IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2023

Pronounced on : 10.05.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.30980, 15869, 18078, 18075, 23607, 23687 and 31403 of 2019 and Crl.O.P.Nos. 395 and 398 of 2020 and Crl.M.P.Nos.8628, 9149, 12470, 12444, 16856 and 17169 of 2019 and Crl.M.P.Nos.241, 242 of 2020 and Crl.M.P.No.4883 of 2023

1. Shri.Ashish Singh ...Petitioner in Crl.O.P.No.30980 of 2019

2. Hemal Arun Mehta ...Petitioner in Crl.O.P.No.15869 of 2019

3.Abhay Gupta
S/o.Narian Kumar Gupta
Director
M/s.Pro Fin Capital Services Ltd.,
B/503, Western edge 2,
Off Western express highway,
Borivalli east,
Mumbai – 400 092 ...Petitioner in

Crl.O.P.No.18078 of 2019

4. Anupam Gupta,
S/o.Narian Kumar Gupta,
Director
M/s.Pro Fin Capital Services Ltd.,
B/503, Western express highway,
Borivalli east,
Mumbai – 400 092. ...Petitioner in
Crl.O.P.No.18075 of 2019

5. Atul Narender Malik ...Petitioner in
Crl.O.P.No.23607 of 2019

6.Bhavesh
S/o.Ram Prakash
Director's
M/s.Quantum Global Securities Limited
Regd. Office:
No.608, 6th floor, Pragati Tower,
No.26 Rajendra Place
New Delhi 110008. ...Petitioner in
Crl.O.P.No.23607 of 2019

7. Rohit Arora ...Petitioner in
Crl.O.P.No.23687 of 2019
and Crl.O.P.No.395 of 2020

8. Smt.Kalpana Singh ...Petitioner in

Crl.O.P.No.31403 of 2019

9.Ramesh Chand Arora ...1st Petitioner in Crl.O.P.No.398 of 2020

10.Mrs.Suman Arora ...2nd Petitioner in Crl.O.P.No.398 of 2020

vs.

1. State
Inspector of Police,
Central Crime Branch - I,
Chennai.
(Ref:Cr.No.282/2019 dt 26.09.2019)

...1st Respondent/Complainant in Crl.O.P.Nos.30980 & 31403 of 2019 and Crl.O.P.Nos.395 & 398 of 2020

2.The Inspector of Police
Central Crime Branch
Team V forgery Wing
Vepery, Chennai 600 007 ...1st Respondent/Complainant in Crl.O.P.Nos.15869, 18078, 18075, 23607, 23687 of 2019

3.Shri.Suresh Venkatachari ...2nd Respondent/Defacto complainant in all Crl.O.Ps

Prayer in Crl.O.P.Nos.30980, 31403 of 2019 and Crl.O.P.Nos.395 and 398 of 2020 : Criminal Original Petitions have been filed under Section 482 of Cr.P.C., seeking to call for records in FIR bearing Cr.No.282 of 2019 dated 26th September 2019 on the file of Inspector of Police, Central Crime Branch - I, Chennai for the offences under Sections 409, 420, 465, 468, 471, 120 B IPC quash the same.

Prayer in Crl.O.P.Nos.15869 18078, 18075, 23607, 23687 of 2019 : Criminal Original Petitions have been filed under Section 482 of Cr.P.C., seeking to call for the records in Crime No.39 of 2019 pending on the file of the 1st Respondent, quash the same.

For Petitioner
in Crl.O.P.No.30980 of 2019 : No Appearance

For Petitioner
in Crl.O.P.No.15869 of 2019 : Mr.K.Ravi
Senior Advocate for
M/s.J.Srinivasan

For Petitioners
in Crl.O.P.Nos.18075, 18078
23607 of 2019 and
Crl.O.P.No.398 of 2020 : Mr.B.Kumar
Senior Advocate for
M/s.N.Bagavan

For Petitioners
in Crl.O.P.No.23687 of 2019
and Crl.O.P.No.395 of 2020 : Mr.T.Mohan for
M/s.N.Bagavan

For Petitioner
Crl.O.P.No.31403 of 2019 : No Appearance

For Petitioner
in Crl.M.P.No.4883 of 2023 : Mr.AR.L.Sundaresan
Additional Solicitor General for
M/s.P.Sidharthan

For R1 in
all Crl.O.Ps : Mr.A.Damodaran
Additional Public Prosecutor (Crl.Side)
For R2 in
all Crl.O.Ps : Dr.M.R.Venkatesh for
M/s.G.Guruprasath

C O M M O N O R D E R

The above petitions have been filed to quash two First Information Reports registered on the file of the 1st respondent police in

Crime Nos.39 and 282 of 2019.

2. The crux of the allegation in Crime No.39 of 2019 is that the defacto complainant borrowed a sum of Rs.37,00,00,000/- (Rupees Thirty Seven Crores Only) from a company by the name M/s.Quantum Global Securities Limited (hereinafter referred to as 'M/s.Quantum' for the sake of convenience) by pledging Fourteen Lakhs shares of his company M/s. 8K Miles Software Services Limited (hereinafter referred to as 'M/s.8K Miles' for the sake of convenience); that M/s. Quantum had disbursed Rs.35,00,00,000/- (Rupees Thirty Five Crores) a loan; that the defacto complainant was asked to transfer another Nine Lakhs shares as the value of the shares had fallen down; that the defacto complainant came to know that the accused transferred Three Lakhs Seventy Four Thousand Five Hundred shares from his Demat Account by forging his signature on the Delivery Instructions Slip; that the accused thereafter transferred Ten Lakhs Twenty Five Thousand shares, by forging his signature and thus cheated the defacto complainant of his shares worth Rs.98,00,00,000/- (Rupees Ninety Eight Crores only).

Similarly the allegation in the Crime No.282 of 2019 is that the defacto complainant obtained a loan of Rs.5.5 Crores (Rupees Five Crores Fifty Lakhs only) from M/s. Desert River Capital Private Limited; that he had transferred Two Lakhs Fifty Thousand shares of his company M/s. 8K Miles worth Rs.17.25 Crores; that since the value of the shares had fallen down, the defacto complainant was asked to transfer fifty thousand shares additionally; that the accused had transferred the defacto complainant's Three Lakh shares worth Rs.20,00,00,000/- (Rupees Twenty Crores only) without his knowledge and thus committed the offence of cheating, breach of trust, falsification and forgery.

3. At the time of admission of the above petitions, this Court had passed an order of stay of investigation in the impugned FIRs in respect of the petitioners. The petitioners had also filed Anticipatory Bail Petitions before this Court. This Court had granted Anticipatory Bail to the petitioners holding that the transfer of shares happened in the normal course of business. This Court had also commented upon the conduct of the defacto complainant in complaining about transactions covered by the Memorandum of Understanding between the company and the defacto

complainant, which stipulated that the transfer of shares can be done without notice if there is a default in repaying the loan.

4. Thereafter, the Enforcement Directorate, Chennai, on 23.03.2020, recorded an ECIR No.CEZO-I/17/2020 against M/s.Quantum and three others. It is stated that some of the persons found to be involved in the offences under the Prevention of Money Laundering Act, 2002, were arrested during the first week of March 2023. Thereafter, the defacto complainant had filed two similar Affidavits attested by the Additional Superintendent, Central Prison - II, Puzal, Chennai stating that he may be permitted to withdraw the impugned FIRs. The relevant portions of the Affidavit filed in Cr.No.39 of 2019 are extracted hereunder:

> *"2. I most respectfully submit that I have preferred a criminal complaint against M/s.Quantum Global Securities Limited and 15 others in the files of CCB Chennai. The FIR No. is 39/2019 was registered against my complaint and all the accused had obtained anticipatory bail in the Crl.OP Nos. 5553, 6792, 6794, 6796, 5268, 5611, 6718, 8201, 8206, 8303 & 8404 of 2019 On 5th April 2019. The alleged offences are*

punishable under section 420, 465, 468, 471 & 120B of IPC. There after the FIR No.39/2019 was stayed by the Hon'ble High Court in CRL.OP of No.23607,,15869, 18078, 18075, 30986 of 2019. In these circumstances in the order passed by the Hon'ble High Court in the anticipatory bail petitions given a conclusion that:

"13. The Facts remains that the entire transactions has been borne out by records and is governed by MOU entered into between the parties. There is no privity of contract between the petitioners and the de facto complainant. This court is not able to find any strong materials in order to come to prima facie conclusion that these petitioners have acted in concert with A1 & A2. The entire sale / transfer of shares has happened in the normal course of business and all these transaction's have happened online and is borne out by records. In the considered view of this court there is no need for custodial interrogation of the petitioners and the petitioners can be granted anticipatory bail by imposing some conditions."

3. I most respectfully submit that I am Advised that all the transactions are predominantly civil in nature and therefore criminal prosecution may not be a justifiable remedy. The defacto complainant submits that he does not want to pursue with the proceedings in FIR.39/2019 on the file of CCB, Egmore, Chennai and the FIR No.39/2019 may be closed. The defacto complainant shall pursue the remedy which is open to him in civil law.

Hence, It is prayed that this Hon'ble court may permit the defacto complainant to withdraw the complaint as he is not pressing with the FIR lodged against his complaint and this Hon'ble court may be pleased to pass an order closing all the criminal proceedings and thus render justice."

Meanwhile, the Enforcement Directorate, has filed an impleading petition to oppose the quashing of the proceedings on the basis of the compromise arrived at between the parties.

5. Mr. B.Kumar, Mr. K.Ravi learned Senior Counsels for the petitioners in Crl.O.P.No.18075, 18078, 23607 and 15869 of 2019 and Crl.O.P.No.398 of 2020 and Mr. T.Mohan, the learned Counsel for the Petitioners in Crl.O.P.No.23687 of 2019 and Crl.O.P.No.395 of 2020 submitted that:

(a) the dispute between the petitioners and the defacto complainant in both the FIRs is commercial in nature and has an overwhelming/ predominant element of a civil dispute. This has been confirmed by the order passed by this Court in the Anticipatory Bail application filed by the petitioners. The relevant portion of the said order has been quoted in the Affidavit filed by the defacto complainant, which is extracted above.

(b) The Enforcement Directorate, Chennai, cannot have any role in the investigation of the impugned FIR. They relied upon the Judgment of the Bombay High Court in Criminal Writ Petition (Stamp) No.3122 of 2020. In that case, the Enforcement Directorate had filed the petition to intervene and oppose the closure report filed by the State. The trial Court dismissed the said petition. The Enforcement Directorate preferred a Writ Petition before the Bombay High Court. The Bombay High Court held that the Enforcement Directorate cannot have any say in the investigation conducted by another Agency.

(c) In the instant case, the Enforcement Directorate cannot exercise supervisory jurisdiction over the State Agency. If the defacto complainant and the petitioners have compromised the issue and jointly seek quashing of the proceedings, there cannot be any objection by the Enforcement Directorate. Further, it is the case of the Enforcement Directorate that the petitioners have not committed the offences alleged by the defacto complainant in the instant case. The grounds of the arrest of Mr. Hemal Arun Mehta and the impleading petition would show that it's their case that the defacto complainant’s claim that he was duped cannot be believed. Therefore, when the Enforcement Directorate themselves have found out that the offences alleged by the defacto complainant have not been made out, the impugned FIRs are liable to be quashed. If the Enforcement Directorate have unearthed some other offences, it is for them to inform the concerned Agencies about the commission of the other offences under Section 66 (2) of Prevention of Money Laundering Act, 2002. However, in the instant case, the Enforcement Directorate had admittedly not informed, about the commission of any other offence unearthed during their investigation, either to the 1st respondent or any other agency.

(d) The present claim of the Enforcement Directorate, that the defacto complainant had sold the shares of the company at manipulated prices and thereby cheated the general public was the subject matter of the proceedings before the Securities and Exchange Board of India (hereinafter referred to as 'SEBI' for the sake of convenience). The SEBI had passed a final order on 16.12.2022 giving certain directions against the defacto complainant and others. However, the SEBI did not choose to prosecute the defacto complainant and others under Section 26 of the

Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act, 1992' for the sake of convenience)

(e) Even assuming that the claim of the Enforcement Directorate, Chennai, that general public were cheated due to the manipulative practices adopted by the defacto complainant is true, the said violation is covered under the SEBI Act, 1992, which is a special Act and the 1st respondent police would have no jurisdiction to register and investigate such offences. The learned counsels relied upon the Judgment of the Madhya Pradesh High Court in ***Alka Shrivastava Vs. State of Madhyapradesh*** in M.Cr.C.No.23883/2020 reported in ***2020 (9) TMI 1209,*** which had held that where there is a violation which would attract the provisions of SEBI, the police cannot entertain a complaint; and that they can only inform the SEBI Board of the alleged violations. The learned Senior counsels further submitted that the Hon'ble Supreme Court did not entertain the challenge to this Judgment and thus confirmed the Judgment of the Madhya Pradesh High Court in Special Leave to Appeal (Crl.) No(s).7737/2022.

(f) The learned Senior counsels relied upon the Judgment of this Court reported in ***(2019)-1-LW [Crl]. 861*** in ***Doraisamy vs. State,*** in which this Court had held that where the offences committed by a company can be dealt with under the provisions of the Companies Act, it would be a bar for the Police to register an FIR relating to the same offences as the Companies Act provides for a comprehensive mechanism to deal with such violations. This Court, in subsequent Judgments, had followed the Law laid down in the above case.

(g) The learned senior counsels further submitted that in a Writ Petition filed by one of the petitioners by the name Mr. Hemal Arun Mehta challenging the ECIR, a Division Bench of this Court had observed that the case projected by the Enforcement Directorate disclosed an offence different from the one for which FIR's were registered, and granted an order of interim stay of the ECIR.

(h) Therefore, the petitioners prayed that the impugned FIRs might be quashed on the basis of the compromise arrived at between the parties.

6. Per Contra, Mr. A.Damodaran, the learned Additional Public Prosecutor, submitted that the FIRs cannot be quashed on mere asking just because the parties have compromised the issue. The impugned FIRs cannot be classified as disputes between private parties. It involves economic offences, and unless the Police are allowed to investigate and ascertain the truth, the FIRs cannot be quashed on the ground of compromise. The learned Additional Public Prosecutor further submitted that since the impugned FIRs were stayed by this Court, they could not conduct further investigation. Hence, he prayed for the dismissal of the quash petition.

7. Mr. AR.L.Sundaresan, the learned Additional Solicitor General of India (ASGI), for the impleading petitioner (i.e.) the Enforcement Directorate submitted that:

(a) The impugned FIRs cannot be quashed on the basis of a compromise since other offences have been unearthed by the Enforcement Directorate, which has to be investigated. That investigation cannot be scuttled on the basis of a compromise said to have been arrived at between the parties.

(b) The learned ASGI , further submitted that the Hon'ble Supreme Court in ***P.Dharmaraj vs. Shanmugam and others*** in ***Crl.A.No.1514 of 2022 dated 08.09.2022*** had held that the FIRs could not be quashed on the basis of a settlement reached between the parties when the FIRs have an impact on the others as well; that in the instant case, the general public is involved; that the defacto complainant had indulged in manipulating the share prices of his Company and thereby caused wrongful loss to the general public who had invested in the shares; and that this has to be investigated by the respondent police.

(c) The learned ASGI further submitted that Section 66 (2) of the Prevention of Money-Laundering Act, 2002 does not prescribe the manner or mode by which the Enforcement Directorate, Chennai, has to inform the Investigating Agency about the commission of offences. In the impleading petition, they have stated the new offences committed by the petitioners and the defacto complainant, and that can be treated as information under Section 66 (2) of the Prevention of the Money Laundering Act, 2002, to the State agency for necessary action.

(d) The learned ASGI submitted that the acts of the petitioners and others attract the offence of Section 420 IPC even though they can be the subject matter of prosecution by the SEBI Authorities. In the instant case, even assuming that the SEBI Authorities have not chosen to prosecute the petitioners and others, the right of the 1st respondent to investigate the offence of Section 420 IPC cannot be taken away. The learned ASGI relied upon the Judgement of the Hon'ble Supreme Court in ***State (NCT of Delhi) vs. Sanjay and another*** reported in ***(2014) 9 SCC 772*** rendered in the context of the power of the police to investigate the offence of theft of river sand when those violations were covered under the Mines and Minerals (Development and Regulation) Act, 1957. The relevant observations are as follows:

> *"72.From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act. whereas dishonestly removing sand, gravel and other minerals from the*

river. which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure."

(e) The learned ASGI also relied upon the observations of this Court in W.P.No.5051 of 2023 in the order dated 29.03.2023. The said Writ Petition was filed by the second respondent/defacto complainant. This Court had held that the defacto complainant himself was found to be guilty of offences during the course of investigation of the case in Crime No.39 of 2019.

(f) The learned ASGI further submitted that the observations of this Court while granting the stay of the ECIR in W.M.P.No.10803 to 10805 of 2023 in W.P.No.10901 of 2023 cannot be taken as binding since that was an order passed in an interim application. Hence, he submitted that this Court may not allow the prayer of the petitioners to quash the proceedings.

8. In the light of the submissions made by the learned Senior Counsels on either side and the compromise entered into between the defacto complainant and the accused in this case, apart from the principal question of whether the FIRs can be quashed on the basis of compromise, other questions, such as what is the nature of the new offence unearthed by the Enforcement Directorate, who are the accused in the said offence, who can investigate that offence and as to whether the first respondent police can investigate that offence arise in the instant case. Before we deal with the above questions, we have to deal with the preliminary objection raised by the learned Senior Counsels for the petitioners that the impleading petition filed by the Enforcement

Directorate is not maintainable as they have no role in the investigation conducted by the State agency. The learned Senior Counsels relied upon the Judgment of the Bombay High Court in Criminal Writ Petition (Stamp).No.3122 of 2020. The relevant observations are extracted hereunder:

> *"17...No investigating agency can claim supervisory jurisdiction over the other in the matter of investigation."*

As stated above, the above observations were made in the context of dismissing the Enforcement Directorate's petition to intervene and oppose a closure report filed by the State. There cannot be any dispute with this proposition of Law. Likewise, the observations made by the Division Bench of this Court in ***R.K.M. Powergen Private Ltd. Vs. The Assistant Director/Officer on Special Duty and another*** in ***W.P.No.24700 of 2021*** dated 08.06.2022 that the Investigating Officer, while investigating the case under the Prevention of Money Laundering Act, 2002, cannot arrogate to himself the power of the agency concerned under another statute and conduct investigation cannot also be disputed. The relevant observation in the said Judgment of this Court is as follows:

> *"31. The aforesaid is the raison d'etre for Section*

66(2) of the PML Act which states that, while investigating a case under the PML Act, if any information or material comes to the possession of the Investigating Officer, he shall share the information or material in his possession with the agency concerned for necessary action. This clearly means that he cannot arrogate to himself the power of the agency concerned under another statute and conduct investigation under that statute."

9. Thus, there cannot be any dispute that the Enforcement Directorate officials can neither investigate offences committed under the other acts nor interfere in the investigation conducted by another agency. However, this Court is of the view that would not mean that they have no right to file an impleading petition and oppose a quash petition_filed against the FIR in the predicate offence. Since the Enforcement Directorate is concerned with the proceeds of the crime, it cannot be said as a rule that they have no right to intervene and assist the Court in a quash petition challenging the proceedings relating to the crime (i.e) the predicate offence. Though they cannot supervise the investigation of another agency or interfere in their investigation, their views cannot be shut, while this Court is hearing a petition to quash the proceedings

relating to the predicate offence. Hence, this Court is of the view that the Enforcement Directorate's impleading petition Crl.M.P.No.4883 of 2023 deserves to be allowed and hence allowed.

10. The next question is whether the impugned FIRs can be quashed on the basis of a compromise arrived at between the parties. It is well settled that if the dispute arises out of a commercial transaction and has a predominant civil flavour, then the proceedings can be quashed on the basis of compromise. It is also settled that if the case relates to economic offences involving large-scale fraud or when there are other victims or persons involved besides the defacto complainant, then quashing on the basis of compromise may not be allowed. In the instant case, it is seen that the dispute between the defacto complainant and the accused is private in nature. This Court, while granting Anticipatory Bail, had made the following observations.

> *"11. This Court has carefully considered the submissions made on either side. The parties are governed by Memorandum of Understanding and*

the same provides for sale of shares without notice as and when the margined loan ratio false down. The MOU stipulates that the transfer/sale or shares can be done without notice. Prima facie material shows that the defacto complainant was aware about the transfers as and when they were made by intimation to his registered mobile number. The document found in page 28 and 29 of the additional type net of papers filed by the petitioner reflects the same. However, the de facto complainant has claimed in his complaint given before the respondent Police that he came to know about the transfers only during February 2019."

12. It is also seen from records that the de facto complainant himself has been hauled up by the SEBI for insider trading twice during the year 2018 and the de facto complainant has also entered into an independent MOU of similar nature with Desert River Capital Private Limited and the same has also resulted in a Police Complaint. It is also seen from records that the de facto complainant was independently having a dealing with M/s. Pro Fin Capital Services Private Limited and Unity Collateral Security Services Private Limited and he *has received various amounts independently during the period from March and April, 2018. Curiously he is feigning ignorance and he is complaining against the very same Company to which 10,16,000/- shares were transferred and Rs.9.70 crores was received by the de facto complainant through A-1 Company out of the total of Rs.35 crores received by the de facto complainant.*

13.The facts remains that the entire transaction has been borne out by records and is governed by MOU entered into between the parties. There is no privity of contract between the petitioners and the de facto complainant. This Court is not able to find any strong materials in order to come to a prima facie conclusion that these petitioners have acted in concert with A1 & A2. The entire sale/transfer of shares has happened in the normal course of business and all these transactions have happened Online and is borne out by records. In the considered view of this Court there is no need for custodial interrogation of the petitioners and the petitioners can be granted anticipatory bail by imposing certain conditions."

11. That apart, it is the admitted case of the Enforcement Directorate that the offence alleged by the defacto complainant is not made out and that the defacto complainant had suppressed certain vital facts. However, he is guilty of manipulating the prices of the share to gain unlawfully. The relevant portion of the averments made in the impleading petition is extracted hereunder:

"9. I submit that Investigation revealed that the claim of Shri Suresh is factually half truth in so far as his knowledge of said transfers and execution of forged DI slips and criminal conspiracy behind his back is concerned. It came to light that M/s. QGSL has been continuously notifying Shri Suresh about the transfer of shares and the confirmation in respect of such transfers were also sought from Shri Suresh by sending email on his was email id: sureshindiaabroad@gmail.com. Shri Suresh claimed that he is not aware of any such email id: sureshindiaabroad@gmail.com and the same has been wrongly and inappropriately used as his email id. Whereas, it was gathered that the said email id was provided by Shri Suresh on his Demat account opening form at the time of completion of KYC requirements. It was also gathered that Shri Suresh has opened the said

Demat account with M/s. QGSL as a resident Indian, whereas he is a citizen of Republic of Singapore and permanent resident (Green Card Holder) of United States of America."

12. Further, the defacto complainant has filed Affidavits stating that he does not intend to proceed against the accused in the impugned FIRs.

13. One of the accused by the name Mr. Hemal Arul Mehta in the FIR has challenged the ECIR before the Division Bench of this Court in W.P.No.10901 of 2023. This Court in the Miscellaneous Petition for stay had observed as follows:

> *"17.From the reading of grounds of Arrest, a new case has been introduced which is contrary to the earlier complaint which is registered under the Scheduled offences. Even the de-facto complainant is shown guilty of different offences involving the petitioner as a person aiding the de-facto complainant who offered to manipulate the price of shares of 8K Miles From the allegation now found against the petitioner, it is made explicit that the petitioner is not involved in the offence registered in Crime No.39 of 2019 before CCB-1, Chennai. Section 2(u) of the Prevention of Money Laundering Act, 2002, defines 'proceeds of crime', to mean any property*

derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property."

Thus, it can be seen from the above observations made by this Court and the case of Enforcement Directorate that the allegations in the impugned FIR need not be investigated further as it is the case of all concerned that no offence is made out on those allegations.

14. Thus, under normal circumstances, this Court would have quashed the impugned FIRs for the aforesaid reasons without any further discussion. However, the Enforcement Directorate have now in their impleading petition, stated that the petitioners and defacto complainant have committed other offences. The impleading petition would state that the defacto complainant had indulged in this transaction of availing loan by suppressing his nationality to get rid of the regulatory requirements of NRE/NRI accounts. That apart the allegation is that some of the accused offered to manipulate the share prices of M/s.8K Miles and that they had manipulated the prices and brought back nearly 26 Lakh shares of M/s.8K Miles to the account of 2-3 HNI clients. It is further stated that one Hemal Mehta (one of the petitioners) had received 3 Lakh shares for

the said work and out of which he received 1 Lakh shares in his own D-Mat Account. He sold those shares and generated proceeds of the crime to tune of Rs.4,77,85,000/-. The relevant paragraphs in the impleading petition wherein the Enforcement Directorate has stated about the offences said to have been committed by the defacto complainant and others is extracted hereunder for better understanding:

> *"10. I submit that Investigation also revealed that the claim of Shri Suresh regarding his claim of ignorance of M/s. Unity and M/s. Pro Fin who were the other loan providers apart from M/s. QGSL was also misleading and factually incorrect. As a matter of fact, Shri Rohit continuously informed Shri Ramani about the holding of shares of Shri Suresh in various Demat accounts which were transferred from the Demat account of Shri Suresh. What came as a surprise and shocking revelation was the fact that the agreement in the pretext of which the said loan was availed by Shri Suresh from M/s. QGSL against his own shares of 8K Miles was actually signed one month after the transfer of 1400000 shares and after receipt of loan amount from M/s. QGSL. Despite the fact that the agreement was signed after one month, the dates were put as if it was executed prior to*

actual execution of loan arrangement.

11. I submit that Investigation also revealed that the identity with respect to nationality and residency of Shri Suresh was intentionally suppressed from M/s. QGSL by Shri Rohit, Shri Ramani and Shri Suresh while processing/availing loan. The said suppression was intended to get rid of the regulatory requirements of NRE/NRO accounts which was required to be maintained by Shri Suresh. As a matter of fact, Shri Suresh approached Shri Rohit in the month of January, 2018 itself through Shri Ramani and Shri Rohit declined facilitating the loan arrangements knowing that Shri Suresh is a foreign national and NRI. However, in the month of March,2018 the criminal conspiracy was hatched and in furtherance of the conspiracy hatched, it was decided by the conspirators to open a resident Demat account on the basis of KYCs of Indian National and the loan would be obtained against shares of 8K Miles belonging to Shri Suresh.

12. I submit that it is pertinent to note that the share brokers are not authorized to provide loan against shares and are only competent to facilitate *margin funding for the purpose of trading in shares. Shri Suresh has already obtained loan against his shares of 8K Miles from Indian Bank and was well aware that the loan against shares can only be obtained from the banks or NBFCs. Thus, the criminal conspiracy for which he filed the complaint with CCB, Chennai was not hatched between Shri Rohit, Shri Atul and Shri Bhavesh but instead hatched between Shri. Rohit, Shri. Ramani and Shri. Suresh prior to obtaining loan from M/s. QGSL and continued till all other accused came on board."*

13. I submit that in the said process of availing illegal loan by Shri Suresh and to manipulate the share price of 8k Miles, Shri Rohit Arora introduced Shri Hemal Mehta to Shri. Suresh Venkatachari and he offered to manipulate the price of share of 8k Miles. He was given the task of manipulation of share price as well as bringing back all 26 lakh shares of 8k Miles to account of 2-3 HNI clients. For the said work, Shri Hemal Mehta brought other individuals on board. Shri Hemal Mehta received 3 Lakh shares for the said work out of which 1 Lakh shares were received directly in his own DMAT Account. He sold the said 1 Lakh shares immediately and liquidated *the same. Thus, he generated proceeds of crime to the tune of Rs. 4,77,85,000 crore. He also received Rs. 20 Lakh from Mr Rohit Arora. Thus, Mr. Hemal Arunbhai Mehta is in possession of huge proceeds of crime to the tune of Rs. 4,97,85,000/-. However, Shri. Hemal Arunbhai Mehta has refused to reveal about the end use of proceeds of crime derived by him.*

14. I submit that the first respondent had suppressed the true facts in the above case, the investigation in the above case under the PMLA has revealed many incriminating materials against first respondent and his active role played in the crime in connivance with the petitioner herein.

15. For the afore stated circumstances and to place the truth before this Hon'ble Court, which revealed the complicity of the 1 respondent in furtherance of the conspiracy with 2nd respondent and his accomplice in order to artificially inflate the share price of 8K Miles by creating a rosy picture of its financials, this petitioner is required to be impleaded as a party to the above Crl.OP filed seeking quashment of FIR No. 39/2019. Further the petitioner herein is a necessary party for proper *adjudication of the above Cri.OP and any order passed in the above Crl.OP will have a direct bearing in the investigation into the offence of money laundering.”*

15. The above pleadings would show that the allegation does not disclose as to what is the actual offence committed by the petitioners and defacto complainant, though it states that there was a conspiracy to inflate the share price of M/s.8K Miles and about instances of malpractices relating to manipulation of share prices and suppressing of the nativity by the defacto complainant for availing loan from M/s. Quantum Global Securities Limited. This has been the subject matter of the proceedings before the Securities and Exchange Board of India against M/s.8K Miles, defacto complaint and others. The Securities and Exchange Board of India went into the allegations against the defacto complainant and others and issued directions which are as follows:

56.In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon *me under Section 11 (1), 11(4), 11(4A), 11B (1) and 11B(2) of SEBI Act, 1992 read with section 19 of SEBI Act, 1992 and Rule 5 of the Rules, direct as under:*

(i) Noticee nos 1, 2 and 3 are restrained from accessing the securities market in any manner whatsoever, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever, for a period of three (3) years, from the date of coming into force of this order;

(ii) Noticee no. 4 is restrained from accessing the securities market in any manner whatsoever, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever, for a period of one (1) year, from the date of coming into force of this order;

(iii) The Noticee nos. 1, 2 and 3 are prohibited from being associated with the securities market in any manner whatsoever, including as a director or Key Managerial Personnel in a listed company or an intermediary

registered with SEBI, for a period of one (1) year, from the date of coming into force of this direction;

(iv) The Noticee no. 4 is prohibited from being associated with the securities market in any manner whatsoever, including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI, for a period of six (6) months, from the date of coming into force of this direction;

(v) Noticee no. 1 is hereby directed, to undertake the measures to bring back or recover Rs. 3.83 crore from Noticee no. 2 within a period of one year. The present directors of Noticee no. 1, shall take appropriate steps for the compliance of this direction by Noticee no. 1 and the Audit Committee of Noticee no. 1 shall report the progress of the same to the Board of Directors of Noticee no. 1.

(vi) The Noticees are hereby imposed with, the penalties, as specified hereunder:

Noticee No.	Name of Noticees	Provisions under which penalty imposed	Penalty Amount (In Rupees)
1.	SecureKloud Technologies Ltd (Formerly known as 8K Miles Software Services Ltd)	Section 15A (a) of SEBI Act, 1992.	Rs.1,00,00,000/- (Rupees One Crore Only)
		Section 15HA of the SEBI Act, 1992.	Rs.2,00,00,000/- (Rupees Two Crore Only)
		Section 15HB of SEBI Act, 1992.	Rs.1,00,00,000/- (Rupees One Crore Only)
2.	Shri Suresh Venkatachari	Section 15A (a) of SEBI Act, 1992.	Rs.1,00,00,000/- (Rupees One Crore Only)
		Section 15HA of the SEBI Act, 1992.	Rs.1,00,00,000/- (Rupees One Crore Only)
		Section 15HB of SEBI Act, 1992.	Rs.1,00,00,000/- (Rupees One Crore Only)
3.	Shri R.S.Ramani	Section 15A (a) of SEBI Act, 1992.	Rs.25,00,000/- (Rupees Twenty Five Lakh Only)
		Section 15HA of the SEBI Act, 1992.	Rs.1,00,00,000/- (Rupees One Crore Only)
		Section 15HB of SEBI Act, 1992.	Rs.75,00,000/- (Rupees Seventy Five Lakh Only)
4.	Shri Gurumurthi Jayaraman	Section 15A (a) of SEBI Act, 1992.	Rs.25,00,000/- (Rupees Twenty Five Lakh Only)
		Section 15HA of the SEBI Act, 1992.	Rs.50,00,000/- (Rupees Fifty Lakh Only)
		Section 15HB of SEBI Act, 1992.	Rs.25,00,000/- (Rupees Twenty Five Lakh Only)

16. The SEBI found that the defacto complainant and others had violated some of the provisions of the SEBI Act, 1992 and issued the above directions. However, the SEBI had not initiated any prosecution

under Section 26 of the SEBI Act, 1992.

17. That apart, it is seen that the submission of the learned ASGI, that the general public were cheated and an offence under Section 420 of IPC is made out is not stated in the impleading petition. All the allegations relate to matters which have been already addressed by the SEBI. It is no doubt true that if an allegation constitutes an offence under the SEBI Act and offences under the Indian Penal Code, the right of the respondent police to investigate the Penal Code offences cannot be taken away. The Judgment of the Hon'ble Supreme Court in ***State (NCT of Delhi) vs. Sanjay and another*** reported in ***(2014) 9 SCC 722*** makes that position very clear. The relevant observation of the Honourable Supreme Court is extracted in the earlier part of this order. The primary ingredient of the offence of Section 420 IPC is deception. Whether there was deception or not in the facts of the case is dependent on the findings of the SEBI. Therefore, the respondent police have to depend on the SEBI to ascertain if the deception has been practised on the general public. The deception, in this case, is the alleged manipulation of share prices which has been dealt with by SEBI. Therefore, in the facts and

circumstances of the case, this Court is of the view that this is not a case where the respondent police can ordinarily investigate the offences, which are also violations under the SEBI Act, 1992. In this regard, the Judgment of Madhya Pradesh High Court in ***Alka Shrivastava vs. State of Madhya Pradesh*** reported in **(*2020) 9 TMI 1209*** is extracted hereunder for better understanding:

> *"33.What the police could have done was that bring to the notice of SEBI Board the alleged violation being committed by the applicant Company. After providing vital information and inputs to the SEBI Court, the matter would have been looked into by SEBI Board only and appropriate complaint could have been filed by SEBI Board before the competent Special Court. However, instead of doing so, the police has embarked upon registration of FIR in such a case and by doing so, has travelled beyond the scope of its competence and jurisdiction."*

18. Even assuming that the offence under Section 420 of IPC relating to cheating of the general public is made out, this Court finds that in none of the proceedings or in the impleading petition, the

Enforcement Directorate have stated so. That apart, the Enforcement Directorate is bound to inform the agency concerned if any other provisions of law are contravened or if any other offence has been committed under Section 66 (2) of the Prevention of the Money Laundering Act, 2002. However, admittedly in this case, the Enforcement Directorate has not informed the respondent police about the unearthing of the alleged new offence. Though, the Act does not prescribe any particular mode by which the information gathered by Enforcement Directorate has to be shared with the investigating agency, this Court is of the view that an impleading petition in a quash petition cannot be treated as information to the respondent police about any new offence. In any case, the impleading petition does not specifically state about the offence of Section 420 IPC by cheating the general public. There cannot be any doubt that if new offences are unearthed, it is open to the Enforcement Directorate to share such information with the concerned agencies who are competent to investigate such new offences. However, in the absence of any information under Section 66 (2) of the PMLA to the first respondent, the Enforcement Directorate cannot oppose the quashing of the FIR which relates to an offence which is not made out even as per the stand taken by the Enforcement Directorate.

19. In this regard, the law is well settled in the decision in ***Vijay Madanlal Choudhary and others vs. Union of India and others*** reported in ***(2022) SCC Online SC 929***, wherein it has been held as under:-

> *"The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."*

20. Therefore, from the above discussion, it is seen that the Enforcement Directorate's opposition to the quashing of the FIRs cannot

be accepted. The Enforcement Directorate cannot resist the quashing of the FIRs prayed on the basis of compromise since the allegations in the FIRs have a predominant civil flavour which discloses a commercial dispute and is private in nature. There are no other victims or other persons involved in the offence alleged in the FIRs. The new offence said to have been committed by the petitioners alleged by the Enforcement Directorate has been the subject matter of the proceedings before the SEBI Act, 1992. The SEBI Act, 1992 provides for a comprehensive mechanism to deal with such violations. The SEBI had not chosen to prosecute the petitioners as stated earlier. Further even assuming that an offence under Section 420 IPC on the allegation that the general public were cheated because of the manipulation in the share price is made out, the Enforcement Directorate had not informed the first respondent about the commission of the alleged new offences as per Section 66 (2) of the Prevention of Money Laundering Act, 2002.

21. Thus for all the reasons as stated above, this Court is of the view that the impugned FIRs are liable to be quashed not only on the basis of the compromise but also since no offence has been made out on

the allegations. Hence, Criminal Original Petitions are allowed. Consequently the connected miscellaneous petitions are closed.

10.05.2023

dk
NCC: Yes/No
Index : Yes/No
Speaking/Non Speaking Order

To

1. The Inspector of Police,
Central Crime Branch - I,
Chennai.

2.The Inspector of Police
Central Crime Branch
Team V forgery Wing
Vepery,
Chennai 600 007.

SUNDER MOHAN. J,

dk

Pre Delivery Common Order in

Crl.O.P.Nos.30980, 15869, 18078, 18075, 23607, 23687 and 31403 of 2019 and Crl.O.P.Nos. 395 and 398 of 2020 and Crl.M.P.Nos.8628, 9149, 12470, 12444, 16856 and 17169 of 2019 and Crl.M.P.Nos.241,242 of 2020 and Crl.M.P.No.4883 of 2023

10.05.2023