IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 896 OF 2020

1 Vyomesh Mahipatray Shah,
Aged 60 years, Occupation Business,
Residing at 23F, Akruti Doongersey Road,
Walkeshwar, Mumbai-400026.

2 Kiran Vinod Contractor,
Aged 45 years, Occupation – Service,
Residing at 7C, Spring Leaf, Lokhandwala
Township, Kandivli (East),
Mumbai-400067.

3 Suhas Tukaram Dumbare,
Aged 45 years, Occupation- Service,
Residing at 2A-1601, Dreams Complex,
Station Road, Bhandup (West),
Mumbai-400078 …. Petitioners.

Vs.

The State of Maharashtra,
At the instance of
The Superintendent of Police,
State CID, Konkan Bhavan,
Navi Mumbai 410210. …..Respondent.

Mr. Aabad Ponda, Senior Advocate a/w Mr. Sajal Yadav and Mr. Shulabh Sexena and Mr. Maitri Yadav i/by Mitul Shah for the Petitioners.
Mr. Pravin Chavan, Special PP a/w Mr. Amit Palkar, APP for the Respondent.

CORAM : A. S. GADKARI, J.
DATE : 18TH FEBRUARY, 2021.

<u>JUDGMENT</u>:-

By the present Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, *"the Cr.P.C."*), the Petitioners, Original accused Nos.9, 10 and 11, have impugned Order dated 15th March, 2017, issuing process against them in the alleged offence under Sections 34, 109, 120B, 201, 406, 409, 411, 420, 465, 467, 468, 471 and 477A of the Indian Penal Code (for short, *"the IPC"*) and under Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988 (for short, "Benami Act") bearing C.R. No.336 of 2015 dated 18th July, 2015, originally registered with Dashisar Police Station and subsequently investigated by the State CID, Konkan Bhavan, Navi Mumbai and Order dated 24th January, 2020, thereby rejecting the Application filed by the Petitioners under Section 227 of the Cr.P.C. for their discharge from the said offences.

2 Heard Mr. Ponda, learned Senior Advocate for the Petitioners, Mr. Chavan, learned Special P.P. for the Respondent State. Perused entire record annexed to the Petition.

3 The prosecution case in brief is that-

(i) The accused No.5-Shri. Ramesh N. Kadam (A-5), when was the Chairman of Sahityaratna Lokshahir Annabhau Sathe Development

Corporation (for short, *"SLASDC"*) during the period from 13th August, 2012 to 12th December, 2014, committed embezzlement and/or defalcation of approximately Rs.312 crores of Government funds and through his various institutions/entities, diverted those funds for purchase of properties. There are in all 27 accused persons in present crime.

(ii) As far as the Petitioners are concerned, the first charge-sheet was filed against them on 18th February, 2017, bearing Court Case No.12 of 2017. A supplementary charge-sheet has been filed against the Petitioners on 13th January, 2020.

(iii) As per the first charge-sheet dated 18th February, 2017, it is the allegation against the Petitioners that, during the period from 2009 to 2015, the Petitioners connived, conspired with the main accused and the then Chairman and public servant of SLASDC in misappropriating funds of SLASDC to the tune of Rs.111 crores, which were earmarked to be used for the upliftment of Matang Community and dishonestly diverted the said amount from Mr. Ramesh Kadam (A-5) controlled institutions like Joshaba Madhyavarti Grahak Sahakari Sanstha Maryadit, Mumbai (for short, *"Joshaba"*), Lokshahir Annabhau Sathe Backward Class Co-operative Spinning Mill Limited, Paithan, Aurangabad (for short, Spinning Mill Ltd.) and Mahalakshmi Dudhautpadak Co-operative Society (for short, Dudhautpadak Society) by effecting false, fabricated, fictitious and fraudulent entries in Comral Realty Private Limited (for short, Comral Ltd.)

and Hubtown Limited (for short, *"Hubtown Ltd."*) books of account and showed them as true while submitting accounts to the Registrar of Companies and diverted the said amount along with the amount diverted from the Metri Sugar and Trading Private Limited (for short, '*Metri Ltd.*') (which was allegedly the amount misappropriated from SLASDC) into the account of Comral Ltd. and Hubtown Ltd. respectively and misappropriated an amount of Rs.111 crores and knowingly retained the misappropriated amount with them and also cheated other share-holders of Comral Ltd. and Hubtown Ltd. for their wrongful gain and wrongful loss to SLASDC and thereby the Petitioners committed an offence under various Sections of the said Acts.

(iv) As per the supplementary charge-sheet dated 13th January 2020, it is the allegation against the Petitioners that, the Petitioner No.1 is the Managing Director of Hubtown Ltd. (formerly known as "*Akruti City Limited", [for short, "Akruti Ltd."]*) and he along with his relatives have 67% shares in the said Company. Petitioner No.1 also had rights of financial transactions of the said Company. Petitioner No.1 also had 50% of shares in Comral Ltd. (formerly known as "Kamla Shanti Realty Private Limited, [for short, Kamla Shanti Ltd.]). Similarly, Petitioner No.1 had 99% shares in the Citygold Management Services Private Limited (for short *"Citygold Management Ltd."*). The Petitioner Nos. 2 and 3 were serving as Assistant Company Secretary and Civil Engineer respectively in Hubtown

Ltd.. They were appointed as Directors in the Comral Ltd. on 15th September, 2011 and 16th June, 2014 respectively and since then, they were working as Directors. That, Smt. Maya Vaidya and Smt. Nancy Pareira were Directors in the Citygold Management Ltd.. Mrs. Maya Vaidya was also working as Director in the sister concern companies of Hubtown Ltd. and Smt. Nancy Pareira was working as Accountant in the Hubtown Ltd.. At that relevant time, the Directors of Comral Ltd., Citygold Management Ltd. and Citygold Investment Private Limited (for short, "*Citygold Investment Ltd.*") had given authority to Petitioner No.1 to effect financial transactions above Rs.10 lakhs of the said Companies. Petitioner No.1 was looking after the affairs of the said Companies.

(v) It is alleged that, firstly Kamla Shanti Ltd. purchased a plot of land on 17th August 2007, bearing C.S. No.1/701 and 2/702, admeasuring about 668.90 sq.mts. situated near Baitul Sadan, opposite Sophia College, Viveksingh Lane, Pedder Road, Mumbai-400 026 (for short, 's*uit property')*. After Kamla Shanti Ltd. purchased the said land on 17th August, 2007, within a period of 3 years, they spend a meager amount of 14 Lakhs on it. The said Company was thereafter, purchased on 26th March, 2010 for consideration of Rs.15 lakhs @ Rs. 10.30 per share by Akruti Ltd. (Erstwhile name of *"Hubtown Ltd."*) along with Shri. Nitin Adani, Manish Pethani, Malav Shah, Prachi Shah and M/s. Suresh Export Private Limited (for short, *'Suresh Export'*). At that time, it was revealed that, there was extremely low outstanding of Rs.31 crores. Generally, when any person purchases the Company, he purchases it by giving or paying all dues of the Company. The name of Kamla Shanti Ltd. was changed and was kept as Comral Ltd.. Since the purchase of the said Company, the Petitioner No.1 started making bogus entries in the balance sheet and books of accounts in the Comral Ltd. regarding dues of the said Company in a planned method with malafide intention and malafide object.

Thereafter a meeting was held between Petitioner No.1 and Mr. Ramesh N. Kadam (A-5) in the month of November 2014, regarding sale of Comral Ltd.. The Petitioner No.1 took decision to sell the said Comral Ltd. to Mr. Ramesh N. Kadam (A-5), without taking into consideration other partners. Accordingly, the Petitioners hatched conspiracy with Mr. Ramesh N. Kadam (A-5) and when Mr. Ramesh N. Kadam (A-5) was a Public Servant, being the Chairman of SLASDC, the defalcated amount of Rs.10 crores was diverted in the account of Joshaba. The said amount of Rs.10 crores was diverted from the account of Joshaba to Santosh Civil Services Private Limited (for short, 'Santosh Ltd.') by co-accused Vijay Kasbe. That, the said amount was used for purchasing shares of Comral Ltd. For the purchase of shares of Comral Ltd., the money which was diverted in the accounts of Spinning Mill Ltd. and Metri Ltd. was utilized by Shri. Ramesh N. Kadam (A-5) and co-accused Vijay Kasbe and was deposited in the account of Comral Ltd. and Hubtown Ltd.. The said amount was Rs.111

crores. Thereafter, the shares of Comral Ltd. were transferred in the name of Mr. Ramesh N. Kadam (A-5) and Vijay Kasbe for Rs.39.69 crores and the balance amount of Rs.67 crores were accepted under the head of liabilities/ dues, thereby causing illegal loss to SLASDC.

Thereafter, though Comral Ltd. was having 668.90 sq. meters of land and without having any work done on the said plot, false entries were made regarding the amount deposited in the Hubtown Ltd., Citygold Management Ltd. and Citygold Investment Ltd., showing the loan given to Comral Ltd. in the books of accounts and balance sheet. Though the Petitioners were fully aware of the fact that, the said entries were false, they presented it as true and siphoned of money of SLASDC, charging unreasonable interest on the alleged loan given to Comral Ltd.

4 The record reveals that, while opening the case of prosecution as contemplated under Section 226 of the Cr.P.C., the learned Special P.P. requested learned Trial Court, to frame charge against all the accused persons by submitting that, the material available in the charge-sheet is sufficient to proceed with trial against them. The Petitioners filed an Application under Section 227 of the Cr.P.C. for discharge from the said Special Case No.12 of 2017. Learned Additional Sessions Court, Mumbai by its impugned Order dated 24th January 2020, was pleased to reject the said Application.

5 The record further discloses that, feeling aggrieved by the said

Order dated 24th January, 2020, the Petitioners had filed Writ Petition No.2429 of 2019 before the Division Bench of this Court. The Division Bench, by its Order dated 3rd February 2020, granted liberty to the Petitioners to challenge the Order refusing discharge in appropriate proceedings and disposed of the said Petition, as withdrawn.

The present Petition is filed in pursuance of the liberty granted by the Division Bench by its Order dated 3rd February, 2020.

6 Mr. Ponda, learned counsel for the Petitioners submitted that, the Trial Court in paragraph Nos.33 and 34 of the impugned Order dated 24th January, 2020, while rejecting the Application of the Petitioners for discharge has simplicitely taken into consideration the facts narrated by the Investigating Officer in the charge-sheets and has failed to take into consideration the vital aspect of the matter that, the Petitioners are bonafide sellers of their own property for valuable consideration. That, as per the prosecution itself, the Petitioner No.1 came in contact with Mr. Ramesh N. Kadam (A-5) in the month of November, 2014 and by that time, Mr. Ramesh N. Kadam (A-5), had already committed defalcation of funds of the said SLASDC. He submitted that, the Petitioners were not aware of the said fact. That, as per the Order of attachment dated 10th March, 2017, passed by the learned Special Judge, (under, PC Act), the Government itself has shown valuation of the suit property as Rs.111 crores. That, the Petitioners have sold the suit property to Mr. Ramesh N. Kadam (A-5) for

Rs.101 crores and therefore, there is no question of inflating its market value. He submitted that, the star witness of the prosecution namely, Mr. Piyush S. Kochar, a Chartered Accountant by profession was appointed by Mr. Ramesh N. Kadam (A-5) for effecting the transfer of Management of Comral Ltd., in his statement recorded under Section 164 of the Cr.P.C. has nowhere stated about any illegal act committed by the Petitioners. He submitted that, the statements of Smt. Maya Vaidya and Smt. Nancy Pareira do not help prosecution at all in constituting even the basic ingredients of the offence alleged against the Petitioners. He submitted that, the Petitioners being share-holders of Comral Ltd., have not received any funds from the Government entities directly. That, Comral Ltd. has received the funds from various entities, controlled by Mr.Ramesh N. Kadam (A-5) and the Petitioners had no culpable knowledge of the alleged tainted source of funds by Mr. Ramesh N. Kadam (A-5).

7 Mr. Chavan, learned Special P.P. Submitted that, though the Order of attachment dated 10th March, 2017 mentions the valuation of suit property as Rs.111 crores, the actual value of the suit property was approximately of Rs.50 crores and therefore, by inflating value of suit property, the Petitioners sold it to Mr. Ramesh N. Kadam (A-5) to Rs.101 crores. He submitted that, the prosecution as against the Petitioners is based on statements of three witnesses namely Mr. Piyush S. Kochar, his father, Mr.Shantilal A. Kochar and Mr. Rahul S. Jadhav, a property broker.

He submitted that, perusal of the said three statements, would make out a *prima facie* case against the Petitioners, showing their involvement in the present crime. He however, fairly submitted that, the statements of Mr. Piyush S. Kochar and his father Mr. Shantilal A. Kochar are the foundation for raising suspicion against the Petitioners. He submitted that, the Petitioners did not pay capital gain tax on the transactions of the transfer of Management of Comral Ltd. in favour of Mr. Ramesh N. Kadam (A-5) and therefore, it amounts to cheating to Government. He submitted that, Mr. Piyush S. Shah, in his statement has pointed out certain irregularities in transferring funds from Metri Ltd. to Hubtown Ltd. and therefore, it amounts to an offence. That, the funds were transferred in favour of Comral Ltd. and Hubtown Ltd. from the entities controlled by Mr. Ramesh N. Kadam (A-5) in the month of November, 2014, December, 2014 and January 2015 and thereafter, the appointment of Mr. Ramesh N. Kadam (A-5) was made back dated on the Board of Comral Ltd. which constitutes an offence. He submitted that, as the funds of SLASDC were transferred in the accounts of institutions controlled by Mr. Ramesh N. Kadam (A-5), a presumption has to be drawn of knowledge by Petitioners about the ill gotten money by Mr. Ramesh N. Kadam (A-5), which gives rise to a suspicion and therefore, it is an offence.

He submitted that, a cheque of Rs.50 crores drawn in the account of Spinning Mill Ltd. was deposited in the account of Comral Ltd.

and was shown as loan from the said Spinning Mill Ltd., which also raises suspicion. He submitted that, the Petitioner No.3 had called for bank statement of Metri Ltd. wherein an entry of Rs.30 crores from SLASDC is reflected and therefore, he had knowledge of defalcation. He submitted that, the Petitioner No.2 has received a statement of account of Metri Ltd. and therefore, it was the duty of the Petitioner No.2 to verify its source, which he failed to do and therefore, it gives rise to suspicion. He submitted that, inference has to be drawn from the statement of Mr. Piyush S. Kochar about knowledge of Petitioners' receiving defalcated money by Mr. Ramesh N. Kadam (A-5) being routed through his Companies/Institutions. He submitted that, there is sufficient material to draw an inference of suspicion of criminal intent of Petitioners. In support of his contentions, he relied on 3 decisions of the Hon'ble the Supreme Court namely (i) *State of Bihar Vs. Ramesh Singh* reported in *AIR 1977 SC 2018,* (ii) *State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.* reported in *AIR 1996 SC 1744* and, (iii) *Kanti Bhadra Shah & Anr. Vs. State of W.B.*, reported in *(2000) 1 SCC 722.* He therefore, prayed that, the present Petition may be dismissed.

8 In rejoinder to the arguments advanced by the learned Special P.P., Mr. Ponda submitted that, mere irregularities in maintaining accounts under the Income Tax Act, is not an offence. He submitted that, the prosecution is relying on the statements of Mr. Piyush S. Kochar and his father, Shantilal A. Kochar, who have mentioned about irregularities in the

transfer of Management and the procedure adopted by the aforesaid Companies. That, the said two witnesses nowhere state about any criminality or knowledge at the behest of the Petitioners. He submitted that, the statement of account of Metri Ltd. was never forwarded to the Petitioner No.2 Kiran and in fact, it was Mr. Piyush S. Kochar, who had received it and therefore, the contention of the learned Special P.P. in that behalf, is wholly incorrect. He therefore prayed that, the present Petition may be allowed in its entirety.

9 Before proceeding further to deal with the core issue involved in the present Petition i.e. whether there is any material against the Petitioners or not, to proceed with them by framing charge, it is necessary to broadly know, how the transfer of ownership or control of Comral Ltd./ suit property was effected. It is an admitted fact on record that, the suit property was the only asset owned by Comral Ltd.. Since the year 2004, the suit property was owned by Dr. Rajendra R. Singh. By a Deed of Conveyance dated 17th August 2007, duly registered with the Registrar of Assurances bearing registration No. BBE-1/08991 of 2007, Dr. Rajendra R. Singh transferred and conveyed all his rights in the suit property to Kamla Shanti Ltd. for a consideration of Rs.29,70,00,000/-. As a consequence thereof, the suit property became the sole asset of Kamla Shanti Ltd. The share-holders of Kamla Shanti Ltd. were Jain family and Mantri family. The requisite funds were infused in the Company as loans and advances to

purchase the said suit property and it became liability in the books of Kamla Shanti Ltd.. In the year 2007, Mr. Nitin Adani and Mr. Manish Pethani invested a sum of Rs.4 crores through one of their Companies namely, Suresh Export for booking of two flats to be constructed on the suit property. As there was no visible work carried out by Kamla Shanti Ltd. on the suit property till 2010, Mr. Nitin Adani and Mr. Manish Pethani demanded their money back from the owners of Kamla Shanti Ltd., since Kamla Shanti Ltd. was unable to refund the invested amount, the Jain family of Kamla Shanti Ltd. suggested Mr. Adani and Mr. Pethani to take over Kamla Shanti Ltd.. In the year 2010, Mr. Pethani approached Petitioner No.1 for jointly taking over Kamla Shanti Ltd.. In furtherance of their discussions on 26th March 2010, Hubtown Ltd. (formerly known as "*Akruti Ltd.*") along with others, purchased the shares of Kamla Shanti Ltd. for Rs.90.45 crores. The new share-holders substituted previous liabilities of Kamla Shanti Ltd. aggregating to Rs.32.82 crores by arranging Rs.32.82 crores as loans/advances for the Kamla Shanti Ltd.. Kamla Shanti Ltd. was subsequently named as Comral Ltd.. There were increased liability in the books of accounts of Comral Ltd. to the expenses related to the project in absence of any further sale by and as agreed by all stake-holders. In the month of August or September 2014, (as per the prosecution in the month of November, 2014) Mr. Ramesh N. Kadam (A-5) through a property broker Mr. Rahul Jadhav met Petitioner No.1 and expressed his desire to take over the property of Comral Ltd. After discussions, the transaction was finalized. It was decided that, the suit property would be transferred by transfer of shares and Management of the holding Company of the property i.e. Comral Ltd. for total value of Rs.101 crores.

10 It is an admitted fact on record that, Mr. Ramesh N. Kadam (A-5) engaged services of a Chartered Accountant of his choice namely Mr. Piyush S. Kochar for effecting the transfer of Comral Ltd. Mr. Piyush S. Kochar accepted the said appointment and pointed out balance of liabilities to be addressed to Mr. Ramesh N. Kadam (A-5). It was decided to transfer the property/ Comral Ltd. in favour of Mr. Ramesh N. Kadam (A-5) by following similar transactions which were adopted in the year 2010 while taking over Kamla Shanti Ltd. by the Petitioner No.1. It was decided between the parties that, Mr. Ramesh N. Kadam (A-5) will pay Rs.61.31 crores for substitution of the then existing liabilities in the books of Comral Ltd. *qua* the outgoing share-holders by incoming share-holders and Rs.39.69 crores for sale of 9 lakh shares @ Rs.441/- per share held by Hubtown Ltd. and Ors. to Mr. Ramesh N. Kadam (A-5) and his associates. It was thus, decided to pay Rs.101 crores by Mr. Ramesh N. Kadam (A-5) to the Comral Ltd. After receipt of Rs.50 crores from Mr. Ramesh N. Kadam (A-5), he was made Director of Comral Ltd. from 30th November, 2014. Admittedly, the amounts received by Comral Ltd. are through the entities fully controlled by Mr. Ramesh N. Kadam (A-5) namely Metri Ltd., Joshaba

Ltd., and Santosh Ltd. and not directly from the SLASDC.

The aforestated facts are culled out from the contents of charge-sheet submitted by the prosecution.

11 As noted earlier, it is an admitted fact on record that, the Petitioners/ share holders of Comral Ltd. have not received a single rupee from the Government of Maharashtra or SLASDC and have received funds from private entities wholly controlled by Mr. Ramesh N. Kadam (A-5). The Petitioners did not have any knowledge of the fact that, the said amount paid by Mr. Ramesh N. Kadam (A-5) was in fact proceeds of crime by him. There is no material to suggest that, the amount of Rs.101 crores was overvalued. As a matter of fact, the prosecution itself has valued the suit property for Rs.111 crores, as has been reflected in the Order of attachment dated 10th March, 2017. As of today, the suit property stands attached by the Respondent and by the Enforcement Directorate for the purpose of confiscation.

It is to be noted here that, the value of approximately Rs.50 crores mentioned on internal page No.5 of the Order of Attachment dated 10th March, 2017 is the value of shares and balance proceeds in the account of Comral Ltd. and does not reflect the correct valuation of the suit property. In schedule-A (Annexure-A) of the said Attachment Order, the valuation of the suit property, as has been made by the Investigating Agency, is shown Rs.111 crores and therefore, the contention of learned

Special P.P. in that behalf, appears to be erroneous.

12 The record clearly indicates that, the transfer of suit property and/or Management of Comral Ltd. in favour of Mr. Ramesh N. Kadam (A-5), though through an intricate process, but was effected by legally permissible method and no illegality can be even inferred from it. The charge-sheet is absolutely silent about any criminality at the behest of the Petitioners in selling their own property to Mr. Ramesh N. Kadam (A-5). The Petitioners are bonafide sellers for valuable consideration. The prosecution witness namely Mr. Rahul Jadhav, a property broker has stated that, through him Mr. Ramesh N. Kadam (A-5) met Petitioner No.1 for the purpose of purchase of the suit property. He has further stated that, Mr. Ramesh N. Kadam (A-5) himself told Petitioner No.1 that, the amount for purchase of suit property will be paid from the institutions governed by him. As per the prosecution, Mr. Ramesh N. Kadam (A-5) met Petitioner No.1 in the month of November, 2014. Even if, the statement of witness Mr. Rahul Jadhav is accepted to the extent that, Mr. Ramesh N. Kadam (A-5) met Petitioner No.1 in the month of August or September, 2014 for the first time, there is no material available on record even to remotely infer that, the Petitioners were aware of the siphoning of funds by Mr. Ramesh N. Kadam (A-5) from SLASDC and diverting it to the entities controlled by him.

13 As submitted by the learned Special P.P., that the statements of

Piyush S. Kochar, Chartered Accountant and his father Shantilal A. Kochar are the foundation of raising suspicion against the Petitioners. Bare reading of said two statements would indicate that, except pointing out irregularities in the transaction, the said two witnesses nowhere state about any illegality or culpable mental state of the Petitioners. Mr. Piyush S. Kochar, in his statement recorded under Section 164 of Cr.P.C. has categorically stated that, whatever he has done, was done in his professional capacity and had no direct or indirect benefit in the transaction except to the extent of his professional charges. The submission of learned Special P.P. that, this Court may draw an inference of suspicion of criminal intent of Petitioners and consequently, commission of offence cannot be accepted for want of basic material in that behalf. It clearly appears that, the prosecution case as against the Petitioners is based on hypothesis of conjectures and surmises and nothing else. Even inference of suspicion against the Petitioners cannot be drawn from the material available on record.

14 It is important to note here that, the Petitioners had earlier filed a Writ Petition No.4197 of 2016 under Article 226 of the Constitution of India, before the Division Bench of this Court seeking declaration that; (i) arrest of the Petitioners is illegal, unlawful and unwarranted, (ii) the proceedings against the Petitioners in respect of CR No.336 of 2015 of Dahisar Police Station are illegal. The Petitioners had also claimed relief for

quashing and setting aside condition Nos.2(i), 2(ii) and 2(iii) in the Order dated 12th February 2016, passed by the learned Special Judge in CR No.336 of 2015 registered with Dahisar Police Station to the extent that, it imposes conditions of depositing Rs.59 crore for granting bail. The Petitioners had further sought directions to the Respondents to defreeze the bank account No.0111256053215 of Hubtown Limited maintained with Canara Bank, Santacruz (East). The Division Bench by its Judgment dated 10th November, 2017 was pleased to allow the said Petition. It is observed in the said Judgment that, the scheduled of property of attachment Order shows that, Ramesh Kadam is the holder of the property; that, the transaction of transfer of property was accepted and completed against valuable consideration; that, the Petitioners being sellers were not obliged to inquire into the source where from Ramesh Kadam brought money for the said transaction; the entire property was transferred through banking channel; the value of shares was commensurate with the fair market value of the property; we see no illegality in the manner of transfer of shares of Comral Realty Private Limited. The Division Bench has further observed that, from the record before us, it does not appear at this stage that, the Petitioners had knowledge about the motives or intentions of Ramesh Kadam and is alleged that, the Petitioners seem to be only unfortunate victims of circumstances as it is apparent that, they have entered into pure commercial transaction, which is valid and legal in the eyes of law and not benami or illegal transaction as alleged.

Mr. Chavan, learned Special P.P. submitted that, the said Judgment passed by the Division Bench has been challenged by the State before the Hon'ble Supreme Court of India. He however fairly submitted that, till date the Hon'ble Supreme Court has not stayed the same. It is therefore clear that, the observations made by the Division Bench, which are noted hereinabove, have binding effect on this Court.

15 In view of the above, and after perusing the record, this Court is of the opinion that, the ingredients of knowledge for indulgence in illegal act or legal act by illegal means for alleging an offence against the Petitioners are missing from the material available on record. No *prima facie* case at all is made out against the Petitioners for proceeding against them by framing of charge. There is no material for even presuming that, the Petitioners have committed the offence as alleged against them.

Petitioners therefore succeed.

Petition is accordingly allowed in terms of prayer clauses (a) and (b).

(A.S. GADKARI, J.)

Sanjiv S. Mashalkar Digitally signed by Sanjiv S. Mashalkar Date: 2021.03.08 17:31:49 +0530