IN THE HIGH COURT OF JUDICATURE AT MADURAI

Reserved on : 28.06.2023

Pronounced on : 14 .07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.18287, 18299, 18300 and 18301 of 2022
and
Crl.M.P.Nos. 12047, 12051, 12053, 12047 and 12045 of 2022

1.Ramkhumar Narashihan ... 1st Petitioner / A2 in all Crl.O.P.s

2.Poorani Nagarajan ... 2nd Petitioner / A3 in all Crl.O.P.s

Vs.

1.The State,
Represented by Inspector of Police,
CBI, Anti corruption Bureau,
Chennai. ... 1st Respondent / Complainant in all Crl.O.P.s

2.Sunil Kumar Jha
Deputy General Manager,
Indian Bank,
Stressed Asset Management Branch,
No.55, Ethiraj Salai,
2nd Floor, Egmore, Chennai – 600 008. ... 2nd Respondent / De-Facto Complainant in Crl.O.P.18287 of 2022

3.Subrata Kumar Roy
Zonal Manager,
Bank of India
Zonal Office – Chennai Zone,
Start House, II Floor, No.30 (Old No.17),
Errabalu Street, Chennai – 600 001. ... 2nd Respondent / De-Facto Complainant in Crl.O.P.18299 of 2022

4.P.Palanisamy
Chief General Manager,
Canara Bank,
Stressed Asset Management Branch
1st Floor, Spencer Tower Building,
770-A, Anna Salai,
Chennai – 600002. ... 2nd Respondent / De-Facto Complainant in Crl.O.P.18300 of 2022

5.L.Ganesan
Assistant General Manager,
Bank of Baroda,
Stressed Asset Management Branch
45, Moore Street,
JBAS Building, 4th Floor,
Chennai – 600 001. ... 2nd Respondent / De-Facto Complainant in Crl.O.P.18301 of 2022

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in FIR No.RC0322021A0015, FIR No.RC0322021A0016, FIR No.RC0322021A0017, FIR No.RC0322021A0018, respectively dated 21.10.2021, on the file of the 1st Respondent, registered based on the complaint lodged by the 2nd respondent, who is a member of the consortium-banks on the same allegations of fraud which is already subject matter of previous FIR being FIR No.RC0322020A0013 lodged by the Lead Banker of the Consortium – Punjab National Bank and quash the same with further and consequential proceedings against the petitioners herein.

For Petitioners (in all Crl.O.Ps.)	:	Mr.P.V.Balasubramaniam For M/s.BFS Legal
For Respondent-1 (in all Crl.O.Ps.)	:	Mr.K.Srinivasan, Special Public Prosecutor for CBI cases.

For Respondent-2 (in Crl.O.P.18287/2022)	:	Ms.Rita Chandrasekar For M/s.Aiyar & Dolia
For Respondent-2 (in Crl.O.P.18299/2022)	:	Mr.Vignesh Imayavaramban
For Respondent-2 (in Crl.O.P.18300/2022)	:	Mr.S.Haroon For M/s. T.S.Gopalan & Co
For Respondent-2 (in Crl.O.P.18301/2022)	:	Mr.M.Palanivel

COMMON ORDER

The Criminal Original Petitions have been filed to call for the records in FIR No.RC0322021A0015, FIR No.RC0322021A0016, FIR No.RC0322021A0017, FIR No.RC0322021A0018, respectively dated 21.10.2021, on the file of the 1st Respondent, registered based on the complaint lodged by the respective 2nd respondents, who are members of the consortium-banks on the allegations of fraud, which is the subject matter of previous FIR being FIR No.RC0322020A0013 lodged by the Lead Banker of the Consortium – Punjab National Bank and quash the same with further and consequential proceedings as against the petitioners herein.

2. The brief facts of the case reads as follows:-

The petitioners along with few other persons incorporated a Private Company in the name and style of “Infinitas Energy Solutions Private Limited” on 12.11.2010 (hereinafter referred to as IESPL), under the Companies Act, 1956. The IESPL is engaged in the business of Renewable Energy. Thereafter, to size up the business, to increase the inventory, to maintain healthy cash flow so as to make payments to the suppliers on time, and for long- term working capital, IESPL wished to avail Fund Based and Non-Fund Based credit facilities from various Banks. The IESPL initially approached Punjab National Bank (hereinafter referred to as PNB) to avail credit facilities. After necessary due diligence, PNB sanctioned Fund Based (FB) facility of Rs.1 Crore and Non-Fund Based Facility of Rs.30 Crores, totalling Rs.31 Crores, on 20.12.2011. Thereafter, the IESPL approached the Bank of Baroda, which sanctioned Fund Based (FB) facility of Rs.15 Crores and Non-Fund Based Facility of Rs.20 Crores, totalling Rs.35 Crores, on 04.12.2012; the Canara Bank sanctioned Fund Based (FB) facility of Rs.20 Crores, on 13.03.2013; the Indian Bank, sanctioned Credit Limit of Rs. 40 crores (Open Cash Credit of Rs. 15 Crores and Inland Letter of Credit of Rs.25 Crores with sub-limit of Rs. 5 Crore for Bank Guarantee) on 01.06.2013 and the Bank of India, sanctioned Fund Based (FB) facility of Rs.10 Crores and Non-Fund Based Facility of Rs.15 Crores, totalling Rs.25 Crores. Since the IESPL could not meet the repayment obligation on time, as agreed and thereby the accused cheated the Banks, thereby causing a wrongful loss to the Banks by misappropriating the loan amount and the accused gained wrongfully. Based on the complaint of the defacto complainants, the above cases have been registered against the petitioners.

3. Mr.P.V.Balasubramaniam, the learned counsel appearing for the petitioners would submit that the petitioners along with few other persons incorporated a Private Company in the name and style of “Infinitas Energy Solutions Private Limited” on 12.11.2010. The IESPL is engaged in the business of Renewable Energy. To size up the business, inventory, maintain healthy cash flow so as to make payments to the suppliers on time, and for long- term working capital, the Company had several borrowing from various Banks. Using the said loans, the IESPL expanded its business. However, owing to circumstances beyond its control, it experienced sluggish growth. Despite the same, IESPL continued using the LC limits by issuing letter of credit to suppliers. In the due course of business, IESPL experienced a heavy stress on profitability owing to severe market conditions. Due to the above said reasons, IESPL incurred heavy losses and continued to operate below breakeven point. Over a period of time, IESPL was continuously suffering losses and there was delay in servicing the interest for development of Letter of Credit. The Company had little to no margin in the business owing to the fierce competition and mismatch of demand supply ratio. As the losses accumulated, IESPL had the additional burden of paying the Letter of Credit Charges. IESPL was suffering from both ends, which led to severe financial deficit. Due to the continuing stress on liquidity, IESPL could not meet the repayment obligation on time, as agreed and on account of non-payment of dues, the account of IESPL was classified as NPA by the the Bank of

Baroda on 17.06.2014; PNB on 30.07.2014; Bank of India on 31.12.2014; Canara Bank on 01.03.2015 and the Indian Bank on 01.03.2015.

4. Pursuant to the same, all the facilities were recalled by the Banks. Consequently, proceedings under SARFAESI Act was initiated by all the bankers starting with demand notices issued under Section 13 (2) of the SARFAESI Act, Possession Notices issued under Section 13(4) of the SARFAES! Act and Recovery Proceedings before Debt Recovery Tribunal, Chennai. PNB along with Canara Bank and Bank of Baroda jointly initiated Proceedings vide OA 454/2017, Indian Bank vide OA 339/2017 and Bank of India vide OA 566/2015 before DRT-II, Chennai, sought for recovery. The Indian Bank approached National Company Law Tribunal (NCLT) vide CP 558/IB/CB/2017, for initiation of Corporate Insolvency Resolution Proceedings (CIRP) against IESPL, which was allowed on 18.09.2017. The Resolution Professional appointed by the Hon'ble Tribunal, appointed independent auditor viz., M/s Chadha and Co LLP in June 2018 to conduct forensic audit for the period 01.10.2015 to 30.09.2017. The forensic audit report was submitted by the Auditor on 26.09.2018. From the said Report, it was alleged that certain irregularities were found in the transactions undertaken in the course of business, which warranted scheduling of joint Lenders Forum (JLF) Meeting. In the JLM conducted on 06.12.2019, all the banks agreed to declare the account of IESPL as Fraud. Thereafter a subsequent report, after clarifications received on 29.10.2018, it was opined by the Auditor

that there might be possibility of diversion of funds, related party transactions, transfer of assets, misrepresentation of financial statements and so on. Based on the said observation, all the Bankers declared the Account of IESPL as fraud.

5. Meanwhile, as no viable Resolution Plan was received by the Resolution Professional, the Hon'ble NCLT ordered liquidation of IESPL on 06.02.2019. As part of the admitted claim of Rs.254.42 Crores, the claims of all the aforesaid Banks were also admitted and the Liquidator began selling the Assets of IESPL and repaying the aforesaid Banks. The Liquidation process is still pending as of date. Subsequent to classifying the account of IESPL as fraud, the Bankers must follow the directions given in the Master Circular RBI/DBS/2016-17/28 DBS.CO.CFMC.BC.No.1/23.04.001/ 2016-17 dated July 01, 2016 Reserve Bank of India (Frauds classification and reporting by commercial banks and select Fls) Directions 2016. Hence, PNB forwarded a complaint to Central Bureau of Investigation, Bank Complaint Cell, New Delhi, on 22.04.2020, which was directed by the Superintendent of Police, Central Bureau of Investigation, Bank Complaint Cell, New Delhi, to be registered with the 1st Respondent against the Petitioners for offence under Section 120-B read with 420 of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Having total disregard to the mandate of the Master Circular, the 2nd Respondent forwarded a separate Complaint to Head of Branch, Central Bureau of Investigation, Anti Corruption Branch, Chennai on 21.09.2021 which was

registered with the 1st Respondent as against the Petitioners again for offence under Section 120-B read with 420 of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. It is pertinent note, both the FIRS are the result of the Forensic Audit Report alleging the commission of the identical offences, hence, identical in facts, parties, time period and place.

6. It is pertinent to note that upon the decision taken to declare the Account of IESPL as fraud, the Petitioners herein filed WP No.17669 of 2020, wherein the Lead Banker viz. Punjab National Bank and the Reserve Bank of India were made as Parties, challenging the vires of the circular based on which, the Account had been declared as fraud. In the said Writ Petition, a Division Bench of this Court directed that no coercive action will be taken by the respondents without Leave of the Court, though investigation by CBI in the Complaint given by PNB may go on. It is submitted that the other Banks, being part of consortium and represented by the Lead Banker, ought not to have filed fresh complaints without Leave of this Court as the same amounts to coercive action. Further, since the Complaint is based on a circular, which is already under challenge, the 2nd respondent ought not to have given such Complaint.

7. The learned counsel would further contend that if a second FIR is registered regarding an incident on which a prior FIR already exists, it amounts to abuse of process of law. Exercise of power under Section 482 CrPC for

quashing of an FIR has not been absolutely excluded where a report under Section 173 CrPC is not filed, to prevent abuse of the process of any court or to secure ends of justice. The member Banks had given Mandate to Lead bank, PNB for filing joint complaint. Accordingly, PNB had filed a supplemental complaint on 04.02.2021 as an addendum to their original complaint dated 22.04.2020 along with the mandate submitted by the Member Banks. However, later, on 04.09.2021, PNB received a letter, dated 03.09.2021, from the 1st Respondent wherein it was advised that, since the original complaint filed by PNB already registered vide RC0322020A0013 on 13.10.2020, the consortium member banks may file a separate written complaint. This is a blatant disregard to the procedures laid down. The 1st respondent cannot formulate their own procedures and rules.

8. It is contended that the Banks formed a Consortium led by PNB. As per the existing Reserve Bank of India (RBI) guidelines and mainly the Master Circular, the 2nd respondent could not have filed a separate independent Complaints. The Master Circular provides for procedures to be followed for classifying the Account as Fraud in case of Lending under Consortium. In the Joint Lenders Forum meeting held on 06.12.2019, all the secured creditors expressed their agreement for declaring the IESPL Account as fraudulent, for withdrawing the credit facilities sanctioned, and for initiating recovery action against the Petitioners. The fraud categorisation after being reported to RBI,

PNB, as the lead bank, ought to have filed a complaint with the CBI on behalf of all banks in the consortium within 30 days of the RBI notification. PNB, on the other hand, declared IESPL's account to be fraudulent on 30.12.2019, and independently, without holding a JLF meting for obtaining the mandate to lodge a complaint on behalf of all banks in the consortium, filed a complaint with the CBI on 22.04.2020, 3 months and 21 days later, rather than on behalf of the Consortium members. Further, the 2nd respondent lodged a separate Complaint belatedly from the date of reporting to RBI as the 1st respondent disagreed to register a joint complaint. Some of the Secured Creditors had already initiated legal proceedings by filing Original Applications for Recovery of the Outstanding Amount with the Debt Recovery Tribunal, Chennai, some jointly and some individually, which further shows the lack of coordination among consortium members.

9. It is further submitted that Consortium lending is a process under which several banks finance a borrower based on common appraisal and documentation, and conduct joint supervision and follow-up exercises. It should be mentioned that once a bank reports a company as "fraud" to the RBI, the central bank instantly sends the information to all banks, requesting their attention. Following that, all banks in the Consortium must give the Lead Bank authorization to file a complaint on their behalf at a meeting of the joint lenders. According to the complaints, the account was categorised as a non-performing

asset (NPA) in the books of most consortium banks as early as 2014, and the consortium members also launched an action for recovery in 2017. No JLF Meeting was conducted to obtain such authorisation prior to PNB registering its Complaint and the complaints were filed late and individually by each member of the Consortium, subjecting the Petitioners to multiple prosecutions having no regard for the procedures laid down in the Master Circular. As the guidelines of the Master Circular will be applicable for lending under Consortium, which is the case at hand, it cannot be overlooked at the party's discretion.

10. Having regard to the totality of the factual allegations made for constituting the commission of several offences in relation to the first and the subsequent FIRS, it is possible to hold that both the FIRS are overlapping on one another and that first FIR alone will be sufficient to take care of the subsequent FIRS. On a mere reading of both the FIR, it is apparent that the allegations are identical . The subsequent registration of the FIR by the 2nd respondent after registration of first one was nothing but repetition of first FIR inasmuch as both the FIR are founded on the same allegations, which are part of the first FIR and, therefore, accused persons cannot be subjected to suffer multiple prosecution cases in relation to the same offences on the strength of multiple FIR once they are made to suffer the prosecution in relation to offences on the strength of first FIR, any subsequent complaint of similar nature to be taken up with the first FIR and not by filing for multiple FIR. The challenge in case at hand is essentially

founded on the ground that filing of the first FIR takes care of subsequent FIR and, therefore, the subsequent FIR is wholly uncalled for and should not have been registered inasmuch as the subsequent FIR is nothing but repetition of the first FIR. Onceinvestigation set in motion in respect of first FIR, subsequent FIR is not necessary and it is nothing but harassment.

11. Once an FIR postulated by the provisions of Section 154 has been recorded, the information subsequently received after the commencement of investigation cannot form the basis of second FIR as doing so would fail to comport with the scheme of the Criminal Procedure Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus, there can be no second FIR and consequently. there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

12. The sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purviews of Sections 154 and 156 CrPC. In the above cases, the genesis of the FIR and complaints originate from the Audit Reports dated 26.09.2018 and 29.10.2018 and this being the case, it is absolutely baseless for any investigation to proceed under different FIRs for identical allegations. It is crucial to observe that there exist a common thread running through the first and the subsequent FIRs registered against the Petitioners. The offences alleged are identical, diversion and siphoning of funds hence, necessarily, the subsequent FIR could only be supplemental to the first FIR. Section 220 CrPC provides for clubbing of offences which form a part of the same transaction. The Court in order to examine the impact of one or more FIR has to rationalise the facts and circumstances of each case and then apply the test of "sameness" and "Consequence" to find out whether both FIR relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences.

13. It is further submitted that the circumstances giving rise to filing of the subsequent FIR is not distinct and independent of the First FIR. The second test

being "Test of Consequence is where the offence registered under the second FIR occurs as a consequence of the offence alleged to have occurred in the first FIR the test of consequence' is to be applied. The subsequent FIR under dispute is only a repetition of the First FIR. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Apex Court in ***Canara Bank Vs. P.R.N. Upadhyaya and Ors.***, reported in ***(1998) 6 SCC 526*** and would contend that the circulars issued by the Reserve Bank of India under Section 21 or 35 of the Banking Regulation Act, 1949 are statutory in nature and are required to be complied with by the banks. Both PNB and the 2nd respondent acted based on their whims and fancies to fit their own convenience, which is clearly arbitrary and unfair. Further, relying on the Judgment of the Apex Court in ***Indian Oil Corporation Vs. NEPC India Ltd., & Ors*** reported in ***(2006) 6 SCC 736***, would contend that a complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. Referring to the Judgment of the Supreme Court in **TT Antony Vs. State of Kerala** reported in **(2001) 6 SCC 181**, the learned counsel would submit that after registration of first information report for commissioning of cognizable offence, requirement of Section 154 CrPC is satisfied. In those circumstances, there cannot be a second FIR with fresh investigation as a consequence thereof for the same cognizable offence or same incident giving rise to one or more cognizable offence.

14. The learned counsel for the petitioner inviting the attention of this Court to the Judgment of the Hon'ble Apex Court in ***S.Swamirathnam Vs. M.K.S.Abbas*** reported in AIR 1957 SC 340, wherein the **charge frame**d, **discloses one single** conspiracy, although spread over several years, where there is only **one** object of the conspiracy, and that is to cheat members of the public, the fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy does not change the conspiracy and does not split up a single conspiracy into several conspiracies. Further, the learned counsel relying on the Judgment of the Apex Court, in ***P.S.R.Sadhanantham Vs. Arunachalam*** reported in ***(1980) 3 SCC 141*** would contend that Article 21, in its sublime brevity, guardians human liberty by insisting on the prescription of procedure established by law, not fiat as sine qua non for deprivation of personal freedom. And those procedures so established must be fair, not fanciful, nor formal nor flimsy, as laid down in Maneka Gandhi's case. So, it is axiomatic that our constitutional jurisprudence mandates the State not to deprive a person of his personal liberty without adherence to fair procedure laid down by law.; Further, the learned counsel relying on the Judgment of the Apex Court ***Prem Chand Singh vs. State of Uttar Pradesh*** would submit that if the substratum of FIRs is same, then mere addition of a few provisions in subsequent FIR does not justify it as being a distinct incident. In the Judgment of the Apex Court in State of ***Rajasthan v Bhagwan Das,*** where multiple FIRs, with same subject-matter, have been filed

in different jurisdictions and hence, falling in jurisdictions of different courts, Section 186 of the Code will be roped in to prevent unnecessary harassment of the accused and directions will be issued to stop the proceedings in other courts.

15. The learned counsel for the petitioner would submit that Section 2(c) of Prevention of Corruption Act, 1988 defines a "Public Servant". It is pertinent to note, certain sections of the Prevention of the Corruption act has been invoked against the Petitioners. Petitioners are private Persons and cannot be in any manner, for whatever reasons be considered a public servants. As the charges under Section 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988, are applicable only to Public Servants, the applicant not being a public servant within the meaning of Section 21 of I.P.C., and section 2 (c) of Prevention of Corruption Act, 1988, the offence under relevant sections of the Prevention of Corruption Act could not be invoked against the Petitioners. The Supreme Court in ***Ramesh Gelli v. Central Bureau of Investigation AIR 2016 SC 1063*** held that officers of private banks to be public servants under Prevention of Corruption Act. The Banks themselves have disclosed in their respective Complaints that they do not perceive any role of the Public Servants and bank staffs as per the Staff Accountability study conducted and reported. It is understood that since Financial Institutions are involved, the 1st Respondent believed that it was necessary to charge the Petitioners who are private persons under the Prevention of Corruption Act which is manifest illegal. The learned counsel, therefore, would contend that the petitioners have made out a prima

facie case and the facts and circumstances would establish that there is no remedy and the only consideration is the request to act in accordance with law. Hence, the learned counsel prays for quash the proceedings.

16. Per contra, Mr.K.Srinivasan, the learned Special Public Prosecutor for CBI cases would submit that CBI, ACB, Chennai, registered a case in FIR No.RC0322021A0015, on 21.10.2021, based on the written complaint lodged by The Deputy General Manager, Indian Bank Stressed Assets Management Branch, No.55, 2 Floor, Ethiraj Salai, Egmore, Chennai , against M/s Infinitas Energy Solutions Private Limited, its Directors/Guarantors, including the petitioners / A-2 & A-3 (in the FIR), unknown public servants & unknown private persons, for causing wrongful loss to the Indian Bank, Guindy Branch, Chennai to the tune or Rs. 21.74 Cr., as on 31.08.2021, due to development of LCs and non serving of Interest. The learned Counsel submitted that the Reserve Bank of India in exercise of power under Section 35-A of the Banking Regulation Act had issued certain guidelines with regard to fraud, prevention and management function. The Apex Court in the case in ***Vikram Kothari Vs. Union of India & Ors.***, in ***SLP No.8122 of 2021***, by order dated 22.11.2021, referring to the Circular issued by the Reserve Bank of India had observed that multiple FIRs by different Banks, despite being part of consortium, regarding the same default, cannot be proceeded. In this case also it is admitted that all the five banks viz., Punjab National Bank, Indian Bank, Bank of India, Canara Bank and Bank of Baroda are

all consortium Banks, which lent advances and loans to the petitioners Company, in default of the same, FIR has been registered. He further submitted that in this case already on the complaints of the Punjab National Bank, a case in FIR No.RC0322020A0013, against the petitioners and others have been registered on 12.10.2020. The above cases have been registered in various First Information Reports viz., FIR.No.RC0322021A0015, FIR.No.RC0322021A0016, FIR. No.RC0322021A0017, FIR No.RC0322021A0018, respectively dated 21.10.2021.

17. The learned Special Public Prosecutor for CBI cases would further submit that separate cases have been registered, as per the provisions as envisaged in Criminal Procedure Code, 1973, for the criminal offences committed by the accused including the petitioners. It is submitted that place and period of crime committed are different in both the cases. The accused have cheated the Punjab National Bank, Anna Salai Chennai in FIR No. RC0322022A0013 dated 12.10.2020 whereas, in FIR No. RC0322021A0015, dated 21.10.2021, the accused have cheated the Indian Bank, Guindy Branch, which is located at a different place. Furthermore, the period of crime is also different in both the cases. In case of FIR No.RC0322020A0013, dated 12.10.2020, the period of crime is from 2011 to 2020 whereas in FIR No.180032202140015, dated 21.10.2021, the period of crime is from 2013 to 2020, as alleged by the complainant bank Therefore, separate FIRs are registered in both cases.

18. The learned Special Public Prosecutor for CBI cases would submit that the accused have cheated the Bank of India, Chennai. Furthermore, the period of crime is also different in both the cases. In case of FIR No.RC0322020A0013, dated 12.10.2020, the period of crime is from 2011 to 2020 whereas in FIR No.180032202140016, dated 21.10.2021, the period of crime is from 2013 to 2020. Therefore, separate FIRs are registered in both cases. Further, the petitioners/A2 and A3 and others cheated the Canara Bank, Chennai. On the complaint of Chief General Manager, Canara Bank the FIR No.180032202140017, dated 21.10.2021 registered. The period of crime is from 2013 to 2019. The period of crime is also different in both the cases and therefore, separate FIRs have been registered in both cases. Further, the petitioners/A2 and A3 and other accused cheated the Bank of Baroda, Chennai. On the complaint of Assistant General Manager, the case in FIR No.180032202140018, dated 21.10.2021 registered against the accused. The period of crime is from 2012 to 2016. It is further submitted that number of accused varies in each cases, further in all the FIRs, there are unnamed public and private servants, whose role have to be found only during investigation. In view of the above, the cases cannot be termed as similar in nature arising out of one transaction. Further, multiple companies have been involved in this and each case is distinct, in view of the same, the case cannot be clubbed together. Clubbing of the case will arise only on filing of the charge sheet at the

conclusion of trial and not at the initial stage. Presently, the case is under investigation and is at a very crucial stage of investigation, at this stage, the accused/petitioners have filed the present petitions, praying to quash the FIRs. Hence, prayed for dismissal of the petitions.

19. It is further submitted that the Indian Bank in its complaint dated 21.09.2021 which has led to registration of the FIR No. RC0322021A0015, dated 21.10.2021, has alleged that the accused borrower company M/s Infinitas Energy Solutions Pvt Ltd through its petitioner Directors and others, had cheated Indian Bank thereby, causing a wrongful loss to the Indian Bank and wrongful gain to themselves, diverted/siphoned of the funds disbursed to them and dishonestly misappropriated the loan amount. Separate cases have been registered in FIR No.RC0332020A0013, dated 12.10.2020 & RC0322021A0015, dated 21.10.2021, as per the provisions as envisaged in Criminal Procedure Code, 1973, for the criminal offences committed by the accused including the petitioners. It is submitted that place and period of crime committed are different in both the cases. The accused have cheated the Punjab National Bank, Chennai and on the complaint of the 2nd respondent Bank FIR No. RC0322022A0013 dated 12.10.2020 whereas in FIR No. RC0322021A0015 dated 21.10.2021, the accused have cheated the Indian Bank, Guindy Branch, which is located at a different place. Furthermore, the period of crime is also different in both the cases. In case of FIR NO. RC0322020A0013 dated 12.10.2020, the period of crime is from

2011 to 2020 has been registered, whereas, in FIR No. RC0322021A0015 dated 21.10.2021, the period of crime is from 2013 to 2020. Moreover in both the cases loss of huge public money is involved. Hence the petition of the accused is deserved to be dismissed outrightly being devoid of any merit.

20. Ms.Rita Chandrasekar, the learned Counsel appearing for the defacto complainant / 2nd respondent in Crl.O.P.No.18287 of 2022, in addition to the submission of the learned Special Public Prosecutor for CBI cases, would submit that the 2nd respondent is the Deputy General Manager of Indian Bank and on his complaint, dated 21.09.2021, FIR No.RC0322021A0015, dated 21.10.2021, registered for the offence under Section 120-B r/w 420 of IPC., and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, against the petitioners and seven others of which A8 and A9 are unknown public servants and private persons. As a part of consortium Bank, the Forensic Auditor Report was received by them. From the Report it is seen that the petitioners herein, in connivance with other accused, have played fraud on the Bank, availed a credit limit of Rs.35 Crores out of which cash credit of Rs.15 Crores and Inland Letter of Credit of Rs.20 Crores, during the year 2013. In a well orchestrated conspiracy, the petitioners along with others had submitted a false financial statement to the Bank, diverted and misappropriated the funds, thereby, wrongful gain to themselves and corresponding loss to the Bank to the tune of 21.74 Crores, as outstanding, as on 31.08.2021. The account was declared NPA on 01.03.2015.

Thereafter steps have been taken to recover the money as well as for criminal action. Hence, the Bank had lodged the complaint.

21. Mr.Vignesh Imayavaramban, the learned Counsel appearing for the defacto complainant / 2nd respondent in Crl.O.P.No.18299 of 2022, in addition to the submission of the learned Special Public Prosecutor for CBI cases, would submit that the 2nd respondent is the Zonal Manager of Bank of India, Chennai, lodged a complaint on 21.08.2020, to the first respondent, who registered the case in FIR No.RC0322021A0016, dated 21.10.2021, for the offence under Sections 120-B and 420, 406 of IPC., and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, against the petitioners and five others of which A6 and A7 are unknown Public servants and unknown private persons. The petitioner Company had availed a credit limit of Rs.25 Crores of which cash credit of Rs.10 Crores and non fund based limit of Rs.15 Crores during 2013 and from the Forensic Audit Report it revealed that the petitioners submitted false financial statement to the Bank and utilized the funds other than of which they were sanctioned, and misappropriated the funds, thereby, cheated the Bank to the tune of Rs.20.79 Crores as on 21.09.2021, thereafter, the account was declared NPA on 31.12.2014. Thereafter steps have been taken to recover the money as well as for criminal action.

22. Mr.Haroon, the learned Counsel appearing for the defacto complainant / 2nd respondent in Crl.O.P.No.18300 of 2022, in addition to the submission of the

learned Special Public Prosecutor for CBI cases, would submit that the 2nd respondent is the Chief General Manager of Canara Bank, and on his complaint, dated 21.09.2021, the first respondent registered the case in FIR No.RC0322021A0017, dated 21.10.2021, for the offence under Sections 120-B r/w 420, of IPC., and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, apart from the petitioners, 6 others are arrayed as accused. A6 and A7 and are unknown Public servants and unknonwn private persons. The petitioners along with others had availed an open cash credit of Rs.15 Crores and non fund based limit of Rs.15 crores, in total Rs.30 crores. In a well conspiracy, the petitioners along with others had submitted a false financial statement to the Bank, diverted and misappropriated the funds, thereby, causing wrongful gain to themselves and corresponding loss to the Bank to the tune of 20.79 Crores, as outstanding, as on 29.09.2020. The account was declared NPA on 01.03.2015. Thereafter steps have been taken to recover the money as well as for criminal action.

23. Mr.M.Palanivel, the learned Counsel appearing for the defacto complainant / 2nd respondent in Crl.O.P.No.18301 of 2022, in addition to the submission of the learned Special Public Prosecutor for CBI cases, would submit that the 2nd respondent is the Assistant General Manager, Bank of Baroda, Chennai, lodged a complaint with the first respondent on 30.09.2021, who registered the case in FIR No.RC0322021A0018, dated 21.10.2021, for the offence under Sections 120-B r/w 420, of IPC., and Section 13(2) r/w 13(1)(d) of

Prevention of Corruption Act, 1988. The petitioners and five other persons have been arrayed as accused, of which, A4 and A5 and are unknown Public servants and unknonwn private persons. The petitioners approached the then Vijaya Bank now the Bank merged with Bank of Baroda, availed credit limit of Rs.35 crores of which credit limit of Rs.15 Crores and inland letter of credit of Rs.20 Crores during 2012 and thereafter, consortium arrangement was formed by the lenders bank of the Company on 27.06.2013. The petitioners / Directors / Promoters of the Company with dishonest intention of cheated the Bank. In a well orchestrated conspiracy, the petitioners along with other accused had submitted a false financial statement to the Bank, availed the loan, diverted and misappropriated the funds, thereby, causing wrongful gain to themselves and corresponding loss to the Bank to the tune 24.85 Crores, as on 31.08.2021. The account had become NPA 17.06.2014. Thereafter steps have been taken to recover the money as well as for criminal action.

24. The counsel for the defacto complainants Bank submitted that the period of offence varies with each other and the accused names varies. The modus adopted by the petitioners and others may be similar, but not same. Further, the role of the public servants viz., the officials of the Banks and as well as other private persons have to be found out during investigation. The petitioners' contention that the defacto complainants' Banks' complaints form part of the complaint lodged by the Punjab National Bank, lead bank of

consortium in FIR No.RC0322020A0013, is not proper. The Punjab National Bank had lodged a complaint with regard to its exposure and cheating. Though the Forensic Audit Report may be common, it is only a starting point. Thereafter each bank has to safeguard its interest and to weed out the corrupt officials, who are involved in the transactions, there is inclusion of Prevention of Corruption Act. In such circumstances, the petitioners' contention that all the above FIRs formed part of the same transaction is not proper, in view of the distinct nature of offence and offenders and it cannot be termed as multiple FIRs, for the same transaction.

25. I have heard the learned counsels appearing on either side and perused the materials available on record.

26. On perusal of the FIR, in the above cases, no doubt, from the Forensic Auditor Report, the fraud committed by the petitioners and others were unearthed. From the report it is seen that the allegation is specific with regard to modes adopted by the petitioners and others in presentation of false financial statement, book adjustment and diversion of funds to non existing Firms and these funds have been diverted for other purpose than for which the loan was sanctioned. The petitioners contention that the Forensic Auditor concluded by saying that even though there were irregularities, which were happened in

nature of diversion of funds, which is a matter of fact to be investigated. Further, period of offence varies. In all the FIRs prevention of Corruption Act is included and in the accused column, unknown public servants and private persons have included. The persons involved, more particularly, the Bank officials role in accepting the financial statement, permitting the petitioners and others to avail the credit limit, despite diversion of fund, which are going on for quite some time to be unearthed. It is a matter to be investigated. No doubt, all the Banks in the complaints refer to the Forensic Audit Report by Auditor T.R.Chadha and Co., LLP Chartered Accountants, but it is only an information to initiate the complaint, thereafter, during investigation there can be scrutiny of the documents, records, examination of the witnesses, identifying suspected persons, including the public servants. Further, each bank granted cash credit limit and the false statement financial statements have been submitted to each of the banks, who sanctioned public funds on several crores. These are the matters for investigation. The contention of the petitioners that the above four FIRs are part of the earlier complaint of the Punjab National Bank in FIR No.RC0322020A0013 is not proper. Each complaint is distinct pertaining to their Banks and the involvement of the officials of the respective banks along with the petitioners and others to be found. The offences registered in FIR includes Prevention of Corruption Act, which is distinct to each of the public servant involved. In view of the same, the contentions that the offences are same kind, at one series so connected together, cannot be accepted. The further contention of the petitioner that the multiple FIRs by different Banks of consortium cannot be permitted, in view of the RBI Master Circular DBS.CO.CFMC.BC.No.1/23.04.001/2015-16, dated July 01, 2015 and SLP No.8122 of 2021, order dated 22.11.2021. From the Supreme Court website, the above SLP.No. 8122 of 2021 was consigned to record as abated. The counsel for the petitioner, in all fairness, could have verified the current status of the case before making his submission placing reliance on it. More so, it is an interim order. The above petition filed on 10.07.2022 and the order of the Apex Court is much earlier.

27. On perusal of the records it is seen that petitioners along with few other persons incorporated a Private Company in the name and style of "Infinitas Energy Solutions Private Limited" on 12.11.2010, under the Companies Act, 1956. The Company engaged in the business of Renewable Energy. In order to develop the business, the Company availed Fund Based and Non-Fund Based credit facilities from various Banks to the tune of several crores. The Company, failed to repay the amount as agreed, thereby, the accused causing a wrongful loss to the Banks by misappropriating the loan amount and the accused gained wrongfully and cheated the Banks. Based on the complaints of the defacto complainants, who are members of the consortium-banks, the F.I.R.No.RC0322021A0015, F.I.R.No.RC0322021A0016, F.I.R. No.RC0322021A0017 and F.I.R.No.RC0322021A0018, respectively dated

21.10.2021, have been registered by the 1st Respondent, on the allegations of fraud, which is the subject matter of previous FIR being FIR No.RC0322020A0013 lodged by the Lead Banker of the Consortium – Punjab National Bank. The petitioners/accused are before this Court with these petitions to quash the FIRs on the ground that those are all subsequent FIRs registered regarding an incident on which a prior FIR already exists, and therefore, it amounts to abuse of process of law.

28. The Court will normally not interfere with the investigation by the Investigating Agency into the offence and allow the investigation to be completed reach in logical conclusion. The condition precedent to the commencement of investigation is that the F.I.R. must disclose, prima facie commission of cognizable offence. If that condition is satisfied, the investigation proceed. The Court has then no power to stop the investigation of the police to investigate into cognizable offences, unless it is abuse of process of law. It was the submission of the learned counsel for the petitioner that the impugned FIRs, does exist overlapping of the offences, and hence the Court can quash all the FIRs. The accused have cheated different banks in different period. I have examined the Complaint/FIR carefully and find no ground for accepting the contention raised. Having noticed significant distinguishing features in all FIRs mentioned above, the submission of the counsel for the petitioner has no merit. All the FIRs registered against the accused are legal and proper and each have

to be given effect for making proper and full investigation in relation to the offences alleged in each FIR. This is not a case for exercise of discretion of quashing the FIR. The Investigating Agency would now speed up the investigation in relation to the affairs of each Bank and on its completion file final report in each case, before the Courts concern. The Petitioner very well can invoke section 223 CRPC or any other provision if he desires so before the Trial Court, at the appropriate time, if required. The complaints lodged by the 2nd respondent Bank officials is in conformity with the guidelines issued by the RBI.

29. In view of the forgoing reasons, the Criminal Original Petitions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

14.07.2023

Index : Yes/No
Internet : Yes / No
mpk

To

1.The Inspector of Police,
CBI, Anti corruption Bureau,
Chennai.

2.The Deputy General Manager,
Indian Bank,
Stressed Asset Management Branch,
No.55, Ethiraj Salai,
2nd Floor, Egmore,
Chennai – 600 008.

3.The Zonal Manager,
Bank of India
Zonal Office – Chennai Zone,
Start House, II Floor, No.30 (Old No.17),
Errabalu Street,
Chennai – 600 001.

4.The Chief General Manager,
Canara Bank,
Stressed Asset Management Branch
1st Floor, Spencer Tower Building,
770-A, Anna Salai,
Chennai – 600002.

5.The Assistant General Manager,
Bank of Baroda,
Stressed Asset Management Branch
45, Moore Street,
JBAS Building, 4th Floor,
Chennai – 600 001.

6.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

VV2/MPK

CRL.O.P.Nos.18287, 18299, 18300 and 18301 of 2022

14.07.2023