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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 290 of 2018

Order Reserved on : 27.07.2021

Order Delivered on : 07.09.2021

1. Gopal Agrawal, S/o Shyam Lal Agrawal, Aged About 42 Years.
2. Smt. Poonam Agrawal, W/o Gopal Agrawal, Aged About 37 Years.

Both the petitioners are R/o Village- Dhurkot, P.O. Dhurkot, P.S. & Tehsil- Dabhra, District- Janjgir- Champa (C.G.) (Accused)

---- Petitioners

Versus

1. State of Chhattisgarh, through Secretary, Department of Home Affairs (Police), Mahanadi Bhawan, Naya Raipur, District- Raipur (C.G.)
2. Superintendent of Police Janjgir- Champa, District- Janjgir- Champa (C.G.)
3. Station House Officer, Police Station- Dabhra, District- Janjgir- Champa (C.G.) (Prosecution).
4. Shashi Bhushan Singh, S/o Chandrama Singh, Posted as Branch Manager of Geo Chem Laboratories Pvt. Ltd. 12/B, M.P. Nagar, Zone- II, Behind Pragati Petrol Pump, Bhopal, Revenue & Civil District- Bhopal (M.P.)

---- Respondents

For Petitioners	:	Mr. Surfaraj Khan, Advocate.
For State/Resp. 1 to 3	:	Mr. Vikas Shrivastava, Panel Lawyer.
For Resp. No. 4	:	Ms. Hamida Siddiqui, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India for quashing FIR No. 334/2016 (Annexure P/1) dated 26.10.2016 registered against the petitioners at Police Station- Dabhra, District- Janjgir-Champa (C.G.) for committing offence punishable under Sections 420, 467, 468, 471/34 of I.P.C. and further subsequent final report submitted before Judicial Magistrate First Class, Dabhra, District- Janjgir-Champa (C.G.).

2. The brief facts as projected by the petitioners are that complainant/respondent No. 4- Shashi Bhushan Singh lodged an FIR No. 334/2016 on 26.10.2016 against the petitioners at Police Station- Dhabhra, District- Janjgir-Champa for committing offence punishable under Section 420, 467, 468, 471/34 of I.P.C. mainly contending that he is working as Manager at Geo Chem Pvt. Ltd., Bhopal and Suveyor of Geo Chem Pvt. Ltd.- B.L. Sahu, in connivance with borrower- Gopal Agrawal, Shyam Lal Agrawal & Smt. Poonam Agrawal has submitted forged storage receipt and thus, committed fraud with the Geo Chem and bank as when the borrower was unable to repay the loan the bank has initated proceedings and directed the complaint to verify the stock of rice kept in godown then it was revealed that loan was taken on the basis of quality and quantity of the rice, which was kept in the storage was not the same and it was inferior quality and less quantity. On the basis of this complaint, FIR has been registered against the petitioners for committing offence under Sections 420, 467, 468, 471/34 of I.P.C.

3. It has been further contended by learned counsel for the petitioner that the petitioner No.1 borrowed commodity loan for Rs. 45 lacs from IDBI Bank branch-Raigarh by depositing Jawaphool rice to the tune of 138.94 metric tons. Likewise, petitioner No. 2 has taken commodity loan of Rs. 50 lacs from HDFC bank by depositing 52.50 metric tons of Jawaphool rice and 83.65 metric tons HMT rice. The rice were kept in the godown hired by the bank through Geo Chem Pvt. Ltd. which is authorized agency. Due to irregular payments, the bank has initiated the proceeding under the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 by filing original application before the Debts Recovery Tribunal, Jabalpur. The said cases are pending. During pendency of the case, the bank has lodged FIR No. 334/2016 at Police Station- Dhabhra, District- Janjgir-Champa for committing the offence as mentioned above.

4. Learned counsel for the petitioner would submit that registration of FIR is nothing but an abuse of process of law as the bank has already initiated proceeding for recovery of the amount. It has been further contended that the bank officials sold the hypothecated rice and has released the loan amount. He would further submit that the FIR and the subsequent criminal proceeding be kindly quashed.

5. He would rely upon the judgment rendered by Hon'ble the Supreme Court in **State of Haryana Vs. Bhajan Lal**, reported in **1992 AIR (SC) 604** and **K. Virupaksha & another Vs. State of Karnataka & another** reported in **(2020) 4 SCC 440**. He would submit that the allegation levelled in the FIR, even if it is taken at their face value and accepted in its entirety, the same does not constitute an offence demanding either the registration of a case or commencement of an investigation in respect of the petitioner.

6. Learned counsel for the petitioners has filed additional document on 12.07.2021, which was taken on record by this Court, in which, it has been submitted that from 22.10.2016 to 26.10.2016, IDBI officials have sold the entire hypothesized rice as well as paddy and incidental thereto, before lodging a false FIR against the petitioners and the same has been done through its agency i.e. Geo Chem. A copy of document of auction sale (Annexure P/5) and delivery order issued by Geo Chem on 24.06.2016 (Annexure P/6) (before lodging FIR) have also been filed.

7. He would further submit that on 24.05.2016, staffs of petitioners namely Dev Narayan Pandey & Dinesh Lahre have lodged a written complaint at Police Station- Dabhra, District-Janjgir-Champa (Annexure P/7) against the officials of IDBI Bank Raigarh for trespass, house breaking and forcible lifting of rice and paddy without the due process of law from the rice mill of the petitioners. Even the bank officials have beaten very badly to staff of the petitioners namely Dinesh Lahre, while the Dinesh Lahre and other staffs were requesting the

bank officials and Geo Chem not to lift the rice and paddy without the permission of petitioners and without due process of law. Copies of photographs depicting lifting of rice and paddy, together with head injuries of Dinesh Lahre (Annexure P/8) have also been filed. He would further submit that handover of hypothesized rice was done under the strict guidance and procedure of the bank i.e. HDFC Bank on 20.03.2016, Branch- Raipur and IDBI Bank on 20.03.2016, Branch- Raigarh and the same are also filed as Annexure P/9 & P/10.

8. He would further submit that the IDBI Bank has already filed petition before Debts Recovery Tribunal, Jabalpur bearing Original Application No. 329/2017 on 10.04.2017 under Section 19 of the Recovery of Debts Act, 1993 for recovery of Rs. 37,76,708.40, which is pending consideration before the Tribunal. He would further submit that registration of FIR against the petitioners is an abuse of process of law, hence, he prays that the present writ petition kindly be allowed and relief may kindly be granted to the petitioners.

9. On the other hand, learned counsel for respondent No. 4 would submit that the Geo Chem Pvt. Ltd. having its head office at Mumbai entered into an agreement with HDFC & IDBI Banks for working as Collateral Manager at Dhurkot and Dhabhra locations. Accordingly, for HDFC Bank Poonam Agrawal godown and for IDBI Bank, Manohar Rice Mill have kept the material at Dabhra. This storage was done by persons who have taken finance from HDBC Bank i.e. Shyam Lal Agrawal & Smt. Poonam Agrawal and from IDBI Bank i.e. Gopal Agrawal & Shyam Lal Agrawal have taken loan. This rice has been mortgaged. After appointment as Collateral Manager for these banks, staff/surveyor- Ubaran Goyal was sent to Dhurkot. From 17.03.2015 to 23.03.2015, they inspected the rice kept in the godown and on 23.03.2015, sent the approval report of Poonam Agrawal's godown No. 1 & 2 to Nagpur office, who sent the same to head office at Mumbai for

approval. The head office issued storage receipt and quality report, which have been sent to the bank and the bank on the basis of storage receipt, has given loan to the borrower. Surveyor-Ubaran Goyal has handed over the charge to one Bharat Lal Sahu on 23.03.2015, therefore, Bharat Lal Sahu was appointed as Location Manger till 19.03.2016. He was given charge of godown and he was also sending report to the bank for approval and after receipt of report, the head office in turn used to send the report of quality and quantity to the bank and accordingly, the bank has issued loan to the borrower. The report for HDBC and IDBI Banks was sending by Bharat Lal Sahu and during his tenure, 14 storage reports have been sent for HDFC Bank, in which it has been mentioned that I.R. 36860 bags 265 M.T. Rice, H.M.T. & Rice H.M.T. 5587 bags, 194.52 M.T. Rice Javaphool 2390 MT & for IDBI Bank, four storage report have been sent in which it has been mentioned that Rice Javaphool shortage and Rice Javaphool 5285 bags 260.13 M.T. have been sent for approval to Geo Chem office at Sub-Branch Nagpur and the same has been sent to head office. The loan which was taken on the basis of quality and quantity of the rice, which was kept in the storage was not the same and it was inferior quality and less quantity. It was alleged that in the bags first quality rice was kept in one or two layer and on lower side of the bag, broken rice & brown rice were kept, therefore, the godown was seized. He received the information from incharge of Nagpur group- Deepak Mishra on phone and the same was forwarded by Bharat Lal Sahu to his senior at head office. After that, the bank submitted complaint and also enquired about the material, which was kept for HDFC bank in the godown of Gopal Agrawal. On 02.06.2016, it has been found that the rice was not upto the standard quality and there was shortage of bags also.

10. It has been further contended by learned counsel for respondent No. 4 that the rice was not upto the standard

quality and quantity, thus, they have committed offence punishable under Sections 420, 467, 468, 471/34 of I.P.C.

11. She would further submit that the bank from time to time proposed to make its customers certain credit facilities, which are to be secured by the security created over certain agriculture crops/goods/products by the respective depositors. She would further submit that as per memorandum of understanding for providing collateral management services between the Geo-Chem Laboratories Pvt. Limited and Industrial Development Bank of India Limited, the respondent No.4 has to discharge his contractual obligation and would refer to the relevant clause of memorandum of understanding which are as under:-

"(i) The Bank as part of its lending activities proposes to make available to its customers/ constituents certain credit facilities which are to be secured *inter alia* by a pledge of certain agricultural crops/ goods/ products by the respective Borrower in favour of the Bank. (ii) As a condition precedent for the grant of such facilities, the Bank shall require each such Borrower to ensure that the security over the commodities be made to the Bank or such agent of the Bank as may be required. (iii) The Borrower shall store the commodities in godowns/ warehouses identified and accepted by the Bank from time to time or in specially demarcated areas of the godown/ warehouse identified from time to time for the purpose. The Storage Areas may either be owned by a Borrower or by any other third party or by a Collateral Manager or its agent acceptable to IDBI and the Storage Area if no owned by the Collateral Manager shall be obtained under a lease entered into by Collateral Manager with the respective owner/ lessee of such Storage Area in a form and manner acceptable to IDBI. (iv) The Bank is concerned about the securities held by it through the Collateral Manager and desires that there should be adequate supervision and monitoring of pledged commodities in the applicable Storage

Areas and also control of the Storage Areas to its satisfaction. (v) Geo-Chem Laboratories Pvt. Ltd. as a Collateral Manger has represented to the Bank that it has got good experience and expertise in the handling, overseeing/ supervising, monitoring and storage of commodities/ products and providing package of total collateral management service in an integrated manner including filed warehousing, inspection and monitoring services etc. similar to or the same as the commodities and in controlling storage areas; inventory audit services, testing and certification services, procurement services and thereby also providing comprehensive risk management services relating to pledge commodities. (vi) Based on the aforesaid representation and at Geo-Chem Laboratories Pvt. Ltd. Request, the Bank has agreed to appoint and engage Geo-Chem Laboratories Pvt. Ltd. As its Collateral Manager to handle, oversee and monitor the storage of the commodities and provide integrated collateral management services to its branches across India at the Storage Areas for the benefit of the Bank and provide such services including comprehensive risk management services relating to commodities as may be mutually agreed upon and Geo-Chem Laboratories Pvt. Ltd. in its capacity as Collateral Manager has agreed and consented to do so upon the terms and conditions mentioned hereinafter."

12. Learned counsel for the State/ respondent No. 1 to 3 has filed return on 01.08.2018 mainly contending that the FIR has been registered on the basis of complaint made by respondent No. 4 and respondent No. 3 has initiated investigation, which is underway, therefore, at this juncture, it cannot be said that the petitioners have not committed any offence and they are innocent. It is also contended that the statement under Section 161 of the Cr.P.C. of the complainant-Chandra Bhushan Singh and other witnesses namely Ubaran Goyal, Shivprasad Karsayal, Rakesh Koge, Bhupendra Kumar and Vijay Kumr Bagde has been recorded. Respondent No. 3

initiated primary enquiry into the matter, whereby all the relevant material evidences and documents have been collected and upon perusal and examination of the said evidences and documents, *prima facie*, cognizable offence of cheating and forgery has been found against the petitioners, therefore, FIR has been registered against them, which is legal and justified. She would further submit that the contention raised by the petitioners is their defence, which cannot be looked into while hearing this writ petition filed under Article 226 of the Constitution of India, therefore, at this juncture, this writ petition is liable to be dismissed.

13. Learned State counsel placed reliance upon the judgment rendered by Hon'ble the Supreme Court in **State of Andhra Pradesh Vs. Golconda Linga Swamy** reported in **(2004) 6 SCC 522 : 2004 SCC (Cri.) 1805** and would submit that from bare perusal of the facts as projected by the petitioners, the disputed facts are involved which cannot be examined by this Court under Article 226 of the Constitution of India, therefore, the present petition is liable to be dismissed by this Court.

14. This Court vide its order dated 02.07.2018 directed that no coercive steps shall be taken against the petitioners till the reply is filed, therefore, the State has filed application on 01.08.2018 for vacating stay order dated 02.07.2018 contending that the FIR has been registered on the basis of material evidence collected during investigation, therefore, interim order passed by this Court deserves to be vacated.

15. Learned counsel for respondent No. 4 filed reply to the application for vacating stay on 05.11.2019 contending that from perusal of FIR, it is clear that in a very planned manner fraudulently, embezzlement as well as misappropriation of approximately one crore has been made by the petitioners and have taken away the amount unlawfully, which was supposed to be given to the bank, therefore, this petition is liable to be dismissed.

16. She would further submit that one of the godowns from where the pledged goods were absent as per their description in the SR lies within the mill campus boundary owned by one of the family members of the petitioners situated near the residence of the accused persons and their family members. The second godown is situated near/ opposite the residence of the accused persons and their family members. In this godown, a similar kind of situation was notices.

17. She would further submit that in May, 2016, the IDBI Bank has done the first auction of 396 bags as borrower has not repaid the loan. During auction, it was found that stock inside the ware- house and the rice which was mentioned in the record was not there but some inferior quality rice as well as husk soil was there in the ware house. On 2nd June, 2016, audit was done in the HDFC godown where it was found that the shortage of bags as well as inferior quality rice inside the godown. The borrower has misappropriated the commodities kept in godown and has put the bags of inferior quality rice as well as there was also shortage of bags. Accordingly, on 26.10.2018, FIR was lodged by Geo Chem against surveyor Bharat Lal Sahu, borrower Gopal Agrawal, Poonam Agrawal, Shyam Lal Agrawal and Dinesh. In the meantime, the commodity was already auctioned.

18. She would further submit that the Bank vide its letter dated 11.04.2016 has withdrawn the credit facilities given to the petitioners. On 22.10.2016, the Panchnama was prepared and signed by the petitioners for the loan from IDBI Bank in front of the witnesses by keeping the rice in the godown. While keeping the commodities in the godown, stock register is prepared by Bank/ Collateral Manger. Since, the petitioners and their family for whom the loan of approximately one crore has been taken from IDBI Bank and has not been paid are local and they have misappropriated the rice kept as Collateral security in the godown by fabricating false security report and thus committed, therefore, the offence under

Sections 420, 466, 467, 468, 471/34 of IPC has been rightly registered against the petitioners. From reading of the entire FIR, the offence is made out against the petitioners, therefore, no interference is warranted in the present petition.

19. I have heard learned counsel for the parties and perused the documents placed on records with utmost satisfaction.

20. From bare perusal of facts of F.I.R., facts projected by petitioners it is quite clear that disputed facts are involved related to quality and quantity of rice kept in the godown, is required to be examined. Similarly, whether the bank has auctioned the rice which was kept in the godown as per the SR report or auctioned the rice which is of inferior quality has been auctioned, is also subject of enquiry before the trial. It has also to be examined during the trial that whether the quality of rice which was said to have been stored by the borrower at the time of taking credit facilities from the bank, has rightly been shown in SR report or not. This cannot be examined by this Court, which requires detailed evidence, material, collected during course of investigation by the police. Similarly, the contention raised by the petitioners that the Panchnama has been prepared, wherein the quality and quantity of rice has been mentioned its correctness and genuineness cannot be seen by this Court at this juncture as it is required elaborate evidence.

21. So far as allegation of the petitioner that the goods have been handed over to the IDBI Bank and would rely upon the document dated 20.03.2016 (Annexure P/9), which is again a matter of evidence and can be examined by the trial Court whether the quality of the rice, which was given to the bank or not, is a matter to be enquired. In the complaint, it has been alleged that in the bags two layers consist of the material which was stored by the petitioners was kept in the bags and on the lower side of the bag, poor quality material was kept. Again allegation of the complainant that standard quality material and some bags were missing, there are manipulation

with regard to Storage receipt done by the petitioners, is required to be examined by thread-bearing analysis of the evidence recorded before trial court.

22. This is a case where facts have been denied by either side, as such, the allegation of commission of offence mentioned in the FIR, is purely dependable on the facts of the case, evidence made available during the trial and on its appreciation, which cannot be examined by this Court while exercising its power under Article 226 of the Constitution of India.

23. Hon'ble the Supreme Court in **State of Madhya Pradesh Vs. Kunwar Singh**[1], has again held that the High Court ought not to be scrutinizing the material in the manner in which, the trial court would do in the course of the criminal trial after evidence is adduced. The Hon'ble Supreme Court in paragraph 8 held as under:-

> "8. Having heard the submissions of the learned counsel appearing on behalf of the appellant and the respondent, we are of the view that the High Court has transgressed the limits of its jurisdiction under Section 482 of CrPC by enquiring into the merits of the allegations at the present stage. The fact that the respondent was a signatory to the cheques is not in dispute. This, in fact, has been adverted to in the judgment of the High Court. The High Court has also noted that a person who is required to approve a financial proposal is duty bound to observe due care and responsibility. There are specific allegations in regard to the irregularities which have been committed in the course of the work of the 'Janani Mobility Express' under the National Rural Health Mission. At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to bean encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme. A final

1 Criminal Appeal No. 709 of 2021 (decided on 30.07.2021)

report has been submitted under Section 173 of CrPC, after investigation.

24. Hon'ble the Supreme Court in **Kaptan Singh Vs. The State of Uttar Pradesh & others**[2], has held as under:-

> "9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/ inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of ***Dineshbhai Chandubhai Patel*** (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers

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2 Criminal Appeal No. 787 of 2021 (decided on 13.08.2021)

like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of ***Dhruvaram Murlidhar Sonar*** (Supra) after considering the decisions of this Court in ***Bhajan Lal*** (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of ***Arvind Khanna*** (Supra), ***Managipet*** (Supra) and in the case of ***XYZ*** (Supra), referred to hereinabove.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarized affidavit of Mamta Gupta – Accused No.2 and Munni Devi under which according to Accused no.2 - Ms. Mamta Gupta, Rs.25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered

> agreement to sell dated 27.10.2010, the sale consideration is stated to be Rs.25 lakhs and with no reference to payment of Rs.25 lakhs to Ms. Munni Devi and no reference to handing over the possession. However, in the joint notarized affidavit of the same date i.e., 27.10.2010 sale consideration is stated to be Rs.35 lakhs out of which Rs.25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No.2. Whether Rs.25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs.25 lakhs as mentioned in the joint notarized affidavit dated 27.10.2010. It is also required to be considered that the first agreement to sell in which Rs.25 lakhs is stated to be sale consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation."

25. Honble the Supreme Court in case of **Priti Saraf & another Vs. State of NCT of Delhi & another**[3], held as under:-

> "31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction.
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> 32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of

3 AIR 2021 Supreme Court 1531

> the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings."

26. Hon'ble the Supreme Court in **State of A.P. Vs. Golconda Linga Swamy & another**[4], held as under:-

> "10. In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in *R.P. Kapoor and Bhajan Lal cases* (supra).
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> 11. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.
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> 12. So far as Criminal Appeal Nos. 1183/2003, 1193-1196/2003 and Criminal Appeals arising out of SLPs(Crl.) Nos. 2191/2003, 2632/2003, 2633/2003, and 3463/2003 are concerned, we find that the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Though the FIR is not intended to be an encyclopedia of the

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4 (2004) 6 SCC 522

> background scenario, yet even skeletal features must disclose the commission of an offence. The position is not so in these cases. Therefore, the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court do not have our approval."

27. Hon'ble the Supreme Court in **Rajiv Thapar & others Vs. Madan Lal Kapoor**[5], held as under:-

> "28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

28. Learned counsel for the petitioners has relied upon the judgment passed by Hon'ble the Supreme Court in **Virupaksha & another Vs. State of Karnataka & another**[6], wherein at para 16, it has been held as under:-

> "16. We reiterate, the action taken by the Banks under the SARFAESI Act is neither unquestionable nor treated as sacrosanct under

5 (2013) 3 SCC 330
6 (2020) 4 SCC 440

> all circumstances but if there is discrepancy in the manner the Bank has proceeded it will always be open to assail it in the forum provided. Though in the instant case the application filed by the Complainant before the DRT has been dismissed and the Appeal No. 523/2015 filed before the DRAT is also stated to be dismissed the appellants ought to have availed the remedy diligently. In that direction the further remedy by approaching the High Court to assail the order of DRT and DRAT is also available in appropriate cases. Instead the petitioner after dismissal of the application before the DRT filed the impugned complaint which appears to be an intimidatory tactic and an afterthought which is an abuse of the process of law. In the matter of present nature if the grievance as put forth is taken note and if the same is allowed to be agitated through a complaint filed at this point in time and if the investigation is allowed to continue it would amount to permitting the jurisdictional police to redo the process which would be in the nature of reviewing the order passed by the learned Single Judge and the Division Bench in the writ proceedings by the High Court and the orders passed by the competent Court under the SARFAESI Act which is neither desirable nor permissible and the banking system cannot be allowed to be held to ransom by such intimidation. Therefore, the present case is a fit case wherein the extraordinary power is necessary to be invoked and exercised."

29. The case laws cited by learned counsel for the petitioners are distinguishable from the present facts of the case. Here, the allegation is that the petitioners have obtained loan by doing fraud with the bank as the goods which were stored in the godown were not at par with the SR report submitted by the petitioners at the time of obtaining loan, therefore, the petitioners cannot take assistance of this judgment.

30. From perusal of the material placed on record, it is quite clear that the dispute involved in this petition, which is required to be determined on the basis of material collected during the investigation and the evidence recorded before the trial Court, therefore, at this stage, this Court cannot exercise its

jurisdiction under Article 226 of the Constitution of India. Hence, this writ petition is liable to be dismissed.

31. Interim relief granted by this Court on 02.07.2018 is vacated. The learned trial Court is directed to decide the trial expeditiously without there being influenced by any of the observations made by this Court while hearing the present petition.

32. With these observations and directions, the present petition is dismissed. No order as to costs.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun