

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO.1715 OF 2020

Mr. Tejas Pravin Dugad,
Aged: 29 years, Occupation: Business,
Indian Inhabitant,
Resident at: 27, Vasant Baug Society,
Bibwewadi, Pune 411037.

... PETITIONER

VERSUS

1. Union of India, through the Ministry of
Finance, Department of Revenue, Room
No. 46, North Block, New Delhi – 110 001.
2. Directorate General of GST Intelligence
(DGGI)
1st & 2nd Floor, Wing Number 06,
West Block, 08 RK Puram,
New Delhi 110066.
3. Chief Commissioner of CGST, Nagpur
Nashik Commissionerate,
Ahmednagar Division,
Post Box No.81, GST Bhavan,
Civil Lines, Telengkhedi Road,
Nagpur 440001.
4. State of Maharashtra, through the
Director General of Police,
Chhatrapati Shivaji Maharaj
Marg, Colaba, Mumbai 400001.

... RESPONDENTS

...

Mr. Makrand D. Adkar, Senior Counsel, with Mr. P. B. Shirsath, with
Mr. Aashit A. Kankariya, with Mr. Shantanu M. Adkar, with Mr. Harsh
Agrawal, with Mr. Sanket S. Bora, Advocate for Petitioner.

Mr. A. G. Talhar, Advocate for Respondent Nos.1 to 3.

Mr. A. V. Deshmukh, APP for Respondent No.4.

...

AND

CRIMINAL WRIT PETITION NO.1716 OF 2020

Mr. Gaurav Pramod Dugad,
Aged: 31 years, Occupation: Business,
Indian Inhabitant,
Resident at: 28, Vasant Baug Society,
Bibwewadi, Pune 411037.

... PETITIONER

VERSUS

1. Union of India, through the Ministry of Finance, Department of Revenue, Room No. 46, North Block, New Delhi – 110 001.
2. Directorate General of GST Intelligence (DGGI)
1st & 2nd Floor, Wing Number 06,
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Nashik Commissionerate,
Ahmednagar Division,
Post Box No.81, GST Bhavan,
Civil Lines, Telengkhedi Road,
Nagpur 440001.
4. State of Maharashtra, through the
Director General of Police,
Chhatrapati Shivaji Maharaj
Marg, Colaba, Mumbai 400001.

... RESPONDENTS

...

Mr. Makrand D. Adkar, Senior Counsel, with Mr. P. B. Shirsath,
Advocate for Petitioner.

Mr. A. G. Talhar, Advocate for Respondent Nos.1 to 3.

Mr. M. M. Nerlikar, APP for Respondent No.4.

...

AND

CRIMINAL WRIT PETITION NO.1717 OF 2020

Miss Sonal Paras Chordiya,
Aged: 31 years, Occupation: Business,
Indian Inhabitant,
Resident at: 186, Akshada Garden,
Poona-Ahmednagar Highway,
Ahmednagar – 414001.

... PETITIONER

VERSUS

1. Union of India, through the Ministry of
Finance, Department of Revenue, Room
No. 46, North Block, New Delhi – 110 001.
2. Directorate General of GST Intelligence
(DGGI)
1st & 2nd Floor, Wing Number 06,
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3. Chief Commissioner of CGST, Nagpur
Nashik Commissionerate,
Ahmednagar Division,
Post Box No.81, GST Bhavan,
Civil Lines, Telengkhedi Road,
Nagpur 440001.
4. State of Maharashtra, through the
Director General of Police,
Chhatrapati Shivaji Maharaj
Marg, Colaba, Mumbai 400001.

... RESPONDENTS

...

Mr. Makrand D. Adkar, Senior Counsel, with Mr. P. B. Shirsath,
Advocate for Petitioner.

Mr. A. G. Talhar, Advocate for Respondent Nos.1 to 3.

Mr. A. V. Deshmukh, APP for Respondent No.4.

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AND

CRIMINAL WRIT PETITION NO.1718 OF 2020

Mr. Kirtikumar Manikchand Dugad,
Aged: 50 years, Occupation: Business,
Indian Inhabitant,
Resident at: Plot No. 5, S. No. 686,
Natekar Society Bibwewadi,
Pune 411037.

... PETITIONER

VERSUS

1. Union of India, through the Ministry of
Finance, Department of Revenue, Room
No. 46, North Block, New Delhi – 110 001.
2. Directorate General of GST Intelligence
(DGGI)
1st & 2nd Floor, Wing Number 06,
West Block, 08 RK Puram,
New Delhi 110066.
3. Chief Commissioner of CGST, Nagpur
Nashik Commissionerate,
Ahmednagar Division,
Post Box No.81, GST Bhavan,
Civil Lines, Telengkhedi Road,
Nagpur 440001.
4. State of Maharashtra, through the
Director General of Police,
Chhatrapati Shivaji Maharaj
Marg, Colaba, Mumbai 400001.

... RESPONDENTS

...
Mr. Makrand D. Adkar, Senior Counsel, with Mr. P. B. Shirsath,
Advocate for Petitioner.

Mr. A. G. Talhar, Advocate for Respondent Nos.1 to 3.

Mr. M. M. Nerlikar, APP for Respondent No.4.

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CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.

DATE : 15th January, 2021.

ORDER: (Per T. V. Nalawade, J.)

. All the proceedings are filed for the following reliefs:

“a. This Hon’ble Court be pleased to exercise its power under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus and/or Writ of Quo Warranto, thereby quashing the illegal proceedings against the Petitioner: AND/OR

b. pending hearing and final disposal of the present Criminal Writ Petition, the alleged illegal proceedings which are initiated against the Petitioner by the Respondents may kindly be stayed; AND/OR

c. Ad-Interim and Interim stay pending the final disposal of this Petition, the Respondents

may be restrained from taking any coercive steps of interfering with the liberty of the Petitioner in any manner; AND/OR.”

2 Heard both the sides.

3 The Petitioners are directors of M/s. Ganraj Ispat Private Limited company and the company is registered under the provisions of the Central Goods and Services Tax Act, 2017 (GST Laws) (hereinafter referred as “the Act”). It has registered office at Supa, District Nagar, Maharashtra. One Tushar Munot, sole proprietor of M/s. Rutu Enterprises was arrested by the Respondents, officers of GST intelligence in the month of October 2020. In the month of November 2020, search of the premises of the company of Petitioners was conducted and some documents came to be seized. It is the contention of the Petitioners that as there was allegations of commission of offence under Section 132 of the Act and it was informed to them that there was GST liabilities of Rs.84,00,046/- (Rupees Eighty-Four Lakh and Forty-Six Only), the Petitioner deposited this amount with Respondent No.2, but under protest. It is the contentions of the Petitioners that they want to contest the liability levied against them.

4 In the petitions, it is mentioned that the Petitioners want to challenge the prosecution as it is on wrong conceptions and as the provisions of Sections 154, 157 and 172 of the Code of Criminal Procedure are not followed by the Respondents. It is the contentions of the Petitioners that all the provisions of the Code of Criminal Procedure need to be applied for registration of crime, investigation and for taking cognizance of the offence and as the procedure is not followed, action taken against them is illegal.

5 As against the aforesaid contentions of the Petitioners, the Respondent department has contended that no summons as such is issued against the Petitioners and the petitions are based on misconceptions. It is contended that the department is following the procedure given under the Act and the officers are acting as per the powers vested in them by the Act. It is the contentions of the Respondent that the investigation into the business of M/s Rutu Enterprises revealed that fake invoices without receipt or supply of goods or services were prepared for availing input tax credit and that is the fraud played by M/s. Rutu Enterprises. It is contended that many invoices were issued to M/s. Ganraj Ispat Private Limited, company of the Petitioners involving the amount of Rs.5,50,66,962/- for which GST of Rs.84,00,046/- is recoverable. It is contended that after gathering such information, search was taken of the premises of M/s. Ganraj

Ispat Private Limited on 24th November, 2020 and the documents collected revealed that there were such fake invoices issued by M/s. Rutu Enterprises to M/s. Ganraj Ispat Private Limited. It is contended that statement of Shri Tushar Munot was confronted to the Petitioners and the statement of Gaurav Dugad, a director of M/s. Ganraj Ispat Private Limited came to be recorded on 24th November, 2020 under Section 70 of the Act (Petitioner of Criminal Writ Petition No.1716 of 2020). It is contended that this Petitioner agreed to reverse the inadmissible ITC availed by them on the invoices issued by M/s. Rutu Enterprises and then the amount of Rs.84,00,046/- was deposited voluntarily by filling Form DRC-03 under the Act. It is contended that on 7th December, 2020, another director Kirtiraj Dugad of M/s. Ganraj Ispat Private Limited requested to keep investigation in abeyance by submitting that their consultant was tested Covid-19 positive. It is contended that all cooperation was given by the department to the Petitioners and when even summons was not issued, they rushed to the Court to prevent the officers from exercising their powers. Thus, it is the contentions of the department that there is admission on the part of the Petitioners that fake transactions were shown for aforesaid purpose and inadmissible ITC was availed in respect of fake transactions.

the Code of Criminal Procedure like Sections 154, 157 and 173 need to be applied for investigation and taking cognizance of the offence and it is contended that such contentions are out of misconception of law.

7 The learned counsel for Petitioners placed reliance on many interim orders made by the High Courts and some orders made by the Supreme Court. Copy of order made by the Honourable Apex Court in *Special Leave to Appeal (Criminal) Nos.4322-4324 of 2019* arising out of many matters including the matter of *Union of India Vs. Sapna Jain and others*, is produced. The order dated 29th May, 2019 is as under:

“Delay condoned.

Issue notice returnable in four weeks.

As different High Courts of the country have taken divergent views in the matter, we are of the view that the position in law should be clarified by this Court. Hence, the notice.

As the accused-respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.5.2019 passed in SLP(Crl.) No. 4430/2019 had

dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.

Beyond the above, we do not consider it necessary to observe anything further.

The present matters alongwith other connected matters (SLP (CrI.) No. 244/2019, W.P. (CrI.) No. 118/2019, T.C. (CrI.) No. 3/2018, T.C. (CrI.) No. 4/2018, SLP (CrI.) No. 4634/2014, SLP (CrI.) No. 993/2016, W.P. (CrI.) No. 309/2018, W.P. (CrI.) No. 333/2018 and W.P. (CrI.) No. 34/2019) be listed before a Bench of three Judges.

SLP(CrI.) No. 4571/2019

Having heard learned Counsel for the petitioner and upon perusing the relevant material, we are not inclined to interfere. The special leave petition is accordingly dismissed.

Pending interlocutory applications, if any, shall stand disposed of.”

8 The learned counsel for Petitioners made specific submissions in respect of Writ Petition (CRL.) No. 118 of 2019 filed in Supreme Court and copy of the petition is produced. He submitted that in the proceeding like Writ Petition (CRL.) No. 118 of 2019 filed by Mukesh Kothari, it is the contentions of Kothari that the procedure

given under Chapter XII of the Code of Criminal Procedure is mandatory in such cases and if that procedure is not followed, the investigation will be vitiated. It is also contended by Kothari that such investigation will be against the provisions of Articles 14 and 21 of the Constitution of India and as there is nothing in the Act as provided in Section 4(2) of the Code of Criminal Procedure, the procedure given in Chapter XII of the Code of Criminal Procedure must be followed by the Respondents. He submitted that in view of such contentions and interim relief granted by the Apex Court to Mukesh Kothari in Writ Petition (CRL.) No. 118 of 2019 that no coercive steps shall be taken against the Petitioner, such interim relief needs to be granted to the present Petitioners also.

9 The aforesaid common order made by the Apex Court in Special Leave to Appeal (Criminal) Nos.4322-4324 of 2019 shows that the direction is given to place the matter before the Bench of Three Judges. But the fact remains that the Apex Court had refused to interfere in the order made by Telangana High Court in similar matter.

10 Some orders made by this Court at Principal Seat are also produced and some orders made by other High Courts are also produced by the learned counsel for Petitioners. He made some submissions on the basis of observations made by Madras High Court

in the case reported as **2019 SCC OnLine Mad 31224**, (*Jayachandran Alloys (P) Ltd., Rep. By its Managing Director Vs. Superintendent of GST and Central Excise and others*) and submitted that in that case there are observations, which support the contentions made by the present Petitioners. He submitted that the Madras High Court referred some observations made by the Apex Court in C.A. No.8081/2018 in order dated 23.01.2019 and the observations are as under:

“37. The aforesaid decision was carried in Appeal before the Supreme Court and the following order passed in C.A.No.8081/2018 & C.A.No.8082/2018, dated 23.01.2019:—

‘Heard learned counsel for the parties at length.

The issue is as to whether the power of arrest under Section 91 of the Finance Act, 1994 ('the said Act') can be exercised without following the procedure as set out in Section 73(3) and (4) of the said Act. The High Court has decided, after detailed discussion, that it is mandatory to follow the procedure contained in Section 73(3) and (4) of the said Act before going ahead with the arrest of a person under Sections 90 and 91. We are in agreement with the aforesaid conclusion and see no reason to deviate from it.

Accordingly, these appeals are dismissed.”

These observations are in support of proposition that provisions of

special law will prevail over provisions of the Code of Criminal Procedure.

11 He then placed reliance on observations made by the Bombay High Court in the case reported as 2019 SCC OnLine Bom 9840, (*Champsi M. Shah and Others Vs. Union of India and Others*) and he submitted that protection was given in similar case by this Court at Principal Seat. Then he placed reliance on the observations made by the Apex Court in landmark case reported as 1984 AIR 718, (*A. R. Antulay Vs. Ramdas Srinivas Nayak and another*) and submitted that the entire procedure given in the Code of Criminal Procedure needs to be followed even in the matters involving GST. He has produced some other interim orders made by the Apex Court, but the petitions showing the contentions of those persons are not produced. He submitted that the matters, which were taken to the Supreme Court against the orders made by this Court at Principal Seat are still pending at Principal Seat and the aforesaid points will be considered by the Supreme Court. Again it is reiterated that there was no interference in the order of Telangana High Court from Apex Court.

12 As against the aforesaid submissions made by the learned counsel for Petitioners, the learned counsel for Respondent department made submissions of the nature mentioned in the reply

and he placed reliance on some observations made by the Telangana High Court in **Writ Petition No.4764 of 2019**, (*P.V. Ramana Reddy Vs. Union of India & ors.*) decided with other proceedings. He submitted that the Telangana High Court has held that the special provisions given in the special Act need to be followed as it is special legislation and it is protected by Section 4(2) of the Code of Criminal Procedure. He placed reliance on observations made by the Gujarat High Court in **R/Special Civil Application No.13679 of 2019**, (*Vimal Yashwantgiri Goswami Vs. State of Gujarat*) decided with other matters, to support his contentions. In these matters, the relevant provisions of the Code of Criminal Procedure are discussed by the High Courts and the provisions of the Act are considered as special enactment. The Gujarat High Court has referred the provisions of Sections 69, 132, 135, 61, 66, 73 and 74 also of the Act. The Gujarat high Court has referred the Finance Act, 1994, which was considered by the Madras High Court. Then the Gujarat High Court has referred the case reported as **(2011) 3 SCC 581**, (*Radheshyam Kejriwal Vs. State of West Bengal and another*), and the principles laid down by the Supreme Court are quoted. They are at paragraph 66 and they are as under:

“66. The Supreme Court in the case of **Radheshyam Kejriwal v. State of West Bengal and another** [(2011) 3 SCC 581] has culled out the various principles in the

aforesaid context as under :

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be

allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

13 The Gujarat High Court specifically framed some questions like whether power of arrest given under Section 69 of the Act can be invoked only upon completion of the adjudication process, finalising the assessment and determination of liability and this point is answered in negative. It is laid down by the Gujarat High Court that the prosecution and adjudication proceedings can be started simultaneously though there may be some exceptional circumstances in which adjudication proceeding and its result can be considered in prosecution.

14 The facts and circumstances of each an every case are always different. In the present matters, there are allegations against the Petitioners and Munot that they created record of false invoices for input tax credit and by deceiving the authority they have committed the fraud of amount of more than Rs.84,00,000/-. There are statements given under Section 70 of the Act showing admissions given by concerned like one director of Petitioner’s company and one Munot. It is the case of the department that after seizure of record, the company of he Petitioners voluntarily deposited the aforesaid amount and it was not deposited under protest. In Section 135 of the Act, it is provided

that the presumption of culpable mental state is available against such persons. In Section 136 of the Act, it is made clear that the statement recorded under Section 70 of the Act can be used in proceeding like prosecution as they would be relevant. Thus, apparently, there is material to make out *prima-facie* case of fraud against the Petitioners.

15 In Section 67 of the Act, power of proper officer of making inspection of search and seizure is given. This provision shows that even before registration of crime, such power can be exercised. It was submitted that crime is registered under the Act with the officer, authority created under the Act. The provision of Section 67(10) of the Act runs as under:

“67. Power of inspection, search and seizure: –

(1)

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.”

16 The provision of Section 67(10) of the Act shows that the provision of Section 165(5) of the Code of Criminal Procedure will not

be applicable to such search and seizure and the report needs to be given to the Commissioner instead of Magistrate. This provision shows that this is special in nature and so this provision will have to be followed.

17 Section 69 of the Act shows power of officers to effect arrest. It runs as under:

“**69. Power to arrest.** – (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.”

Section 69 of the Act we need to consider as it gives procedure which needs to be followed when arrested accused is not released on bail by officer mentioned in this section. Thus, the Magistrate comes into picture after production of accused before him and then the Magistrate will have to follow procedure given for remand purpose in the Code of Criminal Procedure.

18 The provision of Section 69 (3)(b) of the Act shows that when bailable offence is committed, the Deputy Commissioner or the Assistant Commissioner needs to exercise the power, which is given to the officer in-charge of the police station in the Code of Criminal Procedure (underline added). The provision of Section 69 of the Act shows that subjective satisfaction of Commissioner is sufficient for effecting arrest of a person, who has committed the offence under Section 132 of the Act. In Section 132 of the Act, different kinds of offences are mentioned. Section 132 (1) (b) and (c) is as under:

“132. Punishment for certain offences. – (1) Whoever

commits any of the following offences, namely:—

(a) ...

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using such invoice or bill referred to in clause (b);”

Thus, the allegations against the Petitioners and the material quoted above show that there is material for the offences punishable under Sections 132 (1) (b) and (c) of the Act. The provisions of Section 132(4), 132(5) and 132(6) run as under:

“132. Punishment for certain offences. –

(1) ...

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised

or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.”

19 The provision of Section 134 of the Act provides for taking cognizance of the offences and it runs as under:

“**134. Cognizance of offences.** – No Court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.”

The criminal proceeding can be filed by the Respondent department but such proceeding is not in existence at present. From that angle, the petitions are premature.

20 The provision of Section 138 of the Act shows that compounding of the offence is possible either before or after institution of prosecution. There are some provisos, which show that in some circumstances the compounding may not be possible. The proviso to Section 138(1) of the Act shows that such compounding shall not affect the proceeding, if any, instituted under any other law and the

compounding can be done only after making payment of tax, interest and penalty involved in such offences.

21 The aforesaid specific provisions and scheme of the Act show that separate Chapters are given in the Act for determination of tax not paid or erroneously refunded or input tax credit wrongly availed and for offences and penalties. In view of the scheme of the Act, this Court has no hesitation to hold that in the cases of present nature, both adjudication and prosecution can be started simultaneously. Further, the aforesaid special provisions shall prevail over the provisions of the Code of Criminal Procedure and it cannot be said that all the provisions of the Code of Criminal Procedure like Sections 154 and 173 of the Code of Criminal Procedure need to be followed for prosecution under the Act. This Court is limiting the scope of discussion only to the extent of the offences committed under the Act and the observations are made only from that angle. If offences under the Indian Penal Code also are committed then different and more serious view can be taken. It needs to be kept in mind that the allegations make out the case of forgery.

22 The aforesaid circumstances and position of law are sufficient for dismissal of all the proceedings. There are more circumstances for making the order of dismissal. In the present matter,

admittedly, no summons was issued against the Petitioners though one director gave statement of the nature mentioned and the amount of Rs.84,00,000/- came to be deposited by the company of the Petitioners. When there are aforesaid circumstances, before the in-charge Court some submissions were made for the Petitioners of the nature mentioned in the order and the following interim order was made in favour of the Petitioners.

“1. We have briefly heard the learned counsel appearing on behalf of the petitioners, the learned ASGI on behalf of respondent No.1 and the learned APP on behalf of respondent No.4. The learned ASGI sought a pass over for a few minutes.

2. This matter was then called out at the end of the board and the learned ASGI submits that he causes an appearance on behalf of respondent Nos.1, 2 and 3.

3. We have gone through the order dated 11.04.2019 passed by the learned Division Bench of this Court at the Principal Seat in Criminal Writ Petition No.1996/2019 filed by Sapna Jain with Criminal Writ Petition No.1997/2019 filed by Pinkesh Jain with Criminal Writ Petition No.1998/2019 filed by Alpa Jain. This Court has granted ad-interim protection to the petitioners by observing that the petitioners would cooperate with the investigation and

no coercive action shall be taken against the petitioners till the next date.

4. The learned senior advocate for the petitioners before us, makes a solemn statement, on instructions and based on his personal knowledge, that the petitions referred to above before the Principal Seat deal with the same/ identical issue involved in all these petitions.

5. The learned ASGI is unable to state as to whether, his clients would place the petitioners under arrest the moment they appear before the authorities for interrogation based on oral summons.

6. The learned senior advocate for the petitioners makes a statement that no hearing is scheduled in between 31.12.2020 and 11.01.2021 as they have still not received any written summons from respondent No.2.

7. As such, stand over to 11.01.2021 in the urgent admissions category.

8. The petitioners shall not be coerced to appear before respondent No.2 until 11.01.2021.”

Thus, the Respondent department was virtually prevented from exercising its powers even like issuing summons. By such order, the Petitioners indirectly got relief of anticipatory bail, which is also not ordinarily permissible in proceeding of present nature. White collar

offences are more serious than offences like murder, dacoity etc. Such offences are committed after hatching conspiracy. This circumstance needs to be kept in mind by Court as the granting of relief of anticipatory bail hampers investigation and such approach causes damage to the image of judiciary.

23 The circumstances shows that even when the matter could have been filed before the regular Court as search and seizure took place in November 2020, the matter came to be filed before the Vacation Court. This circumstance also cannot be ignored. Attempt is made to give explanation that the consultant of the company was infected due to Covid-19 virus. Such submission ordinarily cannot be accepted by the Court. On 11th January, 2021, there was insistence to grant interim relief and adjournment was sought. The interim relief was vacated by this Court by order dated 11th January, 2021. On 14th January, 2021 also, initially an attempt was made by the counsel, who argued the matter that only the Petitioner from Criminal Writ Petition No.1716 of 2020 had instructed him to argue the matter. When the Court expressed that the Court will dispose of all the matters on merits if the Court finds that admission is not possible, then only argument was advanced in all the matters. Due to all these circumstances, this Court holds that some costs needs to be imposed on the Petitioners. In the result, the following order is passed:

ORDER

- I. All the petitions stand dismissed.
- II. In each petition, the Petitioner to deposit Rs.25,000/- (Rupees Twenty Five Thousand only) as costs of the petition.
- III. The amount is to be deposited in this Court within four weeks from today and the amount is to be given to the Respondents as the Respondents must have spent amount for defending the present matters.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

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