



2024:DHC:6737



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 10.07.2024
Pronounced on: 03.09.2024*

+ **CRL.M.C. 1710/2004 & CRL.M.A. 896/2021, 1890/2021 &
20689/2021**

AJINDRA KUMAR PURI & ORS.Petitioner

Through: Mr. Bharat Chugh, Mr. Jai
Allagh and Mr. Ashok Kumar
Sharma, Advocates.

versus

STATE & ANR.Respondents

Through: Ms. Rupali Bhandopadya,
ASC for the State with Mr.
Abhijeet Kumar and Mr. Sagar
Mahlawat, Advocates.
Mr. Gurpreet Singh, Mr. Jatin
Sethi & Mr. Manit Walia,
Advocates for R-2.

+ **CRL.M.C. 1889/2004 & CRL.M.A. 750/2012, 12563/2013 &
894/2021, 1887/2021 & 20721/2021**

M.P. MEHROTRA & ORS.Petitioner

Through: Mr. Bharat Chugh, Mr. Jai
Allagh and Mr. Ashok Kumar
Sharma, Advocates.

versus



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STATE & ANR.

.....Respondents

Through: Ms. Rupali Bhandopadya,
ASC for the State with Mr.
Abhijeet Kumar and Mr. Sagar
Mahlawat, Advocates.

Mr. Gurpreet Singh, Mr. Jatin
Sethi & Mr. Mani Walia,
Advocates for R-2.

+ **CRL.M.C. 1895/2004 & CRL.M.A. 882/2015, 9977/2015,
5665/2016, 762/2021, 20736/2021**

SOMESH MEHROTRA & ANR.

.....Petitioner

Through: Mr. Bharat Chugh, Mr. Jai
Allagh and Mr. Ashok Kumar
Sharma, Advocates.

versus

STATE & ANR.

.....Respondents

Through: Ms. Rupali Bhandopadya,
ASC for the State with Mr.
Abhijeet Kumar and Mr. Sagar
Mahlawat, Advocates.

Mr. Gurpreet Singh, Mr. Jatin
Sethi & Mr. Mani Walia,
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.



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1. By way of above-captioned petitions filed under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') read with Article 227 of the Constitution of India, the petitioners seek setting aside of order dated 03.06.2004, passed by the learned Metropolitan Magistrate, New Delhi, and for quashing of FIR No. 326/2004, registered at Police Station Connaught Place, Delhi under Sections 406/409/420/424/120B of the Indian Penal Code, 1860 ('IPC'), pursuant to order dated 03.06.2004.
2. These petitions, having similar facts and contentions and common issues for consideration, were heard together and are being decided by this common judgment.

FACTUAL ASPECTS

3. The facts of the case, in brief, are that a complaint was filed by the complainant, M/s Sunair Hotels Limited, against the petitioners herein, who were the former/current directors of VLS Finance Ltd., a Non-Banking Finance Company (NBFC) engaged in leasing and finance. It was alleged by the complainant that in 1994-95, VLS Finance Ltd. had projected itself as a well-established, diversified NBFC with prominent figures from the financial sector on its Board, creating a false impression of secure investment opportunities. The accused had leveraged this image to lure inexperienced investors and companies seeking financial consultancy. As alleged, the complainant company, which had been working on a five-star deluxe hotel project at Bangla Sahib Marg, New Delhi, was approached by the directors of VLS Finance Ltd., who had expressed interest in



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arranging finances and investing in the project. Trusting the representations and assurances of the accused persons, the complainant company had entered into a Memorandum of Understanding ('MOU') with VLS Finance Ltd., on 11.03.1995. The MOU stipulated that VLS Finance Ltd. would provide a forfeitable security deposit of Rs. 10 crores, arrange Rs. 85 crores in loans, cover any shortfall with personal resources, and facilitate a public issue of shares at a significant premium. Considering the promises made by the accused persons, the promoters of the complainant company had renounced 70 lakh shares, at a par value of Rs. 10 per share, out of the right issue dated 11.03.1995, despite the market value as per the own assessment of the accused (vide letter dated 13.02.1995) was Rs.60/- to 70/- per share. It is alleged that the complainant company had been induced to part with these shares on the basis of the assurances of the accused persons to fulfill their obligations under the MOU. However, the malafide intentions of the accused persons had soon become apparent, and their real objective was to take over the hotel project under the guise of equity investment. As alleged, they had acquired the complainant's valuable shares at nominal rates while failing to fulfill their financial obligations, thereby jeopardizing the hotel project. The accused persons had then had begun to project the complainant company as non-compliant with the MOU, despite their own deliberate failures, as part of a larger criminal conspiracy aimed at cheating and defrauding the complainant. The complainant had later realized the oblique motives of the accused, which had become evident through



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various documents, and especially after an income tax raid in the year 1998 which had revealed that VLS Finance Ltd. had artificially inflated its share prices through illegal insider trading and manipulation, which had exposed their fraudulent scheme. It was also alleged by the complainant that the accused persons had also deceived the complainant company by inserting a stipulation in the MOU, contrary to SEBI guidelines, that falsely suggested the complainant could issue shares at a premium. Knowing full well that the complainant did not meet the required profit record for such an issue, the accused had concealed this fact and induced the complainant to sign the MOU. The subsequent actions of the accused persons, including their failure to pay the full security deposit, refusal to arrange the promised funds, and attempts to undermine the hotel project through negative communications with financial institutions, had clearly shown their intent to defraud. Allegedly, the accused persons had even written to ACCOR to dissuade investment in the project and influenced IFCI to cancel a sanctioned loan for the project. The accused had further made substantial wrongful gains by misappropriating profits from the shares they had acquired from the complainant. Their misconduct extended to implicating the complainant in false civil and criminal cases, and their attempts to take over the hotel project were rejected by various forums, including the Company Law Board (CLB), which had observed their actions were prejudicial and motivated by an illegal desire to gain control of the hotel project. Despite the CLB's observations, the accused persons had continued with their attempts to take over the hotel



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project by lodging multiple FIRs against the complainant on the basis of same baseless allegations which had been rejected by the CLB. It was also alleged that the accused persons had a history of defrauding investors and innocent companies, as evidenced by complaints from other shareholders against their financial irregularities. Thus, it was alleged that the accused persons had committed offences under Sections 406, 409, 420, 424, and 120B of the IPC.

4. Based on the aforesaid complainant, an order dated 03.06.2004 was passed by the learned Metropolitan Magistrate, New Delhi (*'learned Magistrate'*) directing the SHO, P.S. Connaught Place, New Delhi to register an FIR against the accused persons. Thereafter, in compliance with order dated 03.06.2004 passed by learned Magistrate, the FIR No. 326/2004 was registered against the petitioners herein.

5. The petitioners thus pray for quashing of FIR No. 326/2004, registered at P.S. Connaught Place, pursuant to order dated 03.06.2004.

6. During the pendency of these petitions, unfortunately, seven out of the twelve petitioners in these petitions passed away.

ARGUMENTS ON BEHALF OF THE PETITIONERS

7. On behalf of the petitioners, arguments were addressed at length by learned Senior Counsels Mr. Sidharth Aggarwal and Ms. Rebecca John, and learned Counsel Mr. Bharat Chugh. Detailed written arguments alongwith several compilations of documents and



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case laws have been filed on record, which has been perused by this Court.

8. The main thrust of the arguments, addressed on behalf of the petitioners, is that the present case is a classic case of gross abuse of the process of Courts and law, which necessitates the invocation of inherent powers of this Court to quash the proceedings in order to meet the ends of justice. It is stated that the present case is one where the learned Magistrate ordered the registration of the FIR without there even being a prior complaint made to the police authorities and even when a complaint was made, the police authorities were not given an opportunity to inquire into the allegations. This is a case where a judicial order under Section 156(3) of Cr.P.C. have been obtained by way of material suppression and concealment, forum shopping, bench hunting, fraud and abusing the process of law. Further, this is a case where the the complainants, who were accused in multiple FIRs, after having failed to get their defence investigated to the manner and method of their choice, later on, became the complainant and abused the process of law. It is also stated that in case, the investigation was surreptitiously started and chargesheets were filed fraudulently and in total contempt of the orders passed by this Court staying the investigation, which orders were made absolute till the disposal of these petitions. The said contemptuous chargesheets have been filed without any real, fair, honest, complete investigation.

9. Learned Senior Counsels appearing on behalf of the petitioners argue that the impugned order dated 03.06.2004, which led to the



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registration of FIR No. 326/2004, ought to be quashed on several grounds. It is argued that the learned Magistrate erred, both in law and in fact, by directing the registration of an FIR against the petitioners. It is argued that the facts of the case do not support the invocation of criminal jurisdiction, as the matter in question is inherently a civil dispute, and has been wrongfully given the appearance of a criminal offence, which the learned Magistrate did not properly assess. It is fervently argued that the impugned order passed under Section 156(3) of Cr.P.C. is cryptic and does not reflect the application of mind by the learned Magistrate. It is submitted that the mere use of the phrase '*heard and perused*' in the order does not indicate that the learned Magistrate has applied judicial mind, which is a requirement for passing such orders. Furthermore, the learned Magistrate failed to consider that the impugned complaint and the application under Section 156(3) of the Cr.P.C. did not disclose any cognizable offence.

10. Moreover, it is argued that the learned Magistrate failed to appreciate that the concept of vicarious liability is alien to the IPC and there must be specific allegations against the accused in the complaint, which are absent in this case. Additionally, the impugned complaint was filed without following the procedure under Section 154 of Cr.P.C., which further invalidates the subsequent orders and FIRs. It is also argued that the order dated 03.06.2004 also does not reflect any need for police investigation, and the learned Magistrate did not call for a status report from the police before passing these orders.



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11. It is further contended on behalf of the petitioners that the inordinate and unexplained delay in filing the impugned complaint, which was not considered by the learned Magistrate, further demonstrates the lack of application of mind. It is submitted that the impugned order under Section 156(3) of Cr.P.C. was obtained by the respondent no. 2 by playing fraud upon the Court, and by suppressing and concealing material documents. Specifically, there was suppression and concealment of relevant information related to the previous FIRs registered against the complainant itself, at the behest of the present petitioners.

12. In support of these arguments, the learned Senior Counsels have relied upon several documents and case laws. Therefore, it is prayed on behalf of the petitioners that the present petitions be allowed and the impugned order and FIR be quashed.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 2

13. On behalf of the complainant/respondent no. 2, i.e. M/s Sunair Hotels Ltd., arguments were addressed at length by learned Senior Counsels Mr. Jayant Bhushan and Mr. Sandeep Sethi, and learned counsels Mr. Vijay Aggarwal and Mr. Tarun Chandiok. Detailed written arguments as well as short written submissions have been filed on record, which have been perused by this Court.

14. The main thrust of the arguments advanced on behalf of respondent no. 2 is that a petition seeking quashing of FIR is not maintainable against an order passed under Section 156(3) of Cr.P.C. once the charge-sheet has already been filed. In this regard, it is



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argued that the FIR becomes infructuous since the same has now been converted into a charge-sheet and quashing of order passed under Section 156(3) of Cr.P.C. or the FIR will wipe out the entire investigation conducted so far. It is further submitted that it was clarified by order dated 23.08.2016 by this Court that there was no stay of investigation in the present case and thus, the police had carried out investigation in accordance with law. It is also submitted that the order dated 23.08.2016 was never challenged by the petitioners herein, and now they cannot contend that the chargesheet filed in the present case is in contempt of this Court's previous orders.

15. It is stated that the alternate remedy is available to the petitioners i.e. to address arguments at the time of charge. It is argued that the investigating agency has already, during investigation, tested the veracity of the allegations after hearing both the complaint and the accused persons and seeking replies from the concerned authorities, and has come to the conclusion that the allegations are *prima facie* made out for the purpose of filing a charge sheet.

16. It is also argued that an FIR cannot be quashed at a premature stage as per the settled principles of law, and no case has been made out by the petitioner in the four squares of grounds pertaining to quashing of an FIR. In this regard, it is also argued that while exercising powers under Section 482 of Cr.P.C., this Court cannot act as an investigating agency and go into the merits of the investigation conducted by the police.



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17. It is argued that the perusal of impugned order clearly reveals that the learned Magistrate has perused the complaint and has found that cognizable offences have been made out, and thus, the said order passes the test of reasonableness as laid down in various judicial precedents. It is also submitted that an application under Section 156(3) of Cr.P.C. is nothing but a peremptory reminder to the police to register an FIR in case of a cognizable offence. It is also stated that there is no statutory duty upon the Magistrate to call for a status report before directing registration of FIR. It is also argued that at the behest of the petitioners herein, FIRs were registered against the respondent no. 2 herein, in an identical mode and manner. It is further submitted that the order under 156(3) of Cr.P.C. passed in one of those cases against the respondent no. 2 herein was passed by the same learned Magistrate, and the said order was upheld by this Court in case of *SP Gupta v. State*, W.P.(Crl.) 1123/2003 vide judgment dated 23.03.2005, and further, the same was upheld by Hon'ble Supreme Court in *SP Gupta v. State*, CRL MP 14246/2005 vide order dated 03.07.2006.

18. It is further argued that role of an individual accused need not be seen at this stage of registration of FIR, and moreover, in cases where an FIR is registered against a company, the corporate veil cannot be lifted easily and a layman will not be able to ascertain the managerial persons who were involved in the commission of offence and, thus, the same can be done only by investigating agency after carrying out detailed investigation. It is also argued that without allegations being investigated by the police, the Court cannot be in a



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position to adjudicate whether the transaction in question is civil or criminal in nature. It is also stated that merely because the present FIR has been lodged subsequent to the previous FIRs lodged by the petitioners herein against the respondent no. 2, the FIR in question cannot be quashed.

19. This Court has **heard** arguments addressed by both the sides, and has perused material filed on record.

ANALYSIS & FINDINGS

20. In the present case, this Court notes that the allegations against the accused persons/petitioners herein, in a nutshell, are that the accused company and its directors had engaged in a series of deliberate acts and omissions after the execution of MOU dated 11.03.1995, demonstrating their *malafide* intent and illegal conduct, amounting to offences such as criminal conspiracy, cheating, fraud, and breach of trust. It has been alleged that the accused had induced the complainant to part with 70 lakh shares at Rs. 10 each, significantly undervaluing them, and had intentionally failed to pay the promised Rs. 10 crore security deposit, thereby jeopardizing the planned hotel project by delaying the payment of Rs. 8 crores. Further, the accused persons had allegedly failed to arrange the promised Rs. 85 crores in financing, which reveals the false assurances and intentions of the accused to trap the complainant in their conspiracy to take over the hotel. The accused persons also did not allegedly provide the necessary personal or corporate guarantees for the required loans, thereby exposing their intent to extract



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financial gains illegally without implementing the MOU. It is also alleged that the accused persons had further jeopardized the project by sending contradictory and negative communications to financial institutions, creating artificial financial disputes to cover up their own offences. It has also been alleged that the accused had written to ACCOR advising against investing in the project due to political instability, a move contrary to the MOU, designed to weaken the complainant's position while benefiting from the undervalued shares. It is also alleged that the accused persons had influenced IFCI's Chairman to cancel a sanctioned loan for the project, which the complainant had to revive through great effort. In addition, the accused person had also failed to facilitate the public issue of the complainant company, as required, due to SEBI guidelines.

21. Pursuant to hearing arguments on behalf of the complainant and perusing the material placed on record along with the complaint, the learned Magistrate had arrived at an opinion that the allegations in the complaint reveal commission of cognizable offences, and thus, the FIR was ordered to be registered. The order dated 03.06.2004 passed by the learned Magistrate under Section 156(3) of Cr.P.C. is extracted hereunder:

“Heard. Perused. It is alleged that in conspiracy the accused have induced the complainant to part with their valuable property which on entrustment has been embezzled and the complainant has been put to wrongful loss and commission of cognizable offences of criminal breach of trust or in the alternative of cheating by conspiracy is alleged. SHO police station Connaught Place is directed to register the FIR under section 154 Cr.P.C. and investigate the matter under section 156(3) Cr.P.C. in accordance with law and submit the status report and CD on 03.08.2004. Complainant / counsel to file



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copy of the complaint and its annexures with the Ahlmad within two days hereof alongwith the copy of this order be sent to the concerned SHO for compliance.”

22. During the course of arguments, both the parties had taken this Court through various documents, running into thousands of pages, including: the MOU entered into between the parties; hundreds of letters exchanged between the petitioners, respondent no. 2 and other concerned authorities over a period of years; copies of earlier complaints/FIRs/chargesheets filed in criminal cases initiated by the petitioners herein against the respondent no. 2; copies of all the petitions/appeals etc. filed by the accused persons in those cases and the orders/judgments passed by different Courts; orders passed by the Company Law Board; orders of Income Tax Department; financial documents/statements of the companies; minutes of the meetings; and civil proceedings filed/pending before other Courts/Tribunals. However, this Court is conscious of its power and the scope of inquiry it can conduct into the allegations levelled by the complainant and the documents placed on record in the present petitions.

23. On the strength of above documents and material, the petitioners have sought to persuade this Court that the order, under Section 156(3) of Cr.P.C., directing registration of FIR has been passed without application of mind and in a mechanical manner, and the complaint/FIR in question does not disclose the commission of any criminal offence whatsoever and, therefore, the said order as well as the FIR must be quashed and set aside.



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24. Insofar as grievance of the petitioners regarding order passed under Section 156(3) of Cr.P.C. is concerned, it would be apt to first take note of the statutory provision, which reads as follows:

“156. Police officer’s power to investigate cognizable case.—

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

25. There are no two views about the fact that the power and the discretion under Section 156(3) of Cr.P.C. has to be exercised judiciously and after application of mind, and not arbitrarily, by the Magistrate.

26. In addition, the necessity of applying judicial mind to the allegations levelled by a complainant and the material placed on record to support those allegations, understanding as to how the ingredients of the alleged offences are *prima facie* made out, recording of reasons, etc. have been held as some of the requirements while passing an order under Section 156(3) of Cr.P.C. by the Hon’ble Supreme Court of India in various judgments, also relied upon by the learned counsels for the petitioners [Ref: *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668; *Anil Kumar v. MK Aiyappa* (2013) 10 SCC 705; *Priyanka Srivastava v. State of UP* (2015) 6



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SCC 287; Shri Subhkaran Luharuka v. State ILR (2010) VI Delhi 495].

27. However, this Court is also conscious of the fact that the order impugned herein was passed in the year 2004 i.e. at a time when none of the judgements cited on behalf of the petitioners had been penned down for the benefit of the learned Magistrates by either this Court or by the Hon'ble Supreme Court. Further, Section 156(3) of Cr.P.C., in the statute, does not specifically mention any requirement of recording detailed reasons before directing registration of an FIR. Thus, the judicial precedents available today, were not available for the benefit of the learned Magistrate in the year 2004.

28. At the same time, it is also crucial to note that on the basis of a **similar and identical order**, passed by the same learned Magistrate in the year 2002, an FIR was registered against the respondent no. 2 herein and its directors etc., at the behest of the present petitioners, culminating in FIR No. 99/2002, P.S. Connaught Place. The order dated 19.02.2002 passed by learned Magistrate under Section 156(3) of Cr.P.C., on the complaint filed by petitioners herein, reads as under:

“Heard. File perused. The material on record contains allegation of breach of trust, forgery, falsification of account, etc. against the respondents. SHO Police Station, Connaught Place, is directed to investigate the matter under Section 156 Cr.PC in accordance with the law and submit his report by 27.3.2002 Copy of the order, complaint and the annexed documents be sent to the SHO, complainant counsel to file the same today itself.”



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29. Further, the writ petition bearing *W.P.(Crl.)1123/2003* seeking quashing of the aforesaid FIR was dismissed by this Court *vide* judgment dated 23.03.2005, observing that the investigation was underway and it could not be held that the allegations were groundless or no offence even *prima facie* was made out. The said judgment was thereafter upheld by the Hon'ble Supreme Court in case bearing number *CRL MP 14246/2005*, wherein it was observed that investigation could not be quashed at an early stage. Therefore, though the order under Section 156(3) of Cr.P.C. was not specifically challenged by the respondent no. 2 herein, in the abovesaid writ petition, the fact remains that the FIR registered consequent to that order was not quashed either by this Court or by the Hon'ble Supreme Court, and as on date, even charges stand framed against the accused persons therein by the learned Trial Court.

30. Thus, on one hand, at the behest of the petitioners, a similar order as the one impugned in these petitions was passed in the year 2002 for registration of FIR No. 99/2002, P.S. Connaught Place against the respondent no. 2 herein, and the said FIR was neither quashed by this Court or by the Hon'ble Supreme Court, and on the other hand, another identical order passed by the same learned Magistrate, but now on the complaint filed by respondent no. 2 herein against the petitioners, has been challenged by the petitioners on the ground of the order having been passed in a mechanical manner and without application of mind.

31. Be that as it may, insofar as the argument regarding lack of application of mind is concerned, this Court notes that the learned



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Magistrate has observed in the impugned order dated 03.06.2004 that after hearing the arguments and perusing the complaint, he was of the view that as per allegations, the accused persons had induced the complainant to part with their valuable property which on entrustment had been embezzled and the complainant has been put to wrongful loss and thus, committing offences of criminal breach of trust or in the alternative, cheating by conspiracy, for which the police was directed to register an FIR, investigate the matter, and place a status report before the Court.

32. In this Court's opinion, in cases such as the present one, where several allegations of cheating, criminal breach of trust and criminal conspiracy for commission of these offences have been levelled by one party against the other, and where such allegations emanate out of one MOU entered into between the said parties and subsequent events thereto, and also where these allegations include commission of certain financial irregularities by the accused persons, neither this Court while exercising its powers under Section 482 of Cr.P.C., nor a court of Magistrate who was then exercising power under Section 156(3) of Cr.P.C. would usurp the powers of the investigating agencies and conduct a roving enquiry into the allegations and appreciate in detail the documents submitted along with the complaint by the complainant, and not direct the registration of an FIR by the police for the purpose of carrying out of a fair and proper investigation, even though certain *prima facie* offences, considering the allegations and the material placed before the Court, have been made out.



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33. In such cases, the necessity of a police investigation may arise, considering that not only the documents available with the complainant may be relevant for deciding the dispute, but also the other documents and relevant records from various concerned authorities, including financial bodies etc., would be required to be procured and examined, alongwith recording statements of the witnesses and confronting them with the documents etc., to reach at a conclusion as to whether the offence, as alleged, has actually been committed by the accused persons or not, and if at all there is criminality involved in the alleged actions, what role can be ascribed to each accused.

34. Therefore, in the peculiar facts and circumstances of the present case, this Court at this stage finds no ground to quash the order dated 03.06.2004 passed by the learned Magistrate *vide* which the FIR was directed to be registered, as the allegations in the complaint, *prima facie*, make out a case for commission of cognizable offences.

35. Insofar as the prayer of the petitioner for quashing of FIR is concerned, this Court, guided by the principles laid down by Hon'ble Supreme Court in case of *M/s Neeharika Infrastructure v. State of Maharashtra* 2021 SCC OnLine 315 and *State of Haryana v. Bhajan Lal* 1992 SCC (Crl) 426, is of the opinion that the discretion to quash an FIR at a nascent stage is to be exercised with great caution and circumspection. In case of *Skoda AutoVolkswagen India Private Limited v. State of Uttar Pradesh* 2020 SCC OnLine SC 958, the Hon'ble Supreme Court has observed as under:



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“40. It is needless to point out that ever since the decision of the Privy Council in *King Emperor v. Khwaja Nazir Ahmad*, the law is **well settled that Courts would not thwart any investigation**. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

41. As cautioned by this Court in *State of Haryana v. Bhajan Lal*, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, **the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint.**

42. In *S.M. Datta v. State of Gujarat* this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. **In S.M. Datta, this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.”**

(Emphasis supplied)

36. Thus, the settled principles of quashing of FIRs have to be strictly followed, and it is only if the allegations levelled in the FIR persuade a Court to a conclusion that the allegations are patently absurd and the offence could not have been committed on the basis of the material placed on record or it is an abuse of process of law, a Constitutional Court should intervene and quash the FIR without even giving an opportunity to the police to investigate the matter and reach a conclusion.

37. However, the proceedings for quashing of FIR under Section 482 Cr.P.C. or Article 226 of the Constitution of India are not meant



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for the purpose of appreciating the evidence or examining the correctness of evidence or material placed on record. As this Court has observed in above discussion, both the sides have placed documents running into thousands of pages for this Court's consideration, however, the same cannot be gone into by this Court in the proceedings such as the present one, wherein quashing of an order under Section 156(3) Cr.P.C. and FIR has been sought at the initial stage. In the present case, the detailed arguments addressed and the contentions raised by the learned Senior counsels, are all, essentially, matters of trial.

38. This Court further notes that the entire litigation in these cases, encompassing multiple FIRs, arbitration petitions, and related proceedings, originates from a single MOU dated 11.03.1995 and the events which unfolded thereafter. However, on one hand, the petitioners have argued before this Court that the dispute in the present case is purely of civil nature which has been given a colour of criminality by the respondent; and on the other hand, the petitioners themselves have initiated criminal action against respondent no. 2 and its Directors/Promoters over disputes arising out of the same MOU, leading to the registration of several FIRs in the past. Thus, the dispute arising between two parties, stemming from the same MOU entered into between them in relation to development of a hotel in Delhi, can either be of civil nature or involve criminality. If the present dispute arising from the said MOU is indeed of a civil nature, as claimed by the petitioners herein, then the previous cases initiated by them against the respondent no. 2 could likewise be characterized



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as civil disputes. However, whether the disputes between the parties herein, are actually of civil nature or there is some criminality attached to their actions, can be ascertained only once the entire investigation is complete and final report is placed before the learned Trial Court, for it to apply its mind and proceed as per law. At this stage, this Court is only required to take a *prima facie* view of the case, and adjudicate the petitions seeking quashing of impugned order and the FIR as per settled principles of law.

39. This Court has also been informed that during the pendency of the present petitions, investigation was carried out by the investigating agency and charge-sheets were filed before the Trial Court, arraying those persons as accused, whose role was found in the commission of alleged offences. The cognizance of the chargesheet has not been taken as the proceedings before the learned Trial Court were stayed thereafter by this Court.

40. As far as grievance of the petitioners that police has filed chargesheet in the present case, despite there being stay of operation of impugned orders, is concerned, this Court notes that while the impugned order was indeed stayed, an order dated 23.08.2016 by this Court clarified that there was no stay on the investigation. Without delving into this controversy at this stage, it is pertinent to observe that the order dated 23.08.2016 has never been challenged by the petitioners. Furthermore, one of the petitioners has himself participated in the investigation (as indicated by the status report submitted by the police before this Court and the learned Trial Court). The interim application seeking stay of proceedings and



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quashing of chargesheet was preferred by the petitioners only in January, 2021, after which the trial court proceedings had been stayed. Be that as it may, the petitioners herein will be at liberty to take recourse to law, by filing fresh appropriate petition/application, if they are aggrieved by the aforesaid action on part of the investigating agency.

41. Therefore, in view of the reasons recorded in preceding discussion and being guided by the principles laid down by the Hon'ble Supreme Court in catena of judgments for exercising powers under Section 482 of Cr.P.C. for quashing of criminal proceedings, this Court finds no ground to quash the FIR registered against the petitioners herein.

42. However, the petitioners herein will be at liberty to raise all their arguments raised before this Court, before the learned Trial Court at the time of addressing arguments on charge, and the learned Trial Court, after giving due consideration to the material placed on record before it, would, as per law, be required to pass an order on charge.

43. Accordingly, the present petitions along with pending applications stand dismissed.

44. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 3, 2024/zp