

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

(I) CRIMINAL APPLICATION (APL) NO.599 OF 2020

Vinod Sahebrao Pandhare,
aged 38 years, occupation :
service, r/o Village Gondala,
Taluka Risod, District Washim.

... Applicant

- Versus -

1) The State of Maharashtra, through
Police Station Officer, Police
Station, Risod, District Washim.

2) Smt. Bhavana Pundlikrao Gavali,
aged about 47 years, occupation :
Politician, Member of Parliament,
r/o Pundlik Nagar, Degao Road,
Taluka Risod, District Washim.

... Respondents

Shri Avinash Gupta, Senior Advocate, assisted by Shri A.A.
Gupta, Advocate, for Applicant.

Shri S.P. Dharmadhikari, Senior Advocate (Special Counsel),
assisted by Shri V.A. Thakare, Additional Public Prosecutor, for
Respondent No.1.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri P.S. Chauhan,
Advocate for Respondent No.2.

(II) CRIMINAL APPLICATION (APL) NO.600 OF 2020

Santosh B. Somani,
aged 40 years, occupation :
Business, r/o Saras Apartment,
Flat No.15, Gorakshan Road,
Akola, Taluka and District Akola.

... Applicant

- Versus -

- 1) The State of Maharashtra, through
Police Station Officer, Police
Station, Risod, District Washim.
- 2) Smt. Bhavana Pundlikrao Gavali,
aged about 47 years, occupation :
Politician, Member of Parliament,
r/o Pundlik Nagar, Degao Road,
Taluka Risod, District Washim.

... Respondents

Shri Avinash Gupta, Senior Advocate, assisted by Shri A.A. Gupta, Advocate, for Applicant.

Shri S.P. Dharmadhikari, Senior Advocate (Special Counsel), assisted by Shri V.A. Thakare, Additional Public Prosecutor, for Respondent No.1.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri P.S. Chauhan, Advocate for Respondent No.2.

(III) CRIMINAL APPLICATION (APL) NO.601 OF 2020

Bharat Dnyandeo Deogire,
aged 40 years, occupation :
Agriculturist and Business,
r/o Flat No.804, JDC,
Platinum Tower, Maharashi Nagar
(Mukund Nagar), Pune-411037.

... Applicant

- Versus -

- 1) The State of Maharashtra, through
Police Station Officer, Police
Station, Risod, District Washim.
- 2) Smt. Bhavana Pundlikrao Gavali,
aged about 47 years, occupation :
Politician, Member of Parliament,
r/o Pundlik Nagar, Degao Road,
Taluka Risod, District Washim.

... Respondents

Shri Avinash Gupta, Senior Advocate, assisted by Shri A.A. Gupta, Advocate, for Applicant.

Shri S.P. Dharmadhikari, Senior Advocate (Special Counsel), assisted by Shri V.A. Thakare, Additional Public Prosecutor, for Respondent No.1.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri P.S. Chauhan, Advocate for Respondent No.2.

(IV) CRIMINAL APPLICATION (APL) NO.602 OF 2020

- 1) Ashok s/o Narayan Gandole,
aged about 55 years, occupation :
Business,
- 2) Sau. Varsha w/o Ashok Helaskar
(Gandole), aged 46 years,
occupation : Business,
Both 1 and 2 residing at Flat No.804,
JDC, Platinum Tower, Maharshi
Nagar, Mukund Nagar, Pune-411037.
- 3) Ganesh s/o Balaji Dhole,
aged 46 years, occupation :
Business, r/o Flat No.40/G.V. 7,
Building No.H, near Poddar
International School, Ambegaon
Budruk, Pune.
- 4) Sau. Aruna w/o Sanjay Halge,
aged 40 years, occupation :
Business, r/o Amardas Road,
Risod, Tahsil Risod, District
Washim, Sunderwatika, Washim.
- 5) Sau. Shakuntala w/o Balaji Kasar,
aged 65 years, occupation :
Business, r/o G.V. 7, Building No.H,
near Poddar International School,
Ambegaon Budruk, Pune.
- 6) Mahesh alias Vivek Dnyandeo
Deogire, aged about 44 years,
occupation : Agriculture,

r/o Flat No.804, JDC, Platinum Tower, Maharashi Nagar, Mukund Nagar, Pune-411037.

- 7) Haribhau s/o Dnyandeo Deogire, aged about 48 years, occupation : Agriculture, r/o Flat No.804, JDC, Platinum Tower, Maharshi Nagar, Mukund Nagar, Pune – 411037.
- 8) Madhukar s/o Narayanrao Helaskar, aged about 70 years, occupation : Agriculture,
- 9) Uddhav s/o Narayan Gandole, aged about 66 years, occupation : Agriculture,
- 10) Samadhan s/o Madhukar Helaskar, aged about 36 years, occupation : service,
- 11) Santosh s/o Uddhavrao Helaskar, aged about 35 years, occupation : Service,

8-11 residents of village Yevta, Taluka Risod, District Washim.

- 12) Upendra s/o Gunwantrao Mule, aged 48 years, occupation : Chartered Accountant, r/o Plot No.61, N-2, Mahajan Colony, CIDCO, Aurangabad.

- 13) Dinesh s/o Namdeorao Dorsetwar,
aged 38 years, occupation :
Business, (At present),
r/o Flat No.FI/FB, Sai Mahak
Apartment, Mohan Nagar, Nagpur. ... Applicants

- Versus -

- 1) The State of Maharashtra, through
Police Station Officer, Police
Station, Risod, District Washim.
- 2) Smt. Bhavana Pundlikrao Gavali,
aged about 47 years, occupation :
Politician, Member of Parliament,
r/o Pundlik Nagar, Degao Road,
Taluka Risod, District Washim. ... Respondents

Shri Avinash Gupta, Senior Advocate, assisted by Shri A.A. Gupta, Advocate, for Applicants.

Shri S.P. Dharmadhikari, Senior Advocate (Special Counsel), assisted by Shri V.A. Thakare, Additional Public Prosecutor, for Respondent No.1.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri P.S. Chauhan, Advocate for Respondent No.2.

(V) CRIMINAL APPLICATION (APL) NO.603 OF 2020

Dhananjay s/o Manohar Halge,
aged 45 years, occupation :
Business, r/o Sundarwatika,

Washim, District Washim.

... Applicant

- Versus -

- 1) The State of Maharashtra, through
Police Station Officer, Police
Station, Risod, District Washim
and Sub-Divisional Police Officer,
Economic Offences Wing,
Sub-division, Mangrulpir,
District Washim.
- 2) Smt. Bhavana Pundlikrao Gavali,
aged about 47 years, occupation :
Politician, Member of Parliament,
r/o Pundlik Nagar, Degao Road,
Taluka Risod, District Washim.

... Respondents

Shri Avinash Gupta, Senior Advocate, assisted by Shri A.A. Gupta, Advocate, for Applicant.

Shri S.P. Dharmadhikari, Senior Advocate (Special Counsel), assisted by Shri V.A. Thakare, Additional Public Prosecutor, for Respondent No.1.

Shri C.S. Kaptan, Senior Advocate, assisted by Shri P.S. Chauhan, Advocate for Respondent No.2.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 24 FEBRUARY 2022

JUDGMENT (PER NITIN JAMDAR, J.) :

These criminal applications arise from the same First Information Report, and they have been argued together and as they involve common questions of facts and law, they are being disposed of by this common judgment.

2) The Applicants in these Applications are accused in First Information Report No.389/2020 lodged at Police Station, Risod, District Washim. The First Information Report is lodged by the Respondent No.2-Complainant under Sections 406, 408 and 420, read with Section 34 of the Indian Penal Code. The FIR is in respect of the affairs of Janshikshan Sanstha, Washim and Mahila Utkarsh Pratisthan, Risod of which the Respondent no.2-Complainant is the chairperson, which runs various educational institutions.

3) Applicant Vinod Pandhare in Criminal Application No.599/2020 was working as an Office Superintendent in a D-Pharma College.

4) Applicant Santosh Somani in Criminal Application No.600/2020 was working as an Accountant in the Ayurved College, Hospital and Research Centre run by the Mahila Utkarsh Pratishthan, which runs B.A.M.S. Courses.

5) Applicant Bharat Deogire in Criminal Application No.601/2020 is related to Ashok Gandole – Applicant in Criminal Application No.602/2020 and is the brother of the wife of Ashok Gandole. This Applicant was also a Director in Mahila Utkarsh Pratishthan.

6) The Applicants in Criminal Application No.602/2020 are connected with each other. Applicant No.1 Ashok Gandole worked as a Secretary in Mahila Utkarsha Pratishthan from 11 October 2003 to June 2019. Applicant No.2 Varsha Helaskar is his wife, who was Vice President. Applicant No.3 Ganesh Dhole is the brother of Applicant No.2 Varsha and Joint Secretary. Applicant No.4 Aruna Halge is the niece of Applicant No.1 Ashok Gandole. Applicant No.5 Shakuntala is sister of Applicant No.1 Ashok Gandole. Applicant No.6 Mahesh Deogire and Applicant No.7 Haribhau Deogire are brothers-in-law of Applicant No.1 Ashok Gandole. Applicant No.8 Madhukar Helaskar and Applicant No.9 Uddhav Gandole are

brothers of Applicant No.1 Ashok Gandole. Applicant No.10 Samadhan Helaskar is son of Applicant No.8 Madhukar Helaskar. Applicant No.11 Santosh Helaskar is the son of Applicant No.9 Uddhav Gandole. Applicant No.12 Upendra Mule is a Chartered Accountant, and Applicant No.13 Dinesh Dorsetwar was working as a Driver in the Institute. According to the Respondents, Applicant Nos.1 and 2 have used surnames at different places, such as Gandole, Helaskar and Mahajan.

7) Applicant Dhananjay Halge in Criminal Application No.603/2020 is related to Ashok Gandole and was working as a Printing Unit In-charge in Janshikshan Sanstha, Washim. He was appointed by Ashok Gandole and was also Director in Mahila Utkarsh Pratisthan.

8) Respondent No.2 made a complaint to Police Station, Risod, on 2 February 2020, based on which the FIR came to be lodged on 12 May 2020. The FIR was lodged against various persons. It was stated by Respondent No.2-Complainant that the Complainant is President of Janshikshan Sanstha, Washim and Mahilla Utkarsh Pratisthan, Risod. It was stated that Ashok Gandole is Secretary of the Trust, who, along with Upendra Mule and others named in the FIR, conspired to misappropriate the funds of the Trust to the tune of Rs.18,18,40,867/-. It was also

stated that on 7 July 2019, in the morning, Ashok Gandole and others went to the Office of the Trust without taking any permission and taking one Bhagwat Chhagan Pedhe into confidence, took away cash of Rs.7,00,00,000/- and certain important documents, such as Registration Certificate, etc. and threatened Bhagwat Chhagan Pedhe. Ashok Gandole was accompanied by Varsha Helaskar, Dinesh Dorsetwar, Bharat Deogire, Mahesh Deogire and other unknown persons. It was further stated that Ashok Gandole was working as a Secretary, and before he resigned, he misappropriated the amount of Rs.9,92,01,067 from Ayurvedic BAMS College, Risod, which was run by Mahila Utkarsha Pratisthan, Risod. The Complainant gave details of the amounts misappropriated, i.e. Rs.4,60,69,000/- by Ashok Gandole through cheque and Rs.4,87,82,067/- by cash, i.e. total Rs.9,48,51,067/-, Varsha Helaskar misappropriated amount of Rs.37,00,000/- and Dinesh Dorsetwar misappropriated amount of Rs.6,50,000/-. The Complainant further stated that these persons misused the important documents of the Trust and misappropriated the amounts. It was stated that their activities substantially impacted the financial health of the Trust and, therefore, Respondent No.2-Complainant, who is President of the Trust, established an Enquiry Committee, which called for all the details from Ashok Gandole, but he did not give satisfactory answers. It was further

stated that Ashok Gandole, Upendra Mule, Varsha Helaskar and Dinesh Dorsetwar threatened the Office Bearers of the Trust that they would be implicated in a false case if the information was given to the Police or any other person. Respondent No.2-Complainant also made allegations against Vinod Pandhare, Accountant of the Trust. On these allegations, the First Information Report was lodged against 12 persons.

9) The Applicants, by filing these applications under Section 482 of the Code of Criminal Procedure, are seeking to quash this FIR No.389/2020 lodged at Police Station, Risod, District Washim.

10) After the FIR was registered, the Applicants filed these applications in May/June 2020. Criminal Applications came up for consideration before the Division Bench of this Court and the Division Bench issued notice for final disposal to the Respondents, returnable after eight weeks. The Division Bench directed Respondent No.1 that no coercive steps be taken against the Applicants, though investigation may go on. It was further directed that no charge sheet be filed until further orders.

11) Thereafter, the Respondents have filed Reply-affidavits. The Applicants have also taken out two applications –

one for permission to file documents on record and the second for calling for cell phone call details from the Respondents. By orders passed separately, we have allowed these applications and considered the documents and additional documents on which arguments have been advanced. The summary of call details is placed on record and the vouchers and other investigation papers are shown to us.

12) We have heard Shri Avinash Gupta, learned Senior Advocate, assisted by Adv. A.A. Gupta, for Applicants, Shri S.P. Dharmadhikari, learned Special Counsel, assisted by Shri V.A. Thakre, learned Additional Public Prosecutor, for the Respondent no.1 and Shri C.S. Kaptan, learned Senior Advocate, assisted by Adv. P.S. Chauhan, for the Respondent No.2.

13) The Applicants have invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for the prayer to quash the FIR; therefore, it is necessary to outline the scope of enquiry and the ambit within which relief of quashing the FIR can be considered. The inherent powers under Section 482 of the Code do not confer an unlimited power on the High Court to quash the FIR, and interference with the ongoing investigation to quash the FIR has to be made sparingly. In the

case of *State of Haryana vs Bhajan Lal*¹ the Supreme Court has laid down certain parameters where the courts could consider prayer for quashing the FIR; however, it cautioned that the High Court should not embark upon merits and demerits of the allegations contained in the FIR and scuttle the further investigation. There is one more angle to exercise of power under Section 482 of the Code regarding quashing of the FIR, i.e. statutory right on the part of the Police to investigate the circumstances of the alleged cognizable crime. Therefore, if a cognizable offence is disclosed from the FIR, the Court will normally not interfere with the investigation and will permit investigation into the offence to be completed. Further, the Court will have to keep in mind that the FIR is not an encyclopedia, and when the investigation is in progress, the Court should not look into the merits of the allegations in the FIR. The Supreme Court in the case of *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others*², has observed that the power of quashing should be exercised sparingly with circumspection in the rarest of rare cases. While examining an FIR/complaint, quashing of which is sought, the court cannot inquire about the reliability, genuineness, or otherwise of the allegations made in the FIR/complaint. The power under Section 482 Cr. P. C. is very wide, but conferment of wide power requires

1 1992 Supp (1) SCC 335

2 2021 SCC Online SC 315

the court to be cautious. The Supreme Court has emphasised that though the court has the power to quash the FIR in suitable cases, the court, when it exercises power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider the case on merits.

14) Therefore, the question that arises before us in these applications is whether it can be said that there is no cognizable offence disclosed and that no further investigation is necessary and, therefore, the FIR needs to be quashed and/or whether the FIR can be quashed on the premise that it is filed to wreak vendetta and is mala fide. Therefore, though the learned Senior Advocate for the Applicants has sought to urge various contentions on the merits of the allegations, we have to be mindful of the ambit of the enquiry as enumerated above.

15) Broadly, the Applicants contend that the FIR is required to be quashed as regards the incident regarding snatching away of Rs.7,00,00,000/- and the documents because the allegations are absurd, inherently improbable, and various facets have not been clarified by the Respondents. The second head of challenge is that the Applicants had filed a complaint against Respondent No.2, who is a Member of Parliament and Respondent No.2 misusing her position has lodged the FIR to

wreak vengeance and out of mala fides. The third head of challenge is that the allegations of misappropriation have been found to be false in an investigation conducted by the Enforcement Directorate, which can be borne out from the complaint filed by the Enforcement Directorate after completion of investigation under Section 45(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the Act of 2002") at the Designated Court in Mumbai. It is also argued that attempt of the Respondent No.2-Complainant in prosecuting the Applicants under the present FIR is to cover up the activities of money laundering,

16) First we take up the contention regarding an incident of 7 July 2019 wherein Ashok Gandole, and others have allegedly taken away Rs.7,00,00,000/- and the essential documents, such as Registration Certificates, Project Reports, Annual Reports, etc. by threatening the Director. The learned Senior Advocate for the Applicants contended that these allegations are inherently improbable and absurd for the reason that if such an incident involving a considerable sum of money had taken place, the Respondent No.2-Complainant would not have waited till 2 February 2020 for filing a complaint and consequently, the FIR. The delay on the part of the Respondent No.2 makes the incident highly improbable. Secondly, it was contended that the call detail

records would show that the Applicants were not at Risod when the incident took place and, therefore, the Court should peruse the call detail records.

17) The learned Special Counsel for the State has placed the extract of the call detail records before us. It is pointed out that Ashok Narayan Gandole used cell phone Nos.9130814441 and 9423173777 between 11 a.m. and 12 noon at Washim. Varsha Ashok Gandole/Helaskar used cell phone No.9822058608 between 11 a.m. and 12 noon at Washim. As regards Samadhan Madhukar Helaskar, he used cell phone No.9881946383, but record is not found. Santosh Uddhav Helaskar used cell phone No.9623191301 between 11 a.m. and 12 noon at Buldhana. Dinesh Dashrath Dorsetwar used cell phone No.9765252131 between 11 a.m. and 12 noon at Washim. As regards Bhagawat Chhagan Pedhe, he used cell phone No.9422939095 between 11 a.m. and 12 noon at Washim and in respect of cell phone No.9130804441 record is not found. As regards Dhananjay Manohar Halge, he used cell phone No.9767316755 between 11 a.m. and 12 noon at Washim. As regards Mahesh alias Vivek Dnyandeo Deogire, he used cell phone No.9922669855 between 11 a.m. and 12 noon at Washim.

18) The learned Special Counsel for the State contended that the distance between Risod and Washim is only 41 km. It was contended that if the contents of the FIR are perused carefully, the incident is said to have taken place at Washim. The learned Special Counsel further submitted that investigation is still going on and no definite conclusion can be drawn at this stage as the Applicants could easily keep their cell phones somewhere else and travel either without cell phones or use some other persons' cell phones and, therefore, report on call details cannot be a ground for quashing the FIR.

19) We have perused the call detail records, which are stated as above. The FIR has stated that Ashok Gandole and others confronted Bhagwat Chhagan Pedhe. He is referred to as director in Janshikshan Sanstha, and it is this director who was threatened and the documents were snatched away. The learned Counsel for the Respondents have pointed out to us, which is not controverted, that the office of Janshikshan Sanstha is at Washim. The averments in the FIR would suggest that cash of Rs.7,00,00,000/- and the documents were seized from the office of Janshikshan Sanstha. That being the position, the call detail records report shows the location of the Applicants at Washim. The point again to underscore is that scope of these proceedings is not to acquit or convict the Applicants, but to find

out whether further investigation is necessary. If the FIR can be read in the manner stated by the learned Special Counsel for the State, then argument based on call details records report does not survive. Furthermore, it cannot be considered an impossibility where the Applicants are said to have gone to collect the cash and documents together, which would be a pre-planned activity that they will leave behind their cell phones or use other cell phones so that their movements are not tracked. Therefore, it cannot be said that the incident is improbable on that ground. Not being present on the spot when the incident took place would also be a defence of alibi of the Applicants, which needs to be proved.

20) The learned Special Counsel for the State also submitted that in the supplementary statement filed by Respondent No.2-Complainant, she has explained the position further and has specified the time and place where the incident of snatching cash and documents took place. To counter, the learned Senior Advocate for the Applicants submitted that this is an improvement, and it was done after the interim order of this Court. According to us, it is not necessary even to go to the supplementary statement as in the FIR itself, it could be read as the incident has taken place at Washim and, therefore, at this stage, it cannot be said that there is an improvement. Furthermore, the FIR need not contain all the details and it is not

an encyclopaedia as stressed by the Apex Court in various decisions.

21) The learned Senior Advocate for the Applicants has relied upon the decision of the Supreme Court in the case of *Prashant Bharti vs State (NCT of Delhi)*³ to contend that mobile call details can be looked into while considering whether the case is made out for quashing the FIR. Firstly, even assuming that call detail records are to be considered, they do not support the case of the Applicants. Secondly, in *Prashant Bharati* (supra), the case was whether the complainant was sexually assaulted. The Supreme Court considered eleven circumstances, and not only call details to conclude that the case was made out to quash the proceedings. In the light of what we have observed above, the decision in the case of *Prashant Bharti* (supra) cannot be made applicable to facts of this case.

22) As regards the contention of the learned Senior Advocate for the Applicants that there is a delay in filing the FIR as regards the incident of 7 July 2019, the learned Special Counsel for the State submitted that in the FIR itself it is stated that an Enquiry Committee was constituted and after the enquiry revealed these facets, the FIR was lodged. It was also pointed out

3 (2013) 9 SCC 293

that the FIR states that Ashok Gandole and others threatened the Office Bearers not to disclose the incident. The learned Senior Advocate for the Respondent No.2-Complainant submitted that the Complainant being Member of Parliament, was engaged in her duties and placed trust in Ashok Gandole and others, who were working in the Trust since 2002, and it was when the Respondent No.2-Complainant found out that as a part of series of transactions, money was siphoned off and these incidents had started coming to light, the complaint was filed after due enquiry.

23) Again, the question is whether it can be said that delay regarding lodging FIR regarding snatching cash and documents would be a ground to quash the FIR. The Respondent No.2-Complainant is admittedly a Member of Parliament. It cannot be said that it is improbable that Respondent No.2-Complainant would be busy in political and social work. It is also not disputed before us that Ashok Gandole was associated with the Trust since 2002 and the Respondent No.2-Complainant would rely upon him to look after the affairs of the Trust and Educational institutes. The other persons named in the FIR are closely connected with Ashok Gandole. Furthermore, the FIR does state that Ashok Gandole and others threatened the Director not to disclose the incident to Police or any other person. This also cannot be considered an impossibility

considering the dominant position Ashok Gandole and his associates had in the affairs of the Trust. These factors, therefore, will have to be further investigated. The FIR also mentions the constitution of the Enquiry Committee and, after submission of its report, filing of the FIR.

24) It also needs to be kept in mind that the FIR is to be read in totality, and the gist of the allegations is an abuse of the position of trust by Ashok Gandole and others in misappropriation of funds of the Trust and the Educational Institutes, which are receiving public funds. The FIR is a composite FIR, and this is not the case of stand-alone theft, but part of the design as alleged to misappropriate the amounts. Therefore, the Applicants' contention to sever the incident of 7 July 2019 and read it differently from other allegations in the FIR cannot be considered even assuming that case is made out by the Applicants qua the incident of 7 July 2019.

25) In respect of the allegations in the FIR of misappropriation, the learned Special Counsel for the State has placed before us a chart indicating vouchers, which have been collected during the investigation and which show that a large number of cash amounts have been withdrawn by the Applicants/Accused. Even Chartered Account has received Rs.1,00,00,000/-.

26) The allegations of cash amounts withdrawn on simple vouchers are : Ashok Gandole withdrew amount of Rs.19,76,400/- from B.P.S., Rs.5,14,59,400/- from B.A.M.S., Rs.1,69,04,000/- from B.Pharm, Rs.1,45,86,086/- from D.Pharm (total Rs.8,49,25,886/-). Varsha Gandole/Helaskar withdrew Rs.9,97,58,870/- from B.P.S., Rs.44,62,000/- from B.A.M.S., Rs.32,53,000/- from B.Pharm and Rs.3,52,000/- from D.Pharm (total Rs.10,78,25,870/-), Bharat Devgire withdrew Rs.5,10,000/- from B.A.M.S., Dinesh Dorsetwar withdrew Rs.17,45,000/- from B.A.M.S. and Rs.60,000/- from B.Pharm (total Rs.18,05,000/-), Mahesh Devgire withdrew Rs.19,000/- from B.A.M.S. and Ganesh Dhole withdrew Rs.29,81,000/- from B.A.M.S., Rs.2,85,000/- from B.Pharm and Rs.1,91,000/- from D.Pharm (total Rs.34,57,000/-).

27) It is stated that the investigation has revealed that Ashok Gandole deposited cash amount of Rs.43,39,070/- in his first Bank Account, Rs.52,60,150/- in his second Bank Account, Rs.1,36,12,000/- in his third Bank Account and Rs.5,29,08,400/- in his fourth Bank Account (total Rs.7,61,19,620/-). Varsha Gandole/Helaskar deposited cash amount of Rs.55,58,925/- in her first Bank Account and Rs.10,44,154/- in her second Bank Account and Rs.11,00,000/- in her third Bank Account (total Rs.77,03,079/-). Bharat Devgire deposited Rs.28,83,880/- in his

first Bank Account and Rs.7,57,673/- in his second Bank Account (total Rs.36,41,553/-), Dinesh Dorsetwar deposited Rs.10,63,530/- in his first Bank Account, Rs.82,26,649/- in his second Bank Account, Rs.5,07,035/- in his third Bank Account and Rs.11,27,012/- in his fourth Bank Account (total Rs.1,09,24,226/-) and Mahesh Devgire deposited Rs.4,46,600/- in his Bank Account.

28) The learned Special Counsel for the State also submitted that in view of the interim order passed by this Court not to take coercive steps and not to file charge-sheet, the Respondent Investigating Agency is deprived of custodial interrogation, and the Applicants have refused to give an explanation as to how such huge amounts came to be deposited. The learned Special Counsel for the State submitted that for any amount above Rs.20,000/-, the transaction would have to be by cheque, and it has to be investigated as to how such huge amounts running into crores of rupees were withdrawn on simple vouchers and how such amounts came to be deposited in the Bank Accounts of the Applicants.

29) We have also been shown a chart with reference to Upendra Mule as regards the Accounts from 2013 to 2018, which, according to the learned Special Counsel for the State, show

irregularities, which need to be investigated. The reply of the State Authorities discloses that during the investigation, Applicant No.7 Haribhau Deogire was apprehended on 9 July 2019, and he was found in possession of gold ornaments worth Rs.48,20,728/- and cash of Rs.15,00,284/-. It is pertinent to note that incident of 7 July 2019 of taking away the cash of Rs.7,00,00,000/- and of 9 July 2019 are in proximity. During the investigation, it is also revealed that Applicant Ashok Gandole deposited Rs.1,56,18,000/- in his personal Account. He has also obtained a gold loan worth Rs.57,75,000/-. He has also purchased immovable properties for valuable consideration of Rs.2,32,94,455/-. The Investigating Agencies have stated that Applicant Varsha Helaskar has obtained a gold loan of Rs.51,28,000/- from a Cooperative Bank, and Applicant Upendra Muley has purchased a bungalow for valuable consideration of Rs.1,33,00,000/-. During the investigation, it is further revealed that Ashok Gandole has formed a Company named Bhavana Agro Products and Services Pvt. Ltd., in which amounts to the tune of Rs.11,66,91,400/- have been deposited. An amount of Rs.2,25,60,000/- has been transferred to the Account of this Company. According to Investigating Agency, the amount is transferred from 12 August 2012 to 13 November 2017. The investigation is also being conducted in respect of the Applicants' properties and sources how they were acquired.

30) This indeed is a matter that, which according to us, needs to be investigated. The investigating papers do show withdrawal of large amounts on simple vouchers. It is not normal for such enormous amounts to be withdrawn on simple vouchers and if Applicant Ashok Gandole and others were closely associated with Trust whose amounts were depleted and the Bank Accounts of the Applicants received huge deposits, a *prima facie* case of connection between these two acts could be argued to have been established. If that be the position, a cognizable offence would be made out. In that case, it will be the duty of the Police Authorities to investigate, and the Court ought not to restrain the Investigating Agency.

31) While considering whether power under Section 482 of the Code is to be exercised to quash the FIR, resulting in stopping the further investigation, we cannot be unmindful of these assertions of the Investigating Agency and that there is a need for further investigation. It is not possible for us and neither the scope to go into the merits and demerits of the allegations in the FIR and assertions made by the Investigating Agency as to which areas in which investigation is required.

32) Regarding the contentions regarding allegations of mala fides and personal vendetta, except stating that Respondent

No.2-Complainant is a Member of Parliament, nothing further is elaborated during arguments. Even otherwise, if a cognizable offence is made out, the Police Authorities have to investigate the crime. In those circumstances, the argument based on vendetta would be diversion. As stated earlier, once the FIR discloses cognizable offence, the Court should ordinarily permit Investigating Agencies to investigate. If no offence is disclosed, the Police Authorities can always file a closure report.

33) The next head of challenge of the Applicants is based on the complaint filed by the Enforcement Directorate under Section 45(1) of the Act of 2002 in the Designated Court at Mumbai. This complaint is placed on record by way of an additional affidavit dated 11 January 2022. The complaint was filed on 25 November 2021. The learned Senior Advocate for the Applicants, on a query as to what would be sequitur of the statements made in this complaint of the Enforcement Director on the case for quashing this FIR, submitted that the statements made in the complaint would make the present FIR suspicious.

34) The complaint filed by the Assistant Director of the Enforcement Directorate refers to the present FIR as the predicate offence. It states that Respondent No.2, who is Chairperson of the Mahila Utkarsh Pratisthan, has filed the present FIR against

the Applicants herein for misappropriation. Reference is also made to the incident of 7 July 2019. The learned Senior Advocate for the Applicants contended that the Enforcement Directorate had recorded the statements of various persons, and our attention was drawn to the statement of Mohammad Athar, who is accused in the complaint filed by the Enforcement Directorate. The learned Senior Advocate submitted that it is stated in the complaint that the cash was withdrawn at the behest of Respondent No.2, and the attempt is that the blame of the fraud committed is shifted on Ashok Gandole and others when Saeed Khan was diverting funds. The learned Senior Advocate also submitted that there is a statement about cash theft of Rs.7,00,00,000/- in the present FIR; however, it is not reflected in the books of accounts of 15 October 2019. The learned Senior Advocate relied on the statement in the complaint that the FIR was registered based on the report submitted by the Fraud Detection Committee when one of the members stated that he did not know about it and all suspicious vouchers were handed over to the Respondent No.2. The learned Senior Advocate further submitted that the Enforcement Directorate has also examined the income tax returns and found that various loans and cash are not being reflected. It was further contended that money trail in the complaint, in fact, shows that the main accused in the complaint of the Enforcement Directorate had utilised the

amount for purchasing property at Nariman Point, Mumbai. The learned Senior Advocate also drew our attention to the part of the complaint where the involvement of Respondent No.2 in money laundering was discussed. It was stated that transactions were book entries, no physical cash was moved, and all was done at the specific instructions of Respondent No.2. Based on the complaint of the Enforcement Directorate, it was contended that the Enforcement Directorate, which was considering the money laundering, has in fact recorded findings that not only the Applicants were not guilty, but it is the Respondent no.2, who has committed fraud and to cover the same, has involved the Applicants in a crime. According to the Applicants, in view of this finding recorded by the independent Investigating Agency, the present FIR needs to be quashed as an exceptional case is made out for the same.

35) On this aspect, the learned Special Counsel for the State submitted that the Applicants could not take support of the investigation and the complaint filed by the Enforcement Directorate as that investigation operates in an entirely different area. The learned Special Counsel submitted that the Enforcement Directorate, which is an Authority under Section 48 of the Act of 2002, can only investigate the offence of Money Laundering as defined under the Act. The learned Special

Counsel submitted that the offence of Money Laundering is defined under Section 3 of the Act of 2002, which is based on the offences enumerated in the Second Schedule to the Act of 2002. The learned Special Counsel further submitted that the Enforcement Directorate could not investigate the scheduled offences, which are referred to as predicate offences and, therefore, observations made in the complaint filed by the Enforcement Directorate are entirely irrelevant. It is submitted that even Enforcement Directorate is continuing further investigation, and the statements made in the complaint of the Enforcement Directorate cannot form the basis for quashing the present FIR. According to the Applicants, the Enforcement Directorate can investigate even the predicate offences. It was also pointed out that the accused in the complaint and the present FIR are different.

36) Firstly, as stated earlier, the scope of enquiry in these Applications is whether investigation in the allegations made in the present FIR is necessary or not and whether cognizable offence is made out. Even assuming there are certain statements in the complaint filed by the Enforcement Directorate, the complaint of the Enforcement Directorate itself records that investigation as regards the role of Respondent no.2 in misappropriation of funds of a Cooperative Society is still

undergoing. Secondly, it is still a complaint to be adjudicated upon by the Court. It cannot be considered as a final word and, therefore, a complaint filed by the Enforcement Directorate, which is investigating the offence of money laundering, cannot form a sole basis for quashing the predicate offences based on certain observations made therein. The investigation in the predicate offences will have to be continued and taken to its logical end. Section 2(p) of the Act of 2002 defines "money laundering" under Section 3 of the Act. Section 3 defines the offence of money laundering. The foundation of money laundering offence is the predicate offence as defined in Schedule II of the Act of 2002. If the predicate offences as enumerated in Schedule II of the Act of 2002 do not exist, then there cannot be proceedings under the Act of 2002. We have not been shown any decision, laying down that the Enforcement Directorate can investigate even the predicate offences. The investigation of the Enforcement Directorate as an Authority under Section 48 of the Act of 2002 is confined within the bounds of the Act of 2002. Therefore, the contention of the learned Special Counsel for the State that based on the statements in the complaint by the Enforcement Directorate, the present FIR cannot be quashed as it requires investigation will have to be accepted.

37) It was sought to be contended by the learned Senior Advocate for the Applicants relying on the statements in the complaint filed by the Enforcement Directorate that statement of Hakeem Sheikh, who was working as an Internal Auditor was recorded wherein he stated that he did not know about any Committee being formed and he never mentioned any fraud in his report submitted to the Respondent No.2. He stated that according to him, there was no fraud committed as on 31 March 2019, there were Rs.47,000/- cash in hand in the Account of Mahila Utkarsh Pratisthan. Relating this to the incident of 7 July 2019, the learned Senior Advocate contended that the allegation of snatching away of Rs.7,00,00,000/- on the face of it is untenable.

38) The learned Special Counsel for the State, in response, submitted that the incident of 7 July 2019 cannot be seen in isolation and as per allegations in the FIR, siphoning off the money by Applicant Ashok Gandole and others started much before 7 July 2019, and a large sum of money has been withdrawn as seen from vouchers, which is revealed during the investigation and substantial amount is deposited in the Bank Accounts of the Applicants, and they have purchased properties, and it is likely that it is the balance amount of Rs.7,00,00,000/- which was lying in the cupboard of the office of Trust and it is

precisely for this reason that investigation is necessary. The learned Senior Advocate for Respondent No.2 also submitted that it is the case of Respondent No.2 that misappropriation was over a substantial period of time and the amount of Rs.7,00,00,000/- was proceeds of this misappropriation.

39) According to us, once it is revealed in the investigation that a huge sum of cash was withdrawn on vouchers and for a corresponding period, substantial deposits have been made in the personal Accounts of those, who were in charge of the Trust, i.e. Applicant Ashok Gandole and others, the matter requires investigation as during investigation, the source of Rs.7,00,00,000/- would be traced and, therefore, at this stage, it cannot be said that there is nothing to investigate because the Auditor has made a statement before the Enforcement Directorate.

40) As regards the contention that the Respondent No.2 is on the run and is avoiding investigation by the Enforcement Directorate, the learned Senior Advocate for Respondent No.2 submitted that Respondent No.2 has taken exemption from the Enforcement Directorate and thereafter, no summons have been issued by the Enforcement Directorate, and it is entirely incorrect to state that the Respondent No.2 is on the run. Except asserting

this orally, nothing further is pointed out to us by the Applicants that Respondent No.2 is avoiding investigating by the Enforcement Directorate. The Enforcement Directorate in the complaint itself has stated that it has not drawn any conclusion regarding the role of Respondent No.2, and further investigation is going on.

41) In the case of *State of Bihar vs J.A.C. Saldanha*⁴, the Supreme Court has observed that investigation of offence is a field exclusively reserved for the Executive through the Police Department, the superintendence over which vests with the State Government, and it is the Executive, who is in-charge of the same. The crime investigation is primarily within the domain of the Executive, and the adjudicatory function of the Judiciary is to decide whether an offence is committed and if so, by whom and further action thereupon. The Supreme Court has emphasised upon the statutory right on the part of Police to investigate the cognizable offence and, therefore, since quashing of the FIR at the initial stage directly interferes and stops further investigation even though such power is conferred under Section 482 of the Code, it needs to be exercised with circumspection. The Supreme Court in the case of *Neeharika Infrastructure Pvt. Ltd.* (supra) after taking a review of earlier law on the subject, has laid down basic

⁴ (1980) 1 SCC 554

parameters for exercise of power under Section 482 of the Code when it is invoked to quash a FIR. The Supreme Court has emphasised that the Police have the statutory right and duty to investigate the cognizable offence, and the Court would not stop any investigation into cognizable offence. Only in the case where no cognizable offence of any kind is disclosed in the FIR, the Court will not permit an investigation to go on.

42) As regards the facts at hand are concerned, Applicant Ashok Gandole was in-charge of the affairs of the Trust. Other Applicants have been shown as connected with him. The Trust in question conducted various Colleges, which were grant-in-aid, and public money was received. The Investigating Agency has stated that money was siphoned off from the Accounts of the Trust on cash withdrawal. Applicant Ashok Gandole and others are alleged to have deposits in their personal Accounts and have substantial properties. Therefore, at this stage, when the investigation is in progress, and all facts are not before the Court, the Court will have to allow the Police Authorities to carry on the investigation as cognizable offences stand disclosed.

43) The learned Senior Advocate for the Applicants has made an alternate submission that the interim order passed by the Division Bench of this Court that no coercive steps be taken and

no charge-sheet be filed be continued and the present investigation be kept in abeyance till proceedings in Enforcement Directorate are complete. The learned Special Counsel for the State and learned Senior Advocate for the Respondent No.2 opposed the submission and relied upon the decision in *Neeharika Infrastructure Pvt. Ltd.* (supra) to contend that such order of no coercive steps and not to file charge-sheet being contrary to the law laid down by the Supreme Court, cannot be continued. It was also contended that there is no need to restrain the Investigating Authority in any manner.

44) As regards keeping the investigation in abeyance, this alternate prayer, in light of what we have observed, cannot be granted. As regards a protective order, the Supreme Court in para 80(xvi) and (xviii) of the judgment in the case of *Neeharika Infrastructure Pvt. Ltd.* (supra) has outlined the parameters of the grant of such interim orders. The Supreme Court has observed thus :

“80.

(xvi) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation*

during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent Court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

(xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

(emphasis supplied)

This proposition of law laid down is clear, unequivocal and is binding.

45) Further, once we have concluded that the FIR discloses cognizable offence and that investigation into this crime is necessary, and no case is made out for exercise of power under Section 482 of the Code, then direction that no coercive steps be taken cannot be continued. The Applicants have a remedy to apply for anticipatory bail under Section 438 of the Code, and if the court is satisfied, the Applicants can be released on anticipatory bail and, therefore, the Applicants are not remediless. To conclude, no case is made out by the Applicants to quash the concerned FIR.

46) It is clarified that the observations made in this judgment are in the context of ascertaining whether there is any case made out for exercise of power under Section 482 of the Code.

47) As a result, all the Applications are dismissed.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

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