IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

ON THE 8th OF AUGUST, 2024

MISC. CRIMINAL CASE No. 30530 of 2024

M/S NARAYAN NIRYAT INDIA PVT. LTD. THROUGH ITS DIRECTOR KAILASH CHANDRA GARG AND OTHERS

Versus

CENTRAL BUREAU OF INVESTIGATION

Appearance:

Shri R.S. Chabra, Sr. Advocate through V.C. With Shri Arpit Singh, learned counsel for the Petitioner .

Shri Himanshu Joshi, Dy. Solicitor General for the respondent/CBI.

ORDER

Per*: *Justice Sushrut Arvind Dharmadhikari

With Consent of the parties, heard finally at motion stage.

The petitioners have filed the present petition under Section 528 of BNSS, 2013 for quashing of FIR No. RC2222020A0002/2020 under Section 420 r/w 120-B of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act registered with respondent on 05.11.2020, consequential chargesheet filed under Section 420, 406, 471

r/w 120-B of IPC and consequential proceedings pending in form of ST No. 16/2023 before XXVII ASJ, Indore.

2. Before adverting to the merits of the case pertaining to the petitioners herein, it is necessary to narrate the undisputed facts of the case as per the chargesheet dated 28.12.2021 filed against the petitioners and documents of uncontroverted nature filed on behalf of the petitioners, which are as follows:-

(i) M/s Narayan Niryat (India) Pvt. Ltd. was originally a partnership firm named as Narayan Trading Company (NTC) constituted on 18.02.1997 by Garg family but on 20.09.2000, Narayan Niryat India Pvt. Ltd. (Petitioner No. 1 Company) was incorporated having Kailash Chandra Garg (Petitioner No. 3) and Suresh Chandra Garg (now deceased) as Directors.

(ii) In the year 2000 itself, Petitioner No. 1 Company was granted credit limit of Rs. 10.50 Crore by UCO Bank which was increased from time to time. Thereafter on 03.07.2010, on account of continuous and satisfactory availing of credit facility by petitioner no. 1 Company between the year 2000-2010, credit limit of Rs. 37 Crores was sanctioned by UCO Bank.

(iii) On 26.08.2010, Petitioner No. 1 Company was granted credit limit/facility of Rs. 33.50 Crore by Punjab National Bank. Similarly, on 23.10.2010, petitioner no. 1 was granted credit limit of Rs. 40 Crore by Corporation Bank. Thereafter on 15.11.2010, Consortium of lenders/Banks was formed by UCO Bank, Punjab National Bank and

Corporation Bank for dealing with Petitioner No. 1 Company which was headed by UCO Bank. Against such extension of credit facility petitioner no. 1 company put up as primary security, first Pari Passu charge by way of Hypothecation on entire stocks of, inventory, receivables, bills & other chargeable current assets of the company (both present & future) and collateral security in form of various immovable properties valued at Rs. 3756.33 Lakhs.

(iv) On 19.01.2012, Income Tax Authorities conducted raid on Petitioners and allied companies known as Ambika Group. Consequently on 09.07.2012, Account of Petitioner No. 1 Company was declared non-performing asset by Corporation Bank. Similarly, on 30.09.2012, account of petitioner no. 1 Company was declared non-performing asset by Punjab National Bank and on 31.03.2013, account of petitioner no. 1 Company was declared non-performing asset by UCO Bank.

(v) On 16.07.2013, Corporation Bank filed Original Application being 154/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. On 30.09.2013, UCO Bank filed Original Application being 224/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. On 01.10.2013, Punjab National Bank filed Original Application being 229/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993.

(vi) On 22.03.2017, Joint Lenders Meeting was conducted by Consortium of Lenders wherein petitioner’s proposal for compromise was held to be on lower side in monetary

terms and account of Petitioner No. 1 was declared as fraud and filing of criminal complaint was proposed.

(vii) On 17.10.2020, complaint dated 17.10.2020 was made by UCO Bank to Respondent in which occurrence of offence has been alleged to have been committed between 07.01.2011 to 31.03.2013 and it is further averred in the said complaint that "*Staff accountability aspects have been examined in the account i.e. M/s Narayan Niryat India Pvt. Ltd. and there is no criminality found against Bank officials. However, the role of any unknown public servant may be investigated.*". On the basis of said complaint, FIR No. RC2222020A0002/2020 was registered by respondent under Section under Section 420 r/w 120-B of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 on 05.11.2020 against petitioner no. 1 and 3, Suresh Chandra Garg (Deceased and unknown public servants.

(viii) After completion of investigation, Cchargesheet has been filed in the case on 06.01.2022 under Section 120-B r/w 406, 420 and 471 of IPC in which further investigation under Section 173(8) of Cr.P.C was kept open against unknown public servants and thereafter on 11.01.2023, supplementary chargesheet was filed and no new person were chargesheeted and it was submitted that no further investigation under Section 173(8) of Cr.P.C is kept open. After filing of chargesheet consequential proceedings are pending in form of ST No. 16/2023 before XXVII ASJ, Indore.

3. Learned Senior Counsel for the petitioner has made the following submissions as has also been mentioned in detail in the petition:-

(i) Investigation undertaken by Respondent and filing of chargesheet under Section 420, 406, 120-B of IPC, by Respondent is without jurisdiction in light of the fact that CBI, who is exercising powers and functions under the Delhi Special Police Establishment Act, 1946 can cause investigation and exercise powers only in terms of section 3 r/w Section 1, 2, 4, 5 and 6 of the DSPE Act. The Respondent/CBI is not empowered to conduct inquiry or investigation much less to file charge-sheet in relation to offences purely under the IPC Act against non-public servants as any such investigation could be carried out only pursuant to obtaining consent from the State. State of Madhya Pradesh unequivocally in the Consent to the extension of powers, pursuant to the provisions of section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) vide notification dated 24.05.1989 and 12.10.2012 (Annexure P/9 and Annexure P/10 respectively), has granted or accorded consent, to the members of the Delhi Police Establishment, for causing investigation in relation to offence committed by the employees of Central Government, Central Public Undertakings and persons connected with the affairs of the Central government (excluding officers of the Indian Administrative Service, Indian Police Service and Indian Forest Service borne on Madhya Pradesh cadre serving under the Government of Madhya Pradesh at the time of Commission of the alleged offences or their investigation) and pertaining to offences committed under Prevention of Corruption Act, 1988, including

offences involving attempts, abetments and conspiracies in the said offences and any other offences committed during similar transaction arising out of the similar facts. Therefore, the consent accorded to the Respondent under Section 6 by the State of Madhya Pradesh was for exercising powers under the DSPE Act, limited to conducting investigation where the offence relates to public servants and for offence committed under Prevention of Corruption Act, 1988, including offences involving attempts, abetments and conspiracies in the said offences and any other offences committed during similar transaction arising out of the similar facts. A bare glance at the contents of the chargesheet, would leave no manner of doubt that the proceedings do not allege any involvement of the public servant or ingredients of commission of offence under the Prevention of Corruption Act as even as per complaint dated 17.10.2020 on the basis of which FIR has been registered (which is part of chargesheet as D/1) itself states that "*Staff accountability aspects have been examined in the account i.e. M/s Narayan Niryat India Pvt. Ltd. and there is no criminality found against Bank officials*". In the entire complaint or even in FIR registered and chargesheet which has been filed, there is no allegation whatsoever against any of the public servant. Thus it is submitted that, the Respondent did not have powers to register FIR or to cause investigation or to file Final Report for the offences alleged to have been committed under the provisions of Indian Penal Code by petitioners who are not even public servants. Hence, the proceedings stand vitiated and renders the same and all consequential proceedings to be a nullity in the eyes of law. In support of this submission,

reliance has been placed on judgment of Hon'ble Apex Court in the case of **'Mayawati Vs. Union of India (UOI) and Ors.'** r**eported in AIR 2012 SC 3765**, **Dharmendra Deo Mishra Vs CBI, reported in 2005 Cri.L.J. 180 (Allahabad High Court), T. Pathaw V/s Inspector of Police, CBI and Another reported in 2023 Cr LJ 1676 (Meghalaya High Court).**

(ii) It is submitted that as per complaint dated 17.10.2020, offence has been alleged to have committed between 07.01.2011 to 31.03.2013. Undisputedly, on 19.01.2012, Income Tax Authorities conducted raid on Petitioners and allied companies known as Ambika Group. Consequently on 09.07.2012, Account of Petitioner No. 1 Company was declared non-performing asset by Corporation Bank. Similarly, on 30.09.2012, account of petitioner no. 1 Company was declared non-performing asset by Punjab National Bank and on 31.03.2013, account of petitioner no. 1 Company was declared non-performing asset by UCO Bank. Thereafter on 16.07.2013, Corporation Bank filed Original Application being 154/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. On 30.09.2013, UCO Bank filed Original Application being 224/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. On 01.10.2013, Punjab National Bank filed Original Application being 229/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. Such application had been filed as admittedly, the petitioners herein had mortgaged properties and put up several primary and collateral security of valuation

approximately Rs. 31.49 Crores as against the Credit facility availed from banks which is evident Sanction Letter dt. 08.07.2010 issued by UCO bank (D-35 filed alongwith chargesheet) and Working Capital Consortium agreement (D/48 filed alongwith chargesheet) which were required to be auctioned for recovering the money from petitioner no. 1. In the aforesaid Original applications filed by the banks there is no allegation of any fraud being committed by the Petitioners herein. 22.03.2017, Joint Lenders Meeting was conducted by Consortium of Lenders wherein petitioner's proposal for compromise was held to be on lower side in monetary terms, account of Petitioner No. 1 was declared as fraud and filing of criminal complaint was proposed after a delay of almost four years after commission of alleged offence, without affording any opportunity of hearing to the petitioner. Furthermore, in the Written Complaint dated 17.10.2020, filing of Original Applications before DRT has been concealed and it has been categorically stated in the said complaint that "*We further inform you that the company has submitted a Compromise Proposal of Rs. 37 Cr to all three consortium bank against total outstanding Rs. 106.56 Cr which was Sanctioned by our Bank but due to non-compliance of terms and conditions of OTS by the company, same has been failed.*" It is argued that it is clearly an admitted position that on account of inability to pay amount by petitioner no. 1 availed by way of credit facility that OTS had been entered into between petitioner no. 1 and Banks and in the meanwhile, Banks had also initiated recovery proceedings against the Petitioner No. 1 in order to auction the mortgaged securities put up

by petitioner no. 1 against credit facilities but when no compromise could be arrived at between Banks and Petitioner No. 1, decision to lodge criminal complaint was taken belatedly after a lapse of four years of the alleged date of offence and complaint dated 17.10.2020 has been made after a delay of more than 7 years which is nothing but a result of an afterthought in which filing of O.As has also been concealed and delay for initiation of criminal proceedings has not been explained. Hence the FIR and consequential proceedings are liable to be quashed on the aforementioned grounds. In support of this submission, judgment of Hon'ble Apex Court in **Hasmukhlal D. Vora & Anr. Versus The State Of Tamil Nadu 2022 LiveLaw (SC) 1033, Usha Chakraborty & Anr. versus State of West Bengal & Anr. 2023 Livelaw SC 67** has been relied**.**

(iii) It is submitted that as per the Chargesheet, allegation has been made under 3 heads. **Firstly,** in investigation conducted w.r.t Non Fund Based (Letter of Credit) Credit Facility availed by petitioner, it is alleged that that the petitioners diverted the funds availed from Credit Facility using forged railway receipts through sister concerns but it is quite evident from bare perusal of the said allegations in the chargesheet that the amount obtained through credit facilities which were routed through sister concerns were ultimately deposited with the bank itself and hence no question of diverting fund or causing wrongful loss to Bank and Wrongful gain to petitioners arises in the present case. Hence, the allegation that the petitioners used forged document/railway receipt to avail credit facility and amount obtained from the said credit facility was diverted in order ultimately deposit

the amount so obtained with the complainant bank itself are inherently so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners as no one would use forged document in order to settle/repay back but rather a person would use only to avail credit facility/loan when he has intention to cheat and convert the money to his own use. Furthermore, as per Sanction Letter dt. 08.07.2010 issued by UCO bank (which forms part of Chargesheet), complainant bank was aware that they were getting loan/credit back from petitioner no. 1 by way of RTGS in EPC A/c from other banks in which account of petitioners existed and hence it can in no way be said that the petitioners had concealed anything regarding their other bank accounts so as to divert funds and hence no offence is made out against the petitioners. **Secondly,** in investigation conducted w.r.t Fund Based (Export Packing Credit) Credit Facility, it is alleged that the petitioners obtained export packaging credit on the basis of international sale contracts but no export was conducted but it has nowhere been alleged that the sale contracts were forged, and the allegation is that despite obtaining funds for export under Credit Facility, no export were executed which is not an offence as it is only when export would have been conducted and petitioner failed to deposit the amount with the bank then only any malice on part of petitioner could be inferred and hence it is merely a case of breach of contract which entails consequence of payment of Commercial interest. Admittedly, such credit facilities had been availed prior to 19.01.2012 and Income tax raid was conducted on petitioners on

19.01.2012 from which it can clearly be inferred that the said raid adversely impacted the business of the petitioners leading to non-fulfilment of export contracts and defaults in repayment of credit extended to petitioner no. 1, which is not an offence and no criminality can be inferred which is the reason why there is delay of four years in taking decision for lodging of FIR. **Thirdly,** in investigation conducted w.r.t Export Based Certificates submitted by M/s NNIPL it has been alleged that forged Export Based certificates has been used for repayment of loan/credit to the banks and not for obtaining loan/credit facility and hence the allegation are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners as no one would use forged document in order to settle/repay loan but rather a person would use them only to avail credit facility/loan and convert the money so obtained to its own use when he has intention to cheat.

4. Per Contra, Learned Counsel for the Respondent has made the following submissions as has also been mentioned in detail in the Reply:-

5. (i) Respondent has registered FIR on the basis of complaint dated 17.10.2020 made by UCO bank and Chargesheet has been filed in the case on 06.01.2022 under Section 120-B r/w 406, 420 and 471 of IPC in which further investigation under Section 173(8) of Cr.P.C was kept open against unknown public servants and thereafter on 11.01.2023,

supplementary chargesheet was filed and no new person were chargesheeted and it was submitted that no further investigation under Section 173(8) of Cr.P.C is kept open.

(ii) The allegation against the Petitioners in the chargesheet is that Petitioner No. 1 was sanctioned a sum of Rs. 110.50 Crores by the consortium of aforesaid 3 banks, namely, UCO Bank, E-Corporation Bank and Punjab National bank and by resorting to diversion of funds through associate/sister concerns, without transacting any goods; not utilising the loan funds for the purpose it was sanctioned etc. , allegedly defrauded the consortium of above said 03 banks to the tune of 106.56 Crores. Considering the gravity of allegations, no case for quashment of FIR and consequential chargesheet/proceedings is made out.

(iii) It is submitted that CBI had jurisdiction to register FIR, investigate the matter, file chargesheet and further conduct prosecution of petitioners in light of notification dated 24.05.1989 and 12.10.2012 issued under Section 6 of DSPE Act in which consent has been accorded to CBI for investigating offences by State of Madhya Pradesh.

5. Heard Learned Counsel for the parties and perused the record.

6. In view of the arguments advanced and pleas taken by the parties, before proceeding to adjudicate the petition on merits, it would be apposite to refer to parameters laid down by Hon'ble Apex Court in the landmark case of ***State of Haryana vs Bhajan Lal AIR 1992 SC 604*** while adjudicating a petition under Section 482 of Cr.P.C:-

> "*In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following*

categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:-

(a) where the allegations made in the First Information Report or 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 a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings *and/or where there is a*

specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. It becomes apparent from the arguments put forth and pleas taken in the petition by the petitioners, it is to be adjudicated that whether the case of the petitioners falls under the Case category **c)**, **e)** and **f)** *of Bhajan Lal Case (Supra)* or not*?*

7. So far as the plea taken by the petitioners that the allegations in the chargesheet are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners and the fact that the proceedings are nothing but abuse of process of law and a result of after thought having been initiated after a substantial delay of almost 7 years from the date of alleged offence, concealing the fact regarding filing O.As by Banks before DRT in which no allegation of fraud had been levelled, is concerned, following judgments of hon'ble apex court are required to be considered before adverting to the merits of the case.

8. Hon'ble Apex Court in the **Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008)13 SCC 678** has laid out the considerations and scope of judicial inquiry permissible for adjudication of a Petitioner for Quashment of FIR under Section 482 of Cr.P.C, in which it has been held as hereunder:-

"*17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well known legal principles involved in the matter.*

18. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised, but some attempts have been made in that behalf in some of the decisions of this Court as for example State of Haryana v. Bhajan Lal, Janata Dal v. H.S. Chowdhary, Rupan Deol Bajaj v. Kanwar Pal Singh Gill and Indian Oil Corpn. v. NEPC India Ltd.

19. In Bhajan Lal this Court held: (SCC pp. 378-79, para 102)

"***102. (1) Where the allegations made in the first information report or 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 a case against the accused.***

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a

police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. We may also place on record that criminal proceedings should not be encouraged when it is found to be mala fide or otherwise abuse of process of court.

21. In All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain it was opined: (SCC pp. 781-82, para 16)

"*16. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice.* ***What was contended was negligence and/or breach of contract on the part of the carriers and their***

agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefore.

Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. *Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice."*

22 ***. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused.*** *While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts,* ***but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately.*** *The courts on the one hand should not encourage such a practice; but, on the other, cannot also*

travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.

(emphasis supplied)"

9. In ***Hasmukhlal D. Vora & Anr. Versus The State Of Tamil Nadu 2022 LiveLaw (SC) 1033,*** Hon'ble Apex Court has held that inordinate delay in lodging criminal case is also a relevant factor while quashing the FIR, and it has been held hereunder: -

"There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings. ***While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint****. While this court does not expect a full-blown investigation at the stage of a criminal complaint, however, in such cases where the accused has been subjected to the anxiety of a potential initiation of criminal proceedings for such a length of time, it is only reasonable for the court to expect bare-minimum evidence from the Investigating Authorities.*

"The purpose of filing a complaint and initiating criminal proceedings must exist solely to meet the ends of justice, and the law must not be used as a tool to harass the accused. The law, is meant to exist as a shield to protect the innocent, rather than it being used as a sword to threaten them.

While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law."

10. In the case of ***Rajiv Thapar and others vs. Madan Lal Kapoor, AIR 2013 SC (Supp) 1056***, the Supreme Court had delineated the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under section 482 of the Cr.P.C.:

> ***(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?***
>
> ***(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e. the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.***
>
> ***(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/ complainant; and /or the material is such, that it cannot be justifiably refuted by the prosecution/complainant.***
>
> ***(iv) Step four, whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High***

Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr. P. C."

11. This court has carefully gone through allegations made in the chargesheet along with documents/evidence annexed therewith and documents of uncontroverted nature filed by the petitioners. Adverting to the admitted facts of this case, following essential features emerge, which are required to be considered, in light of the judgements cited hereinabove.

12. Undisputedly, Petitioner No. 1 had been satisfactorily availing credit facility since the year 2000 from UCO Bank. On 15.11.2010 consortium of lenders was formed and credit facility was extended as against primary and collateral security in form of immovable property valued at Rs. 3756.33 Lakhs

13. Undisputedly as per chargesheet itself, on 19.01.2012, Income Tax Authorities conducted raid on Petitioners and allied companies known as Ambika Group. Consequently on 09.07.2012, Account of Petitioner No. 1 Company was declared non-performing asset by Corporation Bank. Similarly, on 30.09.2012, account of petitioner no. 1 Company was declared non-performing asset by Punjab National Bank and on 31.03.2013, account of petitioner no. 1 Company was declared non-performing asset by UCO Bank.

14. Admittedly, on 16.07.2013, Corporation Bank filed Original Application being 154/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. On 30.09.2013, UCO Bank filed Original Application being 224/2013 under

Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. On 01.10.2013, Punjab National Bank filed Original Application being 229/2013 under Section 19(1) of Recovery of Debts due to Banks and Financial Institution Act, 1993. Such application had been filed as admittedly, the petitioners herein had mortgaged properties and put up several primary and collateral security of valuation approximately Rs. 31.49 Crores as against the Credit facility availed from banks, which is evident Sanction Letter dt. 08.07.2010 issued by UCO bank (filed alongwith chargesheet as D-35) and Working Capital Consortium agreement (filed alongwith chargesheet as D/48), which were required to be auctioned for recovering the money.

15. In the aforesaid Original applications filed by the banks there is no allegation of any fraud being committed by the Petitioners herein.

16. Undisputedly, the offence has been alleged to have been committed between 07.01.2011 to 31.03.2013 and on 22.03.2017, Joint Lenders Meeting was conducted by Consortium of Lenders wherein petitioner's proposal for compromise was held to be on lower side in monetary terms, account of Petitioner No. 1 was declared as fraud and filing of criminal complaint was proposed, without affording any opportunity of hearing to the petitioner i.e. after a delay of almost 4 years from the date of alleged commission of offence, for which no rational explanation is apparent. Furthermore, complaint has only been filed on 17.10.2020, i.e. after a delay of more than 3 years from the date on which decision to lodge complaint was taken.

17. In the Written Complaint dated 17.10.2020, filing of Original Applications before DRT has been concealed and it has been categorically stated in the said complaint that "*We further inform you that the company has submitted a Compromise Proposal of Rs. 37 Cr to all three consortium bank against total outstanding Rs. 106.56 Cr which was Sanctioned by our Bank but due to non-compliance of terms and conditions of OTS by the company, same has been failed.*"

18. From the analysis of aforesaid admitted facts, it becomes apparent that this is a case where Petitioner No. 1 has defaulted on amount which was repayable as against the credit facility availed by the petitioners and it is settled law that mere inability to pay back loan does not amount to cheating and there should be intention to cheat on part of the petitioners from the beginning. When the petitioners while availing credit facility had mortgaged whole assets of the petitioner no. 1 company as well as collateral security in form of immovable property valued at approximately Rs. 31.49 Crores it is hardly believable that the petitioners had any intention to defraud the banks from the inception. Furthermore, Bank has concealed while making complaint that they had filed Original Application before DRT, Jabalpur for recovery of amount due by auctioning company assets and mortgaged immovable properties which had been mortgaged against availing of credit facility. It is also evident that petitioners had made continuous efforts to settle by way entering into OTS which further makes this court conclude that there was no intention

on part of petitioners to cheat. It is in this factual backdrop that delay in lodging complaint and FIR assumes importance.

19. Now adverting to the allegations made under the chargesheet, the same have been made under 3 heads. This court has carefully gone the allegations under each head. **Under the first head**, in investigation conducted w.r.t Non Fund Based (Letter of Credit) Credit Facility availed by petitioner, it is alleged that that the petitioners diverted the funds availed from Credit Facility using forged railway receipts through sister concerns but it is quite evident from bare perusal of the said allegation in the chargesheet that the amount obtained through credit facilities were routed through sister concerns were ultimately deposited with the bank itself and hence no question of diverting fund or causing wrongful loss to Bank and Wrongful gain to petitioners arises in the present case. Hence, the allegation that the petitioners used forged document/railway receipt to avail credit facility and amount obtained from the said credit facility was diverted in order ultimately deposit the amount so obtained with the complainant bank itself are inherently so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners as in the considered opinion of this court, no one would use forged document in order to settle/repay back but rather a person would use only to avail credit facility/loan when he has intention to cheat and convert the money to his own use. Furthermore, as per Sanction Letter dt. 08.07.2010 issued by UCO bank (D-35 of Chargesheet), complainant bank was

aware that they were getting loan/credit back from petitioner no. 1 by way of RTGS in EPC A/c from other banks in which account of petitioners existed. Interestingly, the said letter dates prior to alleged commission of offence. Hence, in the considered opinion of this court, it can in no way be said that the petitioners had concealed anything regarding their other bank accounts so as to divert funds. **Under the Second Head,** in investigation conducted w.r.t Fund Based (Export Packing Credit) Credit Facility, it is alleged that the petitioners obtained export packaging credit on the basis of international sale contracts but no export was conducted but it has nowhere been alleged that the sale contracts were forged, and the allegation is that despite obtaining funds for export under Credit Facility, no export were executed which is not an offence in the considered opinion of this court, as it is only when export would have been conducted and petitioners failed to deposit the amount with the bank then only any malice on part of petitioner could be inferred to any extent and hence in the considered opinion of this court, the present case is merely a case of breach of contract which entails consequence of payment of Commercial interest instead of beneficial interest rate under the credit scheme as per the terms and conditions of the credit facility. Admittedly, such credit facilities had been availed prior to 19.01.2012 and Income tax raid was conducted on petitioners on 19.01.2012 from which this court has strong reasons to conclude that the said raid adversely impacted the business of the petitioners leading to non-fulfilment of export contracts and defaults in repayment of credit extended to petitioner no. 1, considering which no criminality can be imputed with the

petitioners. **Under the third Head,** in investigation conducted w.r.t Export Based Certificates submitted by M/s NNIPL it has been alleged that forged Export Based certificates has been used for repayment of loan/credit to the banks and not for obtaining loan/credit facility and hence the allegation are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners as no one would use forged document in order to settle/repay loan but rather a person would use them only to avail credit facility/loan and convert the money so obtained to its own use when he has intention to cheat.

20. Hence, considering the inordinate delay in lodging of FIR, concealment of Bank regarding proceedings undertaken before DRT, Jabalpur in which no allegation of fraud has been made and inherent infirmities and improbabilities in the allegations made in the chargesheet as discussed above, this court has no hesitation is holding that the case of the petitioners falls under case category **c)** and **e)** *of Bhajan Lal Case (Supra)* and the initiation of criminal prosecution in the case at hand is nothing but abuse of process of court which cannot be allowed to continued.

21. So far as the contention of learned Senior Counsel for petitioner that the registration of FIR and filing of chargesheet under Section 420, 406, 120-B of IPC and continuation of prosecution by Respondent/CBI is without jurisdiction is concerned, it would be apposite

to canvass the Constitutional provisions and scheme of DSPE Act, 1946 and law regarding establishment and jurisdiction of CBI/Respondent in light of applicable provisions of law.

22. Under the Constitution of India, a threefold distribution of legislative power by the three Legislative Lists in the Seventh Schedule to the Constitution of India has been conceptualized (vide Article 246). List II of the Seventh Schedule to the Constitution of India is the part and parcel of a single constitutional instrument envisaging a federal scheme. It thus confers plenary power on the State to legislate on certain exclusive subject matters which includes "public order" and "police" in a State.

23. Article 246(1) empowers the Parliament with exclusive power to make laws with respect to any of the matters enumerated in List I, Seventh Schedule (known as the Union List). Entry 80, List I is relevant in this regard:

> "*80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State."*

24. The police powers come within the State's exclusive jurisdiction is also recognized in Article 246(3) of the Constitution, which provides that the State has exclusive power to make laws for such state for any of the matters enumerated in List II.

Specifically, of such matters, Entry 1 and Entry 2 are relevant which are:

"1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

2. Police (including railway and village police) subject to the provisions of entry 2A of List I."

25. Entries 1 and 2 of List II, the Seventh Schedule to the Constitution of India thus prescribe that public order and the police are exclusive subject matters of the concerned State. Further, Entry 80, List I, ensures that the Union/Center does not transgress into the jurisdiction of the State without permission of the concerned State.

26. The Delhi Special Police Establishment Act, 1946 was enacted by Parliament by deriving power from Article 246(1) r/w List I, Entry 80 of the Constitution of India with the objective of :-

"WHEREAS it is necessary to constitute a special police force in Delhi for the investigation of certain offences in the Union territories and to make provision for the superintendence and administration of the said force and for the extension to other area of the powers and jurisdiction of the members of the said force in regard to the investigation of the said offences;"

27. Relevant provisions of the DSPE Act, which are required to be considered for adjudication of the present petition are being reproduced as hereunder:-

*" **2. Constitution and powers of special police establishment.—***

(1) Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union Territory, of offences notified under Section 3.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout any Union Territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union Territory have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union Territory any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

3. Offences to be investigated by special police establishment. — *The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.*

5. Extension of powers and jurisdiction of special police establishment to other areas.—

(1) The Central Government may by order extend to any area including Railway areas in a State, not being a Union territory the powers and

jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. Consent of State Government to exercise of powers and jurisdiction

Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State."

28. Undisputedly, CBI has been established under DSPE, Act and draws its powers under the DSPE, Act. The DSPE Act, as its preamble provides, was enacted to make

provisions for the constitution of a Special 'Police Force' in Delhi for the investigation of certain offences in the Union Territory, for the superintendence and administration of the said Force and for the extension of its powers and jurisdiction in regard to the investigation of the said offences. Section 2 of the DSPE Act provides for constitution of the force, Section 3 thereof prescribes the offence which are to be investigated by CBI; Section 5 of DSPE Act provides extension of power and jurisdiction of CBI into any area (including a railway area) in a State; Section 6 thereof expressly provides that the force/CBI is required to obtain the consent of the concerned State in case of exercise of such power in terms of Section 5 of the DSPE Act.

29. Section 6 of the DSPE Act is the statutory recognition of the principle of federalism which forms a part of the basic structure of the Constitution of India, as also protected under Entry 80, List I and Entries 1 and 2, List II, Constitution of India. In absence of Section 6 in the statute book, the piece of legislation would have attracted the vice of unconstitutionality. In the considered opinion of this court, any act of the CBI in violation of Section 6, DSPE Act, strikes at the roots of federalism, which this Hon'ble Court in ***S.R. Bommai v. Union of India, 1994 SCC (3) 1***, has held to be a part of the Constitution's basic structure. Therefore, the CBI's exercise of powers by violating Section 6, DSPE Act, subverts the basic structure of the Constitution. Hon'ble Apex Court in ***M. Balakrishna Reddy v. CBI*, (2008) 4 SCC 409** has held that fulfilment of all three conditions under Sections 3, 5, and 6 are required prior to the CBI exercising its powers in

any State. It has been further held that the provisions of DSPE Act can be invoked to authorize the CBI to exercise its powers and jurisdiction within any State, the following conditions are necessary:

"*A notification must be issued by the Central Government specifying the offences to be investigated by CBI (Section 3);*

An order must be passed by the Central Government extending power and jurisdiction of CBI to any area (including railway area) in a State not being an Union Territory in respect of offences specified under Section 3 (Section 5); and

Consent of the State Government must be obtained for the exercise of power by CBI in the concerned State (Section 6)."

30. Admittedly, State of Madhya Pradesh in exercise of powers under Section 6 had firstly issued consent notification dated 24.05.1989 which is being reproduced as hereunder:-

Delhi Special Police Establishment Act 1946

[Central Act 25 of 1946]

> *NOTIFICATION UNDER No. F. 15(1) 88-XLIX-10 dated 24th May, 1989. In pursuance of Section 6 of the Delhi Special Police Establishment Act, 1946 [No. 25 of 1946], the State Government of Madhya Pradesh hereby gives its consent to the extension of the powers and jurisdiction of the Members of the Delhi Special Police Establishment in the whole of the State of Madhya Pradesh* ***for investigation of the following offences committed by employees of the Central Government, Central Public Undertakings and persons connected with the affairs of the Central Government****, namely :-*
>
> *(1)* ***offences under the Prevention of Corruption Act, 1988 [No. 49 of 1988].***

2) attempts, abatements and conspiracies in respect of any one or more of the above mentioned offences and any other offence or offences committed during similar transaction arising out of the similar facts*.*

[Published in M.P. Rajpatra Asadharan dated 24-5-1989, Pg. 926].

31. The aforesaid Notification remained effective till 12th October 2012 and thereafter, the State of Madhya Pradesh superseded the earlier Notification by a Gazette Notification dated 12.10.2012 and the following sanction/consent order was issued which is reproduced hereunder for the kind convenience of this Hon'ble Court :-

"F-21-282-2012-B-1-Two - In supersession of all previous notifications and letters issued by the Government of Madhya Pradesh in this behalf and in pursuance of Section 6 of the Delhi Special Police Establishment Act, 1946, the State Government, hereby, gives its consent to the extension of the powers and jurisdiction of the Members of the Delhi Special Police Establishment in the whole of the State of Madhya Pradesh for ***investigation of the offences committed by the employees of Central Government, Central Public Undertakings and persons connected with the affairs of the Central government (excluding officers of the Indian Administrative Service, Indian Police Service and Indian Forest Service borne on Madhya Pradesh*** *cadre serving under the Government of Madhya Pradesh at the time of Commission of the alleged offences or their investigation) in respect of the following offences, namely :-*

(a) offences under the Prevention of Corruption Act, 1988 [No. 49 of 1988].

(b) attempts, abatements and conspiracies in respect of any one or more of the above mentioned offences and any other offence or offences committed during similar transaction arising out of the similar facts.

This notification shall come into force with immediate effect."

32. A perusal of aforesaid notifications issued by State of Madhya Pradesh, pursuant to the provisions of section 6 of the Delhi Special Police Establishment Act, 1946 (25 of

1946), it is apparent that State of Madhya Pradesh has granted or accorded consent, to the members of the Delhi Police Establishment, for causing investigation in relation to offences under Prevention of Corruption Act, 1988, including offences involving attempts, abetments and conspiracies in the said offences and any other offences committed during similar transaction arising out of the similar facts done by the Public Servants. Hence, the aforesaid notification provides **Firstly,** the class/category of persons which can be investigated and **Secondly,** it further provides that the category of offence that can be investigated. Therefore, the consent accorded to the Respondent under Section 6 by the State of Madhya Pradesh was for exercising powers under the DSPE Act, is limited to conducting investigation where the offence relates to Prevention of Corruption Act and that too with respect to public servants. In the considered opinion of this court, both the conditions as prescribed in the aforesaid notifications is required to be fulfilled for CBI to exercise jurisdiction of registration of FIR and cause investigation in the territory of State of Madhya Pradesh. Any investigation undertaken by CBI beyond the scope of the aforesaid notifications would be an unconstitutional and without jurisdiction in view of the observations made above.

33. At this juncture, it would be apposite take into consideration the judgments relied upon by the petitioners. Hon'ble Apex Court in the case of ***'Mayawati Vs. Union of India (UOI) and Ors.***' reported in AIR 2012 SC 3765 vide Para 17 categorically observed as:-

"17. As rightly pointed out that in the absence of any direction by this Court to lodge an FIR into the matter of alleged disproportionate assets against the Petitioner, the Investigating Officer could not take resort to Section 157 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein the Officer-in-charge of a Police Station is empowered Under Section 156 of the Code to investigate on information received or otherwise. Section 6 of the DSPE Act prohibits the CBI from exercising its powers and jurisdiction without the consent of the Government of the State. It is pointed out on the side of the Petitioner that, in the present case, no such consent was obtained by the CBI and submitted that the second FIR against the Petitioner is contrary to Section 157 of the Code and Section 6 of the DSPE Act. It is not in dispute that the consent was declined by the Governor of the State and in such circumstance also the second FIR No. R.C. 0062003A0019 dated 05.10.2003 is not sustainable."

34. Hon'ble High Court of Meghalaya in T. Pathaw Vs. CBI 2023 SCC Online Megh 33, has held as hereunder:

"25. However, under Section 6 of the said DSPE Act, if the CBI is to operate in any of the States, consent of such State Government for exercise of its powers and jurisdiction is required. By now, it is well settled that CBI can investigate into cases involving offences under the PC Act, however, when it comes to offences under the IPC which are generally taken up and investigated into by the State or local police, if a particular case involves provisions of offences under the PC Act as well as IPC then the CBI would be well within its right to investigate into such cases, but if, ***as in the present case, though initially the offences involves provisions under the PC Act along with those under the IPC, which was rightfully investigated into by the CBI, after the filing of the charge sheet wherein only the provisions under the IPC remains, while the offences under the provisions of the PC Act were dropped, including release of liabilities of the public servants implicated therein, it stands to reason that the jurisdiction of the CBI would ceased as on the date of filing of the***

charge sheet. At this juncture, if the CBI is to continue prosecution, the specific consent of the State is required. Admittedly, nothing is on record as to whether such consent was given or not or whether the same was requested or not.

In view thereof, as submitted by the learned counsel for the petitioner, that the charge sheet was forwarded by the CBI in the court of the Chief Judicial Magistrate, the same was without jurisdiction. On this ground alone, the entire proceedings against the petitioner are vitiated."

35. Allahabad High Court in Dharmendra Deo Mishra Vs CBI, reported in 2005 Cri.L.J. 180, has held as under:

"*15............ Further, it is also to be noticed that there is complete bar in Section 6 of the Act to exercise powers by the CBI conferred to it under Section 5 without consent of the State Gout.* ***Since, it is a statutory provision, violation of the same is not permissible and would frustrate the purpose of Section 6.*** ***It is also a matter of consideration that in case the CBI is permitted to investigate a matter suo motu, there are other investigating agencies in the State of V. P. i.e. C.B. CID, U.P. Vigilance Deptt. and the Special Investigation Squads and if all these investigating agencies are allowed to make investigations suo motu without getting authority or consent, in that case so many parallel investigations would go on and there may be possibility that some agency may file chargesheet and some agency may submit final report in respect of the same incident/ offence. Thus, it would affect the administration of justice. Therefore, with a view that there should be only one investigating agency at one time, the legislature has restricted all these agencies to make investigation suo motu and has enacted the law by way of commencement of Section 6 of the Act barring the investigation by the CBI without consent of the State, meaning thereby that only one way was left open i.e. lodging of FIR at the local police station, which will investigate the matter unless entrusted to any other investigating agency.***

*16. In view of the above, **<u>this Court is of the confirmed opinion that when there is a statutory provision to exercise the powers and jurisdiction by the members of the Delhi Special Police Establishment given under the Act, Section 6 of which does not permit to exercise such powers in the State without its consent, the CBI could not have exercised such powers suo motu without following the said statutory provision. The Hon'ble Apex Court is also of the view as laid down above in the case of Sampat Lal (supra) that in a matter where the State Police is to investigate the matter, the CBI should be entrusted the investigation only when there is an apprehension that fair and impartial investigation would not be done by the State agency.</u>***

<u>17. Considering the facts and circumstances as discussed above, this Court has come to the conclusion that the CBI had no occasion to investigate and file a charge-sheet dated 28-12-1988 without consent of the State Government under Section 6 of the Act."</u>

36. In the case at hand, a perusal of complaint dated 17.10.2020 on the basis of which FIR has been registered and the contents of the chargesheet reveals that there is no allegation of any involvement of the public servant or ingredients of commission of offence under the Prevention of Corruption Act. As per Complaint dated 17.10.2020, on the basis of which FIR has been registered itself states that "*Staff accountability aspects have been examined in the account i.e. M/s Narayan Niryat India Pvt. Ltd. and there is no criminality found against Bank officials*". It would not be out of place to mention here that in entire complaint or even in FIR registered and chargesheet which has been filed, there is no allegation whatsoever against any public servants but merely petitioners who are undisputedly private company and private persons. Initially, FIR was registered by respondent under Section under Section 420 r/w 120-B of IPC and Section 13(2) r/w 13(1)

(d) of Prevention of Corruption Act, 1988 on 05.11.2020 against petitioner no. 1 and 3, Suresh Chandra Garg (Deceased) and unknown public servants. After completion of investigation, chargesheet has been filed under Section 420, 406, 471 r/w 120-B of IPC against petitioners and other private persons and consequential proceedings are pending in form of ST No. 16/2023 before XXVII ASJ, Indore.

37. Thus, in the considered opinion of this court, in light of the aforesaid notifications and judgments, the Non-Public Servants, who have been alleged to have committed offence other than of Prevention of Corruption Act, 1988 or offences falling under the Indian Penal Code, can't be investigated, tried and prosecuted in absence of consent. Admittedly, prior to registration of FIR or filing of chargesheet, no consent under Section 6 of DSPE Act was obtained by Respondent for investigating and prosecuting petitioners who are private company and individuals. Such consent was mandatory especially when in the case at hand, in the complaint on the basis of FIR nowhere alleged involvement of public servants nor there existed any allegation under Prevention of Corruption Act. Such action of the Respondent violates the Constitutional provisions, the DSPE Act, and derogates from the doctrine of federalism. In the considered opinion of this court, CBI cannot be permitted to undertake investigation by simply including Sections from Prevention of Corruption Act in the FIR without there being any ingredient of the offence under the said act in the complaint made by complainant, as if such an action is allowed to

be continued the same would render the provisions under Section 6 of the DSPE Act nugatory which cannot be allowed by this court.

38. It is a settled legal proposition of law that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case. Also, Once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally. It is also a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (***Vide State of Punjab Vs, Debender Pal Singh 2011 (14) S.C.C 770, Badrinath v. State of Tamil Nadu & Ors., AIR 2000 SC 3243; State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr., (2001) 10 SCC 191 and State of Orissa & Others Vs. Mamata Mohanty, (2011) 3 SCC 456.)***

39. In view of the above, this court is of the considered opinion that the case of the petitioners falls under the case category **f)** of Bhajan Lal Case (Supra) on account of the fact that there exists a express legal bar engrafted under the Constitution of India and DSPE Act, to the institution and continuance of the proceedings by CBI as against petitioners in absence of consent from State of Madhya Pradesh as required under Section 6 of DSPE Act. Hence in the considered opinion of this court, on this ground alone, FIR, Chargesheet and consequential proceedings are liable to be quashed.

40. In view of the forgoing discussion, this petition deserves to be allowed and is hereby allowed. *Ex Consequenti*, FIR No. RC2222020A0002/2020 registered by Respondent under Section 420 r/w 120-B of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, consequential chargesheet filed under Section 420, 406, 471 r/w 120-B of IPC and consequential proceedings pending in form of ST No. 16/2023 before XXVII ASJ, Indore are hereby quashed.

41. The petition, accordingly stands allowed and disposed off.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(DUPPALA VENKATA RAMANA)
JUDGE

NEUTRAL CITATION NO. 2024:MPHC-IND:23709

sh/-