49. In the present case also, the total OTS payment done by petitioner No.4 is only a small fraction of total dues. The details of the same are specifically mentioned in the tabular form mentioned supra. The allegation against petitioner No.4 is that it has caused a massive loss of Rs.182.99 Crores to the public sector banks and the same is also specifically mentioned in the complaints dated 30.06.2018 and 29.02.2020 by the Central Bank of India and Bank of Maharashtra. The said money ultimately belongs to the public and tax payers. Thus, *prima facie*, the petitioners have committed fraud not only against one or two banks, but against the public in general and it is a 'loan fraud' and it is an 'economic offence'.

50. Such economic frauds adversely affect the financial and economic well-being of the Nation and have implications which lie beyond the domain of a mere dispute between petitioner No.4 and the above said banks. The mere fact that the banks which are already

under stress to clear the NPAs from their books accepted the OTS, will not absolve the petitioners from criminal charges. The Apex Court in the above said judgments categorically held that in economic offences, it is not proper for the High Court to exercise its inherent powers under Section - 482 of the Cr.P.C to quash the FIRs/charge sheets. It is nothing but stalling investigation / enquiry initiated by the Authorized Officer under the provisions of PMLA.

51 The Apex Court, in a recent judgment in **Sau. Kamal Shivaji Pokarnekar v. The State of Maharashtra**[15], categorically held 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. 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. 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

[15] AIR 2019 SC 847

averments in the complaint spell out the ingredients of a criminal offence or not.

52. It is further held that 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.

53. In view of the above said authoritative pronouncement of law, coming to the facts of the case on hand, as discussed supra, there are specific allegations against the petitioners herein. The *modus operandi* adopted by the petitioners is also specifically mentioned in the complaints as stated above.

54. At the cost of repetition, it is once again reiterated that *prima facie* it appears that the petitioners are economic offenders. The crimes are at investigation stage. The Investigating Officer of Central Bureau of Investigation is collecting the evidence and he has to record the statements of witnesses including the material witnesses. The Enforcement Directorate is conducting only investigation and it has to proceed further in accordance with the provisions of the PMLA.

ECIR cannot be equated with FIR. The petitioners herein whom summons under Section - 50 of the PMLA were served cannot be treated as accused.

55. Considering the said aspects, and also the seriousness of the offences committed by the petitioners and also the *modus operandi* adopted by them, this Court is not inclined to quash the above said FIRs and the ECIR / Summons issued by the Enforcement Directorate. Therefore, all the Criminal Petitions lack merit and the same are liable to be dismissed.

56. Accordingly, the Criminal Petitions are dismissed. The interim orders passed by this Court on 15.09.2020 in Crl.P.Nos.3966 and 3982 of 2020 and on 19.10.2020 in I.A.No.2 of 2020 in Crl.P. No.4272 of 2020 stand vacated.

As a sequel, miscellaneous petitions, if any, pending in all the Criminal Petitions shall stand closed.

SD/- K. AMMAJI
ASSISTNAT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

One Fair Copy to the Hon'ble Sri Justice K. LAKSHMAN
(For His Lordships kind perusal)

1. The Station House Officer, CBI/BS AND FC Police Station, Bangalore.
2. One CC to Sri D. B. Chaitanya, Advocate [OPUC]
3. One CC to Sri D. B. Narasimha Sharma, Advocate [OPUC]
4. Two CCs to K. Surender (Special Public Prosecutor, for CBI)High Court for the State of Telangana, at Hyderabad [OUT]
5. 15 LR Copies
6. The Under Secretary, Union of India Ministry of law, Justice and Company Affairs, New Delhi
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HIGH COURT

KLJ

DATED:22/12/2020



COMMON ORDER

CRLP.No.3966, 3982 and 4272 of 2020

DISMISSING THE CRIMINAL PETITIONS

SSV
15 copies
Dt 24/12/2020