

UMESH
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1805 OF 2021

1. Indiabulls Housing Finance)
Ltd. Having its corporate)
office at Indiabulls Finance)
Centre, Indiabulls House,)
Tower 1, 17th Floor,)
Senapati Bapat Marg,)
Elphinstone Road,)
Mumbai – 400 013.)
through Ms. Uma Salma)
Mansuri)
 2. Mr. Rajiv Gandhi)
Having his office address)
at One International)
Centre, Indiabulls House,)
Tower 1, 18th Floor,)
Senapati Bapat Marg,)
Elphinstone Road,)
Mumbai – 400 013.)
 3. Mr. Santosh Khopade,)
Having his office address)
at One International)
Centre, Indiabulls House,)
Tower 1, 18th Floor,)
Senapati Bapat Marg,)
Elphinstone Road,)
Mumbai – 400 013.)
- ...Petitioners

Versus

1. State of Maharashtra)
through Wada Police)
Station, Police Station)
Road, Agari Ali, Wada,)
Maharashtra – 421 303.)
2. Ashutosh Kamble,)
129, Ahmed Sailor Compound,)
B.J. Devrukhkar Road,)
Naigaon, Dadar,)

Mumbai – 400 014.) ...Respondents

ALONG WITH
WRIT PETITION NO. 6812 OF 2021

Atul Chordia,)
Level 8, Chordia World,)
Mumbai – Bangalore Highway,)
Baner, Pune – 411 045.)
Maharashtra, India.) ...Petitioner

Versus

1. The State of Maharashtra)
(Through Wada Police)
Station, Palghar))
2. Ashutosh Vijay Kamble,)
380, At Biloshi, Taluka)
Wada, District Palghar)
421 303. Maharashtra,)
India.) ...Respondents

- Mr. Mukul Rohatgi, Senior Advocate, Mr. Amit Desai, Senior Advocate, a/w Mr. Gopalkrishna Shenoy, Mr. Pranav Badheka, Mr. Nikhil Rohatgi, Mr. Karan Luthra, Mr. Rohan Dakshini, Ms. Pooja Kothari, Ms. Janaki Garde, Ms. Anuka Bhansali, Ms. Urvi Gupte Advocates i/by Rashmikanth and Partners for Petitioners in WP/1805/2021.
- Dr. Abhinav Chandrachud, Mr. Shubhash Jadhav, Mr. Amit Patil i/by Parinam Law Asso for Petitioner in WP/6812/2021.
- Mrs. A.S. Pai, PP a/w Mr. J.P. Yagnik, APP for Respondent – State in both Writ Petitions.
- Mr. Akhilesh Dubey a/w Mr. Dharmesh Joshi, Mr. Amit Dubey, Mr. Uttam Dubey, Mr. Rajaram Kuleriya, Mr. Varad Dubey i/by T.D. Joshi and Asso for Respondent No. 2 in both Writ Petition.
- Mr. Narayan Dnyanoba Saste, Dy.SP, State CID, Pune is present.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

RESERVED ON : APRIL 08, 2022.
PRONOUNCED ON : MAY 04, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. The present Petitions are filed under Article 226 of the Constitution of India & Section 482 of the Code of Criminal Procedure, 1973 seeking quashment of the order dated 07th April, 2021 passed by the Judicial Magistrate First Class, Wada in O.M.A. No. 105 of 2021 and first information report bearing Crime No. 0129 of 2021 dated 13th April, 2021 in Wada Police Station for the offences punishable under Sections 420, 465, 467, 468, 469, 470, 471 read with Section 120(B) of the Indian Penal Code, 1860 against the Petitioners.

2. **Rule.** Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective parties, matters are taken up for hearing and disposal, at the admission stage itself.

3. Writ Petition No. 1805 of 2021 is treated as lead Petition so as to discuss the facts, submissions and merits of both the Petitions.

4. The challenge is raised on following grounds:

i. Respondent No. 2 at whose instance the complaint was submitted to the JMFC, Wada is wholly untenable and the Judicial Magistrate without application of mind passed the order under Section 156(3) of the Code of Criminal Procedure.

ii. Respondent No. 2 submitted in the complaint that he had invested certain amount in the shares of the Petitioner – Company and it is admitted by the Petitioner himself that Respondent No. 2 had not suffered any personal loss.

iii. Respondent No. 2 in his complaint admitted that the for the first time he had invested the amount in the shares of the company and further stated that on collection of certain information it came to his knowledge that the Petitioner – Company played the mischief and with an oblique object caused the loss to its shareholders.

iv. Respondent No. 2 who is otherwise resident of Dadar, Mumbai, with a designed motive shifted to Biloshi, Wada and by arranging the house on rental

basis for a limited period approached the Magistrate by submitting his complaint. Thus, Respondent No. 2 for fulfilling his oblique intention selected the jurisdiction of said Court.

v. Mr. Rohatgi, learned Senior Counsel vehemently submitted before this Court that a similar attempt was made in other part of the county and a Petition was filed for quashing before Delhi High Court. The Delhi High Court in its detailed order observed that the complaint was filed with oblique motive.

vi. Mr. Rohatgi, learned Senior Counsel further submitted before the Court that the material in support of the complaint submitted before the Wada Court is nothing but an replica of a complaint in question before the Delhi High Court.

vii. Mr. Rohatgi submitted that without admitting, even if the complaint is considered on its face value, not a single offence is made out against the Petitioner.

viii. Mr. Rohatgi, learned Senior Counsel further submitted before this Court that the continuity of the

proceedings against the Petitioners would be nothing but an abuses of process of law.

5. It was submitted by Mr. Rohatgi, learned Senior Counsel appearing for Petitioners in WP/1805/2021 & Dr. Chandrachud appearing for Petitioner in WP/6812/2021 that a detailed order was passed by this Court refers to the points urged before this Court and the observations thereon. It was submitted that the observations of this Court are on the merits of the Petition and it covers the major contentions raised in the Petition as such, it assumes importance. For ready reference, we may quote the relevant observations of the Division bench in the order dated April 27, 2021 as under:

2] Mr. Amit Desai, learned senior counsel appearing on behalf of the petitioners submitted that complaint lodged by respondent no. 2 (original complainant) leading to registration of aforesaid FIR was absolutely malafide and part of similar attempts made earlier against the petitioners by certain persons seeking to initiate criminal proceedings on the basis of false and frivolous allegations, so as to extract money from the petitioners. Attention of this Court was invited to certain complaints filed in the name of various persons at the behest

of Ram Mani Panday and Kislay Panday who claimed to be lawyers running a law firm called 'Magnum Juris'. It was emphasized that petitioners initiated criminal proceedings against such persons seeking to extract money from them leading to registration of F.I.R. in the matter. Petitioner no. 1 company also filed a suit in the year 2019 against the said Ram Mani Panday and his associates and in the said suit, Delhi High Court had temporarily enjoined defendants from disseminating and publishing allegations against the petitioner no. 1 company as it was leading to grave financial loss and loss of reputation. It was also brought to our notice that bail application filed by accused Ram Mani Panday was rejected by Punjab and Haryana High Court making scathing observations against modus operandi adopted by said person and his associates.

3] Learned senior counsel also brought to the notice of this Court that there was one Public Interest Litigation in the Delhi High Court i.e. WP (Civil) 9887/2019 (Citizens Whistle Blower Forum V. Union of India and Ors) wherein averments were made raising frivolous allegations against the Petitioners. The said petition is pending and according to learned senior counsel for the petitioners, perusal of affidavits filed by respondents therein, including Ministry of Corporate Affairs, Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI) would show that there was no substance in the allegations levelled against the

petitioner. It was then submitted that in the present case, respondent no. 2 appeared to have been set up with the said design of making wild allegations against the petitioners so as to somehow initiate criminal proceedings against the petitioners. It was submitted that Magistrate in the present case had no territorial jurisdiction to entertain the complaint for the reason that respondent no. 2 admittedly executed a leave and licence agreement pertaining to room in Palghar on 26/03/2021 and filed a complaint before the police authorities on the very same day levelling aforesaid allegations against the petitioners. This was done deliberately to create false basis for invoking jurisdiction of the Magistrate. It was further brought to the notice of this Court that while respondent no. 2 purchased shares for the first time on 17/03/2021, within less than 10 days, he approached the police with his alleged grievances. He did not wait for the matter to proceed further and within 4 days i.e. on 30/03/2021, he approached the higher authority i.e. Superintendent of Police and then immediately on 03/04/2021 he filed the complaint before the Magistrate under Section 156(3) of the Cr.P.C. On 07/04/2021, Magistrate proceeded to pass the impugned order directing registration of F.I.R. According to learned senior counsel for the petitioner, this was an absolutely malafide complaint, which the Magistrate failed to appreciate in the proper perspective and that there was not even a prima facie case made out for registration of FIR. It was further

submitted that the complaint in question did not satisfy the requirements of law as laid down by the Hon'ble Supreme Court in the case of Priyanka Srivastava Vs. State of U.P. (2015) 6 SCC 287 and the judgments passed by this Court in as much as there was no affidavit filed in support of the said complaint before the Magistrate. Learned senior counsel emphasized that there were false statements made in the complaint, verifiable from material on record, which the Magistrate failed to appreciate. Learned senior counsel relied upon the Judgment of the Hon'ble Supreme Court in the case of State of Haryana V. Bhajan Lal 1992 Supp (1) SCC 335 particularly category 7 laid down in paragraph 102 thereof. He also relied upon Judgments of the Hon'ble Supreme Court in the case of P. Chidambaram Vs. Directorate of Enforcement (2019) 9 SCC 24 and in Neeharika Infrastructure Pvt. Ltd. V. State of Maharashtra and others [2021 SCC OnLine SC 315] to contend that a clear case for grant of stay of investigation was made out by the petitioners.

6. While considering the prayers for grant of interim stay on the backdrop of recent judgment of the Apex Court in the case of Neeharika Infrastructure Pvt. Ltd V. State of Maharashtra and others¹, the Division bench made following observations:

7] Therefore, we need to examine in the present case as to whether prayer made on

1 2021 SCC OnLine SC 315

behalf of Petitioners for grant of interim stay of further investigation can be granted and if so, reasons for the same.

8] We are conscious of the fact that since FIR has been recently registered on 13/04/2021, investigation is at nascent stage and that there ought to be compelling reasons to favourably consider the prayer for grant of ad-interim stay of investigation.

9] We are proceeding on the basis of facts discernible from the complaint itself filed by respondent no. 2 and documents on record with which respondent no. 2 cannot have any quarrel. It is evident from the complaint itself that respondent no. 2 for the first time purchased shares of petitioner no. 1 company on 17/03/2021. In the De-mat account from which respondent no. 2 purchased the said 500 shares, he is shown to be resident of Dadar, Mumbai. On 26/03/2021, respondent no. 2 executed a leave and licence agreement pertaining to a room at Palghar. It is on that very day that respondent no. 2 approached the police Station Wada to raise his alleged grievance against the Petitioners. Immediately thereafter, on 30/03/2021, respondent no. 2 went to Superintendent of Police, Palghar claiming that he disclosed facts showing cognizable offences committed by the petitioners and other accused persons. Thereafter, immediately on 03/04/2021, respondent no. 2 filed the complaint before JMFC Wada under Section 156 (3) of Cr.P.C. In the detailed complaint consisting of 92 paragraphs, respondent no. 2 made

allegations against the petitioners and others regarding alleged fraud, siphoning of money through dummy entities etc. As noted above, on 07/04/2021, Magistrate passed the order directing registration of F.I.R. against the petitioners and others, on the basis of the aforesaid complaint.

10] Perusal of the complaint shows that detailed statements have been made about alleged fraud committed by petitioners on innocent investors and the alleged modus operandi has been stated. Respondent no. 2 has also stated that he came to know about rigging of shares by promoters/ directors of the petitioner no. 1, as far as back as on 10/06/2019. Respondent no. 2 has also referred to number of litigations filed before the Hon'ble Supreme Court of India wherein allegations were made against the petitioners, which were subsequently withdrawn. A reference is made to alleged manner in which funds were diverted by the petitioners through companies in Mauritius and pumped back illegally. All this information, even according to respondent no. 2, was in the public domain since 2018-2019 and he was aware about the same. Yet, admittedly he chose to purchase 500 shares of petitioner no. 1 company on 17/03/2021. He had no concern with the said company till he purchased shares on 17/03/2021 and that too allegedly knowing fully well from 2019 onwards about the manner in which petitioners were allegedly committing fraud and duping innocent investors.

11] Even as per the complaint, the respondent no. 2 within less than 10 days

of purchasing the shares, found that he was cheated and approached the police station, Wada with his grievance. Respondent no. 2 did not wait for the police to examine the grievance raised by him and immediately rushed to Superintendent of Police on 30/03/2021 and without waiting for the senior officer to take any steps in the matter, within 4 days lodged complaint dated 03/04/2021 before the Magistrate. Therefore, from 17/03/2021 when respondent no. 2 for the first time bought 500 shares of petitioner no. 1 company to 03/04/2021, when he rushed to the Magistrate with a detailed complaint consisting of 92 paragraphs, entire set of grievances of respondent no. 2 were supposed to have arisen requiring an order of registration of FIR under Section 156(3) of Cr.P.C.

12] These admitted facts prima facie raise a suspicion about bonafide of respondent no. 2 and prima facie it appears that respondent no. 2 has been set up to initiate criminal proceedings in the matter. This is accentuated by the admitted position that respondent no. 2 for the first time executed a leave and licence agreement about a room at Palghar on 26/03/2021 and on that very day approached the police station with his grievances, prima facie indicating that this modus operandi was undertaken to foist jurisdiction on the Magistrate at Wada. No part of the transaction is shown to have been undertaken within the jurisdiction of the Magistrate at Wada or District Palghar. (Emphasis supplied)

14] It is also significant that perusal of complaint itself would show that details stated therein running into as many as 92 paragraphs, which appear to be akin to allegations sought to be made against the petitioners in the PIL. At this stage, prima facie it appears suspicious that respondent no. 2 became aware of all such alleged facts regarding functioning of the petitioners in the short period between 17/03/2021 when he purchased shares and 26/03/2021, when he sought to raise the grievance before Police Station, Wada. It is also significant that in the complaint, respondent no. 2 has claimed that he holds a De-mat account having number 613440 and that he was involved in regular trading of shares in the stock market. But, a document is placed on record by the petitioner to show that the share register of the transfer agent of the petitioner-company has stated as per record that the said De-mat account bearing no. 613440 is not connected with respondent no. 2 at all and that in fact, respondent no. 2 purchased 500 shares of the company for the first time on 17/03/2021 through De-mat account 1202990006916691 showing the address of respondent no. 2 at Dadar, Mumbai. Although, we are aware that such documents may need further confirmation and they would be subject to reply of respondent no. 2, nonetheless they prima facie indicate false statement made by respondent no. 2 in the complaint itself.

7. A ground was also raised before this Court that the complaint filed by Respondent No. 2 before the

Judicial Magistrate was not supported by an affidavit which is a pre-requisite not only as per the provisions of law but as per the judgments of the Apex Court as well as this Court. The Division bench was pleased to make following observations on that point:

15] Apart from this, by referring to copy of the complaint filed by respondent no. 2 on record, it has been strenuously argued on behalf of the petitioner that complaint is not supported by an affidavit. We have perused copy of complaint on record and prima facie find that the statement appears to be correct.

16] In the case of Priyanka Shrivastava [cited supra] followed by judgments of this Court in the case of Sayed Anwar Ahmed V. State of Maharashtra [2017 SCC OnLine Bom 3972] and Devidas V. State of Maharashtra [2017 SCC OnLine Bom 8416] it has been laid down that complaints filed before the Magistrates need to be supported by affidavit so that the complainant can be held responsible for allegations and statements made in the complaint. It has been laid down that such requirement has to be satisfied so as to ensure that citizens are protected from pervert litigations and complaints filed before the Magistrates for initiating criminal proceedings only with a view to harass fellow citizens. Therefore, prima facie, we find some substance in the contentions raised in this context on behalf of the petitioners.

8. The Division bench in clear words observed that it was the *prima facie* opinion of this Court that the complaint filed by Respondent No. 2 appears to be malafide and deficient as such, this Court was inclined to grant ad-interim stay. This observations find place in paragraph 17 of the order and the same reads thus:

17] As regards the contentions raised on behalf of respondent no. 2 that since FIR is already registered, investigation ought to continue, we are of the opinion that in view of above, since we prima facie are of the opinion that the complaint filed by respondent no. 2 appears to be malafide and deficient, insofar as the complaint is not supported by a proper affidavit, ad-interim stay of the investigation deserves to be granted.

9. The Division bench then granted ad-interim relief in terms of prayer clause 'b' and further observed that since the Division bench had stayed the investigation the question of taking any further action on the basis of said FIR would not arise.

10. It was brought to the notice of this Court during the pendency of the Petition and post order of this Court, the investigation was transferred to the State- CID. As such, this Court made it clear that the

orders granting stay to the investigation applies to the agency to whom the investigation was subsequently entrusted i.e., the State CID – Pune.

11. Similarly, in Writ Petition No. 6812 OF 2021 following order was passed by the Division bench on 27th April, 2021:

2. This petition arises out of the same order of the Magistrate and F.I.R., which are subject matter of Criminal Writ Petition No. 1805 of 2021.

3. Insofar as contentions pertaining to malafide complaint and it being deficient as it is not supported by affidavit of Respondent No. 2 (original complainant) are concerned, Dr. Chandrachud, learned counsel appearing for the Petitioner has adopted the submissions made on behalf of the Petitioners in the said connected writ petition by Mr. Amit Desai, learned Senior Counsel. Additionally, it is submitted by Dr. Chandrachud appearing for the Petitioner herein that insofar as the said Petitioner is concerned, there is only one statement made against him in the entire complaint filed by the Respondent No. 2, which is at paragraph 84 of the complaint.

4. By inviting our attention to the said paragraph, the learned counsel submitted that even if the statement made therein is accepted as it is, only a non-cognizable offence under Section 86 read with 439 of the Companies Act, 2013, can be

alleged pertaining to no charge being filed with the Ministry of Corporate Affairs regarding loan advances. On this basis, it is submitted that the order passed by the Magistrate dated 7th April, 2021 under Section 156(3) of Cr.P.C. shows total non application of mind, insofar as it directs registration of F.I.R. against the Petitioner.

5. In the order passed today in Writ Petition No. 1805 of 2021, we have already stated detailed reasons as to why we have prima facie found that the complaint filed by Respondent No. 2 appears to be malafide and deficient. The same reasons apply in the present case also. Additionally, insofar as the present Petitioner is concerned, the said contention raised specifically in the context of the provisions of Companies Act, 2013, also makes out a prima facie case for stay of further investigation, against the Petitioner herein.

6. Issue notice returnable on 28th June, 2021.

7. Dr. F.R. Shaikh, learned APP waives service of notice on behalf of Respondent No.1- State and Mr. Dubey, learned counsel waives service of notice on behalf of Respondent No. 2.

8. In the meanwhile, there shall be ad-interim relief in terms of prayer clause (b), which reads as follows :

“(b) That this Hon’ble Court be pleased to issue a Writ of Mandamus or any other Writ, order or direction, directing the

Respondent No.1 not to initiate any action against the Petitioner in furtherance of FIR bearing No.129 of 2021 dated 13.04.2021 (Exhibit 'A' hereto)."

9. The Respondents may file their affidavits-in-reply before the returnable date.

10. Tag with Writ Petition No. 1805 of 2021.

12. Mr. Rohatgi vehemently submitted before this Court that the complaint filed against the Petitioner Company before JMFC, Wada was an act of oblique motive. Mr. Rohatgi further submitted that on similar set of allegations a group consisting of two lawyers and 8-9 Petitioners filed Petition before Apex Court and before the Petition could get registered, the same was withdrawn. Filing of the Petition in the Apex Court was given a wide publicity and because of such negative publicity, the share value of the Company was reduced and the company was subjected to certain financial loss. Mr. Rohatgi further submitted, it is the reasonable and *bona fide* impression of the Petitioner Company that that some disgruntled business rivals provoked some private persons for filing complaints. Thus, Mr. Rohatgi raised questions about the *bona fide*

approach of complainant. Mr. Rohatgi further submitted that it clearly reveals from the record that Respondent No. 2 is resident of Dadar, Mumbai and only to achieve oblique motive against the Petitioner Company he shifted to Biloshi.

13. Mr. Rohatgi submitted that Respondent No. 2 can be said to be the kingpin of such disgruntled elements who are behind the screen and these elements are the string puller. Mr. Rohatgi further submitted that Respondent No. 2 who is a permanent resident of Dadar chooses to hire a accommodation i.e., one room on leave and license basis for 11 months at Biloshi, Dist. Palgahr. Mr. Rohatgi further then led critical attack on the conduct of Respondent No. 2 to submit how the Respondent No. 2 made untrue statements in the complaint. By inviting our attention to the copy of the complaint placed on record and particularly, at page nos. 258 and 259, Mr. Rohatgi submitted that on one hand Respondent No. 2 submitted that he is doing regular share trading and this statement is falsified by another statement of Respondent No. 2 in the complaint itself and it is stated that Respondent No. 2

by opening a Demat account on 16.03.2021 at Dadar, for the first time purchased two lots of share i.e., 800 shares in each lot in the shares of Petitioner Company. Mr. Rohatgi then submitted that a statement is made in the complaint at page 260 of the Petition that the Petitioner lost substantial amount whereas the record is contrary that there was no loss caused to the Petitioner Company. Mr. Rohatgi also submitted that making this initial statement the Respondent No. 2 makes references to the Petition filed before the Apex Court and then the allegations are practically copied from the contents of the Petition filed before the Apex Court by one Yadav. Mr. Rohatgi then submitted that interestingly enough Mr. Yadav who filed the Petition before the Apex Court withdrawn the Petition. In support of his submissions, Mr. Rohatgi invited our attention to the other material in the complaint.

14. Mr. Rohatgi also submitted that those disgruntled elements who have acted with a designed motive were brought to the books and one of such disgruntled element namely, Mr. Pandey who had approached for grant of bail, the bail was rejected.

Mr. Rohatgi further submitted that in a Petition filed before Delhi High Court as Public Interest Litigation identical allegations were made against the Petitioner Company, one another Company namely, DLF Group, Chordia Group of Company. Mr. Rohatgi further submitted that in the said Petition the allegations were made submitting a table with a statement that loan given to Chordia Group of Company i.e., IBHFL and in the tabular form following statement was made :

2.	Built to Live Realty LLP	-do-	2017-18	450	This loan was repaid with money Mahalunge Land Developers borrowed from IBHFL. A copy of Balance Sheet of Built To Live Realty FY 2017-18 is annexed herewith as Annexure P34.
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15. Mr. Rohatgi by inviting our attention to the statement immediately after the table submitted that it was admitted in the statement that the loan taken from the Petitioner Company was repaid by its sister concerned. Mr. Rohatgi then invited attention to the documents placed on record under caption "Common Allegation Against Re. Harish Fabiani PIL filed before the Delhi High Court- Writ Petition No. 9887 of 2019" urged that in the complaint filed before the Magistrate

all these allegations against Mr. Harish Fabiani are reiterated. Thus, it was the submission of Mr. Rohatgi that filing of these baseless complaints before various Courts, in different parts of the country against the Petitioner Company, is a *modus operandi* of the disgruntled elements. Mr. Rohatgi submitted that the Respondent No. 2 before approaching Magistrate had not raised any grievance before the competent forum for redressal of his grievance such as, SEBI or RBI. Mr. Rohatgi further submitted that it is not submitted in the reply filed by Ministry of Corporate Affairs and RBI before Delhi High Court that the Petitioner Company has played any mischief or conducted any misdeeds. In an Petition filed at Delhi High Court against the Petitioner, RBI filed its reply and it was submitted in the reply that the Petition may be dismissed. It is further submitted that even though in the present Petition the reply is filed by RBI and it is stated that the authority had conducted the scrutiny and found that the loans obtained by the Petitioner Company were repaid.

16. Mr. Rohatgi vehemently submitted that the

lodgment of the report against the Petitioner Company and continuity of any proceedings arising out of said complaint would be nothing but an abuse of process law. Mr. Rohatgi vehemently submitted that the case of Petitioner squarely falls in the categories framed by the Apex Court in oftenly quoted judgment of State of Haryana and Others Vs. Bhajan Lal and Others² and particularly in category 7.

17. In so far as the submission of selected jurisdiction by Respondent No. 2 is concerned, Mr. Rohatgi placed heavy reliance on the latest judgment of the Apex Court in the matter of Vijay Kumar Ghai and Others Vs. State of West Bengal and Others³.

18. In so far as other submission that filing of the affidavit with complaint is a pre-requisite, Mr. Rohatgi placed heavy reliance on following judgments : Devidas Vs. State of Maharashtra⁴, Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others⁵, & Babu Venkatesh and Others Vs. State of Karnataka and Another⁶.

2 1992 Supp (1) SCC 335.

3 2022 SCC OnLine SC 344

4 2017 SCC OnLine Bom 8416

5 (2015) 6 SCC 287

6 2022 SCC OnLine SC 200

19. Mr. Desai, learned Senior Counsel while supporting the submissions of Mr. Rohatgi further added that the Petitioner Company is not only required to face wholly untrue allegations submitted in the complaint and to undergo the rigors of law, but also such false complaint adversely affects the reputation of Petitioner Company and impact of such false complaint results in falling of share value in the market and resultantly, the Petitioner Company has to suffer a huge financial loss and this loss is certainly an irreparable. Mr. Desai also submitted that the Board of Directors of the Petitioner Company consists of various reputed persons who were occupying responsible position(s) in different walks of life. It was submitted that the Board of Directors consists of Former Judge of the Supreme Court of India, Retired Senior Officer of the Reserve Bank of India, Retired Director General of Police and complaint lodged with some designed motive only adding pages after pages borrowed from a some other Petition, if entertained by the Magistrate and orders are passed by the Magistrate on such complaint without application of mind, the same

would have serious irreversible repercussion and in such in the case like this, this Court can certainly exercise its powers under Section 482 of Code of Criminal Procedure to prevent the abuses of process of law. Thus, learned Counsel appearing for Petitioners prayed for allowing the Petition.

20. Dr. Chandrachud, learned Counsel appearing for Petitioner in WP/6812/2021 adopted major submissions of Mr. Rohatgi & Mr. Desai, learned Senior Counsel appearing for Petitioner in WP/1805/2021. Mr. Chandrachud submitted that the allegations against the Petitioner – Atul Chordia are only vague allegations that loan was obtained but there is not specific any material in so far as how much loan amount was obtained, how much amount was repaid, what was the collateral security against the loan and without there being any such specific material only the allegations were made that by illegal means the loan was obtained. Mr. Chandrachud further submitted that the Petitioner is a real estate developer and contrary to the allegations against the Petitioner there is a specific material to show that the Petitioner had obtained the

loan by following due procedure. If the Petitioner had obtained the loan by illegal means and failed to repay it, he could have been certainly declared as defaulter and the financial institutions like Bank certainly would have initiated proceedings against the Petitioner by taking recourse to SARFEASI Act, but no such action is taken. Mr. Chandrachud then submitted that the Respondent No. 2 is not even purchaser of any property from the Petitioner and as such, there was absolutely no locus for Respondent No. 2 to lodge any report / complaint against the Petitioner. In support of his submissions, Mr. Chandrachud relied on following judgments: Babasaheb Narayan Naik and Others Vs. State of Maharashtra and Others⁷, & Sudhir Rangrao Patil Vs. State of Maharashtra⁸.

21. Mrs. A.S. Pai, learned Public Prosecutor opposed the Petitions and submitted that during pendency of the Petitions the investigation is transferred to State CID, Pune, and investigation is at preliminary stage, let the investigation be completed and prayed for dismissal of Petition.

7 2019 SCC OnLine Bom 3003

8 2017 SCC OnLine Bom 8915

22. Mr. Akhilesh Dubey, learned Counsel appearing for Respondent No. 2 in both Petitions vehemently opposed the Petitions. Learned Counsel for Respondent No. 2 submitted that the Petitioner is having no concern with Petition filed in Delhi High Court at the instance of one Mr. Atul Pandey and the Petitioner by connecting itself with Atul Pandey cannot dislodge the Respondent. It is submitted that in one of the Petition filed before Delhi High Court at the instance of Citizen Whistle Blower Forum which consists of reputed persons including Prashant Bhushan, Senior Advocate, certain orders were passed by Delhi High Court. It is submitted that it came to his knowledge that one Petition was filed before Delhi High Court only through news paper, except this he is not connected with said Abhay Yadav. Learned Counsel appearing for Respondent No. 2 admits that Respondent No. 2 had not approached to the authorities like SEBI or RBI and submitted that as the Respondent No. 2 had lodged the complaint against the Petitioners for their misdeeds the Respondent No. 2 expected that on registration of FIR against the Petitioner Company the investigating agency

would take appropriate steps during the course of investigation including seeking necessary information from SEBI and RBI. It is also submitted that because of filing of Public Interest Litigation the share value of the Petitioner Company was reduced and certain Directors of the company purchased the shares at lower value for their own benefit even at the cost of loss of reputation to the company. It is also submitted that by playing mischief the Petitioner Company helped the beneficiaries namely, Jasol Investment and Trading Company Pvt. Limited. It is then submitted that Respondent No. 2 had filed the annual reports of the company along with complaint. It is also submitted that non swearing of the affidavit in support of the complaint is a curable defect.

23. Learned Counsel appearing for Respondent No. 2 further submitted that there was diversion of funds by certain private persons. The funds were diverted and routed through Mauritius and in support of this submission, the Counsel referred to the material in the complaint placed on record at pages 271, 272, 283. It is then submitted that the Respondent No. 2 had placed

on record all the relevant material and as observed by the various Courts the FIR is not an encyclopedia, the investigating agency is required to investigate into the complaint and collect the necessary material. Learned Counsel appearing for Respondent No. 2 submitted that even though Petitioner raises certain questions in so far as locus of Respondent No. 2 and even assuming that the malafides are against the Respondent No. 2, the Petitioner cannot absolve itself from the criminal liability. It is further submitted that any person set the criminal law in motion and the allegations of malafide against the Respondent No. 2 cannot be a reason for quashing the report. Learned Counsel for Respondent No. 2 vehemently submitted that the order of this Court granting stay to the investigation be vacated and investigation agency be permitted to continue with the investigation. Learned Counsel appearing for Respondent No. 2 in support of its submissions relied on following judgments: A.R. Antulay Vs. Ramdas Srinivas Nayak and Another⁹, Sheno Nandan Paswan Vs. State of Bihar and Others¹⁰, Trisuns

9 AIR 1984 SC 716

10 AIR1987 SC 877

Chemical Industry Vs. Rajesh Agarwal and Others¹¹,
Shakson Belthissor Vs. State of Kerala and Another¹²,
Umesh Kumar Vs. State of Andhra Pradesh and Another¹³,
State of Karnataka Vs. M. Devendrappa and Another¹⁴,
Kaptan Singh Vs. State of Uttar Pradesh and Others¹⁵,
Ghulam Mohi-ud-Din Vs. State of J&K and Others¹⁶,
Naroji Vs. State of Maharashtra¹⁷, Mrs. Rita Bhalla and
Anr Vs. State (Govt of NCT of Delhi) and Anr¹⁸, & Harish
Fabiani & Others Vs. Enforcement Directorate and
Others¹⁹.

24. On hearing the learned Counsel appearing for respective parties and on going through the material placed on record, we find considerable merit in the submissions of learned Counsel appearing for Petitioners.

25. Perusal of the complaint submitted by Respondent No. 2 shows that the Respondent No. 2 submitted that he is working with one Illuminati

11 (1999) 8 SCC 686

12 (2009) 14 SCC 466

13 (2013) 10 SCC 591

14 (2002) 3 SCC 89

15 2021 CRI.L.J. 3922

16 CRMC No. 761/2017 (High Court of Jammu and Kashmir)

17 2019 SCC OnLine Bom 3928

18 CrI.M.C. 3532/2016 + CrI.M.C.3533/2016 (High Court of Delhi)

19 WP(CRL).408/2022 (High Court of Delhi)

services as Office Clerk since last couple of years and it is admitted in the complaint that the complainant is residing at Biloshi, Tq. Wada, District Palghar on leave and license basis since 26.03.2021.

Thus, there is merit in the submission of learned Senior Counsel appearing for the Petitioner that the Respondent No. 2 with a designed motive shifted his residence in Tq. Wada only to select the jurisdiction of the Wada Court.

26. Perusal of the complaint further shows that it is stated in the complaint that Respondent No. 2 is regularly trading in shares but the complaint clearly discloses that the Respondent No. 2 purchased the shares of the Petitioner Company only in one solitary instance. Then the complaint run in nearly 40 pages. The complaint refers to the Public Interest Litigation bearing Writ Petition (Criminal) Diary No. 20710/2019 before the Supreme Court of India by one Mr. Abhay Yadav. Then there are allegations against one Jasol Investment and Trading Company. Then reference is made to AmeriCorp Capital Private Limited advancing loans to the Petitioner company. Then there are allegations

against one Mr. Harish Fabiani stating that Mr. Harish Fabiani by playing mischief and fraud diverted certain funds to other country. The Judicial Magistrate by referring to mere allegations in the complaint observed that as per offences as alleged in the complaint a huge amount is siphoned of.

27. It seems that Magistrate was influenced by the lengthy complaint placed before him and arrived at a conclusion that there was a diversion of huge monetary funds to the tune of Rs. 300 crores and the money was transferred to other country i.e., Mauritius. Admittedly, it was only allegations in the complaint and except bare words of the complainant there was no other material before the Magistrate to form such an opinion as such, there is merit in the submissions of learned Senior Counsel Mr. Rohatgi that the Magistrate without applying his mind passed mechanical order under Section 156(3) of Code of Criminal Procedure.

28. Learned Counsel appearing for Petitioners were justified in making submissions that the Respondent No. 2 who is a resident of Dadar with some designed motive shifted to Biloshi, Tq. Wada, Dist. Palghar, obtained a

room on leave and license basis and lodged a complaint before the JMFC, Wada. The complaint also reveals that the Respondent No. 2 had purchased 800 shares in two lots by opening Demat account from Dadar and this was solitary transaction of the Petitioner. As such, the claim of the Respondent no. 2 that he was regularly trading in shares is falsified. It is also difficult to believe that the Respondent No. 2 complainant was in a position to study the balance sheet of the Petitioner for a past several years in a very limited span of purchasing the shares and lodging the report to the Magistrate so as to arrive at a conclusion that the Petitioner Company has siphoned the amount and played mischief.

29. There is also merit in the submissions of Mr. Rohatgi, learned Senior Counsel that the majority material in the complaint is the replica of the material which was filed in the complaint which was the subject matter of Petition before Delhi High Court and though the Respondent No. 2 denied any connection with Mr. Yadav who had filed the Petition before Delhi High Court, there is a reason to believe that there was some

nexus of the Respondent No. 2 and Mr. Yadav.

30. Though, learned Counsel appearing for Respondent No. 2 relies on the judgments and there cannot be any dispute on the proposition of law expressed in the judgment, considering the peculiar facts referred to above by us, in our opinion, the judgments relied on by learned Counsel appearing for Respondent No. 2 are not of any help to Respondent No. 2.

31. Learned Counsel appearing for Petitioners were also justified in submitting that the complaint submitted by Respondent No. 2 was lacking of the basic requirement i.e., an affidavit supporting the contents in the complaint. Though, learned Counsel appearing for Respondent No. 2 made an attempt to submit that the defect in the complaint was curable, but in view of the judgments of the Apex Court in the matter of Priyanaka Srivastava (supra) & Babu Venkatesh and Others (supra), we are unable to accept the submission and it will have to hold that the complaint lodged at the instance of Respondent No. 2 was defective. It may be useful for our purposes to refer to observations made in the

matter of Priyanka Srivastava (supra) as under:

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156 (3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions

on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156 (3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154 (3), indicating it has been sent to the Superintendent of police concerned.

29. At this stage it is seemly to state that power under Section 156 (3) warrants application of judicial mind. A court of

law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156 (3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154 (1) and 154 (3) while filing a petition under Section

156 (3) . Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156 (3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156 (3) . That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari²⁰ are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR. (Emphasis supplied)

32. There is also merit in the submissions of learned Counsel appearing for Petitioners that though it was alleged in the complaint that one Mr. Harish Fabiani had obtained loan and misutilized the loan amount, the document placed on record and relied on by

20 (2014) 2 SCC 1; (2014) 1 SCC (Cri) 524

Mr. Rohatgi, learned Senior Counsel demonstrates that the said loan was repaid.

33. We also find merit in the submissions of Dr. Chandrachud appearing for Petitioner in WP/6812/2021 that the Respondent No. 2 failed to provide necessary details in the complaint and only vague statements were made. Mr. Chandrachud justified in submitting that if the Petitioner could have failed in repayment of the loan the financial institution certainly would have initiated action against the Petitioner treating him either as defaulter or would have initiated proceedings by taking recourse to SARFEASI Act.

34. The replies filed before the Delhi High Court at the instance of RBI and Ministry of Corporate Affairs is also not making any positive statement so as to hold that the Petitioner Company had played some mischief causing financial loss to this shareholder.

35. The submission of learned Counsel appearing for Respondent No. 2 that the Directors of the Petitioner Company were instrumental to file the Petition against the Petitioner Company itself at Delhi

High Court and thereby permitting to reduce the share value of the Company at the cost of loss of reputation to the Petitioner Company, cannot be accepted as no specific material supporting this statement is placed on record and further it would not stand to reason or logic that the Directors of Petitioner Company would permit themselves for reduction of share value of the Petitioner Company at the cost of loss to the reputation.

36. The Division bench of this Court also find some merit in the contentions raised at the preliminary stage itself and granted interim relief by passing a detailed and reasoned order.

37. In our opinion, Mr. Rohatgi, learned Senior Counsel justified in making submission that the case of Petitioner is squarely covered by categories laid down by the Apex Court in the matter of State of Haryana & Others Vs. Bhajan Lal & Others (supra) and particularly category 7.

38. We are of the opinion that the lodgment of the complaint against the Petitioners and continuity of the

proceedings, is an abuse of process of law. Thus, these are the fit cases for exercising inherent powers of this Court under Section 482 of Code of Criminal Procedure, 1973 to secure the ends of justice. Accordingly, both Writ Petitions are allowed in terms of prayer clause 'a'. Rule made absolute.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)