



NC: 2025:KHC:28893
WP No. 40308 of 2018
C/W CRL.P No. 5157 of 2018
CRL.P No. 5159 of 2018
AND 5 OTHERS

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JULY, 2025

BEFORE

THE HON'BLE MRS. JUSTICE M G UMA

WRIT PETITION NO. 40308 OF 2018 (GM-RES)

C/W

CRIMINAL PETITION NO. 5157 OF 2018

CRIMINAL PETITION NO. 5159 OF 2018

CRIMINAL PETITION NO. 6885 OF 2018

WRIT PETITION NO. 35925 OF 2018 (GM-RES)

WRIT PETITION NO. 7492 OF 2019 (GM-RES)

WRIT PETITION NO. 7493 OF 2019 (GM-RES)

WRIT PETITION NO. 7494 OF 2019 (GM-RES)

IN W.P.NO.40308/2018

BETWEEN:

SHRI AVINASH KATWARE
S/O SHARADRAO,
AGED ABOUT 59 YEARS,
R/AT FLAT NO.101, BAJIRAO SADAN,
PLOT NO.322, LAXMI NAGAR,
NAGPUR - 440 022.

... PETITIONER

(BY SRI. M.S. SHYAM SUNDAR, SR. ADVOCATE FOR
SRI. PRASANNA KUMAR S. ADVOCATE)

AND:

1. THE STATE OF KARNATAKA BY
SUBRAMANYAPURAM POLIE STATION
SUBRAMANYAPURA, BANGALORE - 62
REPRESENTED BY THE SHO AND THE
STATE PROSECUTOR.
2. SHRI. PRASHANTH HEGDE,
AGED MAJOR, MANAGING





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DIRECTOR, M/S METAL CLOSURE,
12TH MAIN, KANAKAPURA MAIN
ROAD, BANGALORE - 560 032.
(AMENDMENT AS PER THE ORDER
DATED 19.09.2023)

... RESPONDENTS

(BY SRI. RAJATH SUBRAMANYA, HCGP FOR R1
SRI. ANANTH MANDAGI, SR. ADVOCATE FOR
SRI. H.N. VASUDEVAN, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF INDIAN CONSTITUTION READ WITH SECTION 482 OF CRIMINAL
PROCEDURE CODE PRAYING TO QUASH THE FINAL REPORT/CHARGE
SHEET FILED IN CRIME NO.580/2016 OF RESPONDENT POLICE
STATION (VIDE ANNEXURE-B WHICH IS RECEIVED BY THE LEARNED
MAGISTRATE ON 23.09.2016 IMPUTING THE PETITIONER HEREIN
FOR THE OFFENCE PUNISHABLE UNDER SECTION 120(B), 403, 408,
447, 381, 420 READ WITH SECTION 37 OF IPC AND ETC.,

IN CRL.P.NO.5157/2018

BETWEEN:

V. V. KRISHNAMURTHY,
S/O. M. VEDAGIRI,
AGED ABOUT 57 YEARS,
RESIDING AT NO.197,
SAI KRUPA, 6TH 'A' MAIN,
J.P. NAGAR, 4TH PHASE,
BENGALURU - 560 078

... PETITIONER

(BY SRI. S.S. NAGANANDA, SR. ADVOCATE FOR
SRI. SRIRANGA .S. ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY DY.
SUPERINTENDENT OF POLICE,



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ECONOMIC OFFENCES DIVISION,
CARLTON HOUSE, PALACE ROAD,
C.I.D., BENGALURU - 560 001,
REPRESENTED BY SPP,
HIGH COURT BUILDING.

2. MR. B. PRASHANTH HEGDE,
S/O LATE V. RATNAKAR HEGDE,
AGE 67 YEARS, MANAGING DIRECTOR,
METAL CLOSURES PVT. LTD.,
12TH MAIN, KANAKAPURA ROAD,
BENGALURU - 560 062.
RES: #261, DEFENCE COLONY,
INDIRANAGAR, BANGALORE - 560 083.

... RESPONDENTS

(BY SRI. RAJATH SUBRAMANYA, HCGP FOR R1
SRI. DHYAN CHINNAPPA, SR. ADVOCATE FOR
SRI. H.N. VASUDEVAN, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE CHARGE SHEET DATED 05.05.2018 (ANNEXURE-A) IN C.C.NO.11073/2018, ON THE FILE OF THE I ACMM BANGALORE AND THE ORDER DATED 07.05.2018 (ANNEXURE B) PASSED BY THE I ACMM, BANGALORE IN C.C.NO.11073/2018, TAKING COGNIZANCE AS WELL AS ALL PROCEEDINGS AGAINST THE PETITIONER PURSUANT TO THE COMPLAINT AND FIR DATED 03/23.09.2016 FILED BY M/S METAL CLOSURES PRIVATE LTD. (ANNEXURE-C).

IN CRL.P.NO.5159/2018

BETWEEN:

RAVA SAHEB HONAKATTI,
S/O. LATE SOMANNA,
AGED ABOUT 61 YEARS,
PRESENTLY RESIDING AT PLOT
NO.74, SHIVAMANJUNATH ANUGRAHA,
SHANTINIKETANA TEACHERS COLONY,
KELAGERI ROAD, DHARWAD - 580 008
PREVIOUSLY AT FLAT B3/429,



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GHATAPRABHA BLOCK, NGV,
KORAMANGALA, BENGALURU - 560047

... PETITIONER

(BY SRI. S.S. NAGANANDA, SR. ADVOCATE FOR
SRI. SRIRANGA S., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY DY.
SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCES DIVISION,
CARLTON HOUSE, PALACE ROAD,
C.I.D., BENGALURU - 560 001,
REPRESENTED BY SPP,
HIGH COURT BUILDING.
- 2 . MR. B. PRASHANTH HEGDE,
S/O LATE V. RATNAKAR HEGDE,
AGED 67 YEARS,
MANAGING DIRECTOR,
METAL CLOSURES PVT. LTD.,
12TH MAIN, KANAKAPURA ROAD,
BENGALURU - 560 062.
RESIDING AT NO.261, DEFENCE COLONY,
INDIRANAGARA, BENGALURU - 560 038.

... RESPONDENTS

(BY SRI. RAJATH SUBRAMANYA, HCGP FOR R1
SRI. DHYAN CHINNAPPA, SR. ADVOCATE FOR
SRI. H.N. VASUDEVAN, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE CHARGE SHEET DATED 05.05.2018 (ANNEXURE-A) IN C.C.NO.11073/2018, ON THE FILE OF THE I ADDL. C.M.M., BENGALURU AND THE ORDER DATED 07.05.2018 PASSED BY THE I ADDL.C.M.M., BENGALURU IN C.C.NO.11073/2018 (ANNEXURE B) TAKING COGNIZANCE AS WELL AS ALL PROCEEDINGS AGAINST THE PETITIONER PURSUANT TO THE COMPLAINT AND FIR DATED 03/23.09.2016 FILED BY M/S METAL CLOSURES PRIVATE LTD. (ANNEXURE-C).



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IN CRL.P.NO.6885/2018

BETWEEN:

S. BHASKARAN,
S/O. LATE R.G. SUBRAMANIAN,
AGED ABOUT 58 YEARS,
PRESENTLY WORKING AS
GENERAL MANAGER,
CREDIT REVIEW DEPARTMENT,
STATE BANK OF INDIA,
5TH FLOOR, MAFATLAL CENTRE,
NARIMAN POINT, MUMBAI - 400 021.

... PETITIONER

(BY SRI. MURTHY D. NAIK, SR. ADVOCATE FOR
SRI. MAHENDRA G., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY SUBRAMANYAPURA POLICE,
SUBRAMANYAPURA POLICE
STATION,
BANGALORE - 560 061.
2. THE DEPUTY SUPERINTENDENT
OF POLICE AND INVESTIGATION
OFFICER,
ECONOMIC OFFENCES DIVISION,
CARLTON HOUSE, PALACE ROAD,
CID, BENGALURU - 560 001.

... RESPONDENTS

(BY SRI. RAJATH SUBRAMANYA, HCGP FOR R1 & 2
SRI. DHYAN CHINNAPPA, SR. ADVOCATE FOR
SRI. H.N. VASUDEVAN, ADVOCATE FOR R3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C. PRAYING TO QUASH THE FINAL REPORT/CHARGE SHEET
BEARING FINAL REPORT NO. 'A' NO.4/2018 DATED 05.05.2018
FILED IN CR.NO.580/2016 FOR THE OFFENCES P/U/S 120B, 403,



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408, 409, 447, 381, 420 R/W 37 OF IPC PRODUECED AS ANNEXURE-A.

IN W.P.NO.35925/2018

BETWEEN:

SHRI D. VASUDEVAN
S/O S. DHARMALINGAM,
AGED ABOUT 58 YEARS,
PUNJAB NATIONAL BANK
HEAD OFFICE, CREDIT DIVISION,
PLOT NO.4, SECTOR 10, DWARKA,
NEW DELHI - 110 054. R/AT FLAT
NO B-3, 2ND FLOOR, PNB SR.
OFFICERS' RESIDENTIAL COMPLEX,
8, UNDERHILL ROAD, CIVIL LINES,
DELHI - 110 054.

... PETITIONER

(BY SRI. M.S. SHYAM SUNDAR, SR. ADVOCATE FOR
SRI. PRASANNA KUMAR S. ADVOCATE)

AND:

THE STATE OF KARNATAKA BY
SUBRAMANYAPURAM POLICE
STATION, SUBRAMANYAPURA,
BANGALORE - 560 062
REPRESENTED BY THE SHO
AND THE STATE PROSECUTOR.

... RESPONDENT

(BY SRI. RAJATH SUBRAMANYA, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO QUASH THE FINAL REPORT/CHARGE SHEET FILED IN CRIME NO.580/2016 OF RESPONDENT POLICE STATION (VIDE ANNEXURE-B WHICH IS RECEIVED BY THE LEARNED MAGISTRATE ON 23.09.2016 IMPUTING THE PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER



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SECTION 120 (B), 403, 408, 447, 381, 420 READ WITH SECTION 37
OF IPC AND ETC.,

IN W.P.NO.7492/2019

BETWEEN:

SHRI. SHRIYANSH SHARMA,
S/O. SHRI. SHRI KANT SHARMA,
AGED ABOUT 28 YEARS,
OCCUPATION BUSINESS,
R/@ C-128, SOUTH CITY-2
SECTOR 49, GURGAON - 122 018.

... PETITIONER

(BY SRI. M.S. SHYAM SUNDAR, SR. ADVOCATE FOR
SRI. SUBRAMANYA .M., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ASHOK NAGAR POLICE
STATION, ASHOK NAGAR,
BANGALORE - 560 001,
REPT. BY SPP, HIGH COURT
COMPLEX, BANGALORE - 560 001.
2. THE STATE OF KARNATAKA
BY CID-EOD, CID OFFICE,
CARLTON HOUSE, PALACE ROAD,
REPT. BY SPP, HIGH COURT
COMPLEX, BANGALORE - 560 001.
3. MR. PRASHANTH HEGDE,
S/O LATE V. RATHNAKAR HEGDE,
AGED ABOUT 70 YEARS,
MANAGING DIRECTOR,
M/S METAL CLOSURES
PRIVATE LIMITED,
OFFICE AT NO.4-7, ST.
PATRIX COMPLEX, 15-K,
BRIGADE ROAD, BANGALORE - 560 025
R/@ #261, DEFENCE COLONY,



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INDIRANAGAR, BANGALORE - 560 038

... RESPONDENTS

(BY SRI. RAJATH SUBRAMANYA, HCGP FOR R1 & 2
SRI. ANANTH MANDAGI, SR. ADVOCATE FOR
SRI. H.N. VASUDEVAN, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF INDIAN CONSTITUTION READ WITH SECTION 482 OF CRIMINAL
PROCEDURE CODE PRAYING TO QUASH THE FINAL REPORT/CHARGE
SHEET FILED IN CRIME NO.486/2015 AND CC NO.32746/2018 OF
RESPONDENT POLICE (VIDE ANNEXURE-C), WHICH IS RECEIVED BY
THE LEARNED MAGISTRATE ON 13.12.2018 IMPUTING THE
PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER
SECTION 120 (B), 408, 409, 420, 468, 471, 474 36 AND 37 OF IPC
AND ETC.,

IN W.P.NO.7493/2019

BETWEEN:

SHRI. SHRI KANT SHARMA,
S/O SHRI RAM PRAKASH SHARMA,
AGED ABOUT 59 YEARS,
DEPUTY GENERAL MANAGER,
PUNAJB NATIONAL BANK,
HEAD OFFICE, PLOT NO.4,
SECTOR 10, DWARAKA,
NEW DELHI - 110 075
R/@ C-128, SOUTH CITY-2
SECTOR-49, GURGAON - 122 018

... PETITIONER

(BY SRI. M.S. SHYAM SUNDAR, SR. ADVOCATE FOR
SRI. SUBRAMANYA M., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ASHOK NAGAR POLICE
STATION, ASHOK NAGAR,
BANGALORE, REP BY



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SPP, HIGH COURT COMPLEX
BANGALORE - 560 001

2. THE STATE OF KARNATAKA
BY CID-EOD, CID OFFICE,
CARLTON HOUSE PALACE ROAD,
REPT BY SPP, HIGH COURT
COMPLEX, BANGALORE - 560 001.
3. MR. PRASHANTH HEGDE,
S/O LATE V. RATHNAKAR HEGDE,
AGED ABOUT 70 YEARS,
MANAGING DIRECTOR, M/S METAL
CLOSURES PRIVATE LIMITED, OFFICE
AT NO.4-7, ST. PATRIX COMPLEX,
15-K, BRIGADE ROAD,
BANGALORE - 560 025
R/@ #261, DEFENCE COLONY,
INDIRANAGAR, BANGALORE - 560 038

... RESPONDENTS

(BY SRI. RAJATH SUBRAMANYA, HCGP FOR R1 & 2
SRI. ANANTH MANDAGI, SR. ADVOCATE FOR
SRI. H.N. VASUDEVAN, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO QUASH THE FINAL REPORT/CHARGE SHEET FILED IN CRIME NO.486/2016 OF RESPONDENT POLICE VIDE ANNEXURE-C, WHICH IS RECEIVED BY THE LEARNED MAGISTRATE ON 13.12.2018 IMPUTING THE PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER SECTION 120 (B), 408, 409, 420, 471, 474 36 AND 37 OF IPC AND ETC.,

IN W.P.NO.7494/2019

BETWEEN:

SHRI. AVINASH KATWARE
S/O SHARADRAO,



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AGED ABOUT 59 YEARS,
RETD CHIEF MANAGER,
PUNAJB NATIONAL BANK,
NAGPUR BRANCH R/AT
FLAT NO. 101, BAJIRAO SADAN,
PLOT NO.322, LAXMI NAGAR,
NAGPUR - 440 022.

... PETITIONER

(BY SRI. M.S. SHYAM SUNDAR, SR. ADVOCATE FOR
SRI. SUBRAMANYA M., ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
BY ASHOK NAGAR POLICE
STATION, ASHOK NAGAR,
BANGALORE, REP BY
SPP, HIGH COURT COMPLEX
BANGALORE - 560 001
- 2 . THE STATE OF KARNATAKA
BY CID-EOD, CID OFFICE,
CARLTON HOUSE PALACE ROAD,
REPT BY SPP, HIGH COURT
COMPLEX, BANGALORE - 560 001.
- 3 . MR. PRASHANTH HEGDE,
S/O LATE V. RATHNAKAR HEGDE,
AGED ABOUT 70 YEARS,
MANAGING DIRECTOR,
M/S METAL CLOSURES PRIVATE
LIMITED, OFFICE AT NO.4-7, ST.
PATRIX COMPLEX, 15-K,
BRIGADE ROAD,
BANGALORE - 560 025
R/@ #261, DEFENCE COLONY,
INDIRANAGAR, BANGALORE - 560 038

... RESPONDENTS

(BY SRI. RAJATH SUBRAMANYA, HCGP FOR R1 & 2
SRI. ANANTH MANDAGI, SR. ADVOCATE FOR
SRI. H.N. VASUDEVAN, ADVOCATE FOR R3)



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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO QUASH THE FINAL REPORT/CHARGE SHEET FILED IN CRIME NO.486/2015 OF RESPONDENT POLICE VIDE ANNEXURE-C, WHICH IS RECEIVED BY THE LEARNED MAGISTRATE ON 13.12.2018 IMPUTING THE PETITIONER HEREIN FOR THE OFFENCE PUNISHABLE UNDER SECTION 120 (B), 408, 409, 420, 468, 471, 474, 36 AND 37 OF IPC AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 12.06.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE M G UMA

COMMON CAV ORDER

The petitioner - accused No.6 in Writ Petition No.40308 of 2018; the petitioner - accused No.7 in Writ Petition No.35925 of 2018; the petitioner - accused No.4 in Criminal Petition No.5159 of 2018; the petitioner - accused No.8 in Criminal Petition No.5157 of 2018; and the petitioner - accused No.3 in Criminal Petition No.6885 of 2018 are seeking to quash the criminal proceedings initiated against them in Crime No.580 of 2016 of Subramanyapura Police Station, pending in CC No.11073 of 2018 on the file of the learned I Additional Chief Metropolitan Magistrate, Bengaluru City, registered for the



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offences punishable under Sections 120-B, 403, 408, 409, 447, 381, 420 read with Section 37 of IPC.

2. The petitioner - accused No.26 in Writ Petition No.7492 of 2019; the petitioner - accused No.10 in Writ Petition No.7493 of 2019 and the petitioner - accused No.11 in Writ Petition No.7494 of 2019 are seeking to quash the criminal proceedings initiated against them in Crime No.486 of 2015 of Ashoknagar Police Station, pending in CC No.32746 of 2018 on the file of the learned I Additional Chief Metropolitan Magistrate, Bengaluru City, registered for the offences punishable under Sections 120-B, 408, 409, 420, 468, 471, 474, 36 and 37 of IPC.

3. Brief facts of the case in relation to Crime No.486 of 2015 are that, the respondent - Sri Prashanth Hegde has filed the first information with Ashoknagar Police Station against accused Nos.1 to 11 alleging commission of offence punishable under Sections 408, 468, 471, 381, 420, 506 read with Section 34 of IPC. It is alleged by the informant that he is a qualified Chartered Accountant and the Managing Director of M/s Metal Closures Private Limited, which was set up in the



year 1977. He had three operational plants across India and employed more than 650 workmen. It is stated that the Company had undertaken to manufacture metal packaging products like ROPP, Caps, Crown Corks, Shoe Polish containers, battery jackets, lug caps etc., It had high-end multinational customers like Coco-Cola, Pepsi etc., It was operated with high speed equipments imported from various countries in the world.

4. It is stated that during 1992, accused No.1 joined the Company as an Accounts Assistant. He grew in his position, and during 2003-04, he was the General Manager (Finance) and later, the Chief Financial Officer of the Company. Thus, he was in-charge of finance of the Company and was authorized to deal with financial institutions for normal banking works like bank limits, submission of stock statements, arriving at drawing power and also to have routine correspondences with the Bank. He was also assigned with the work of importing goods, including signing of Letters of Credit, both Foreign and Inland, documents/hundies, and liaison with shipping and handling agents along with accused No.2 who was



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working as Deputy Chief Financial Officer. Every other employees were working under accused Nos.1 and 2. It was accused No.2 who was approving authority for payments and was also in-charge of internal and statutory audit. He was responsible for attending stock taking by independent Bank, appointed stock auditors and to accompany them whenever and wherever they went on stock audit to all the three plants.

5. It is stated that, when accused No.1 was entrusted to be in-charge of the finance of the Company, accused Nos.2 to 9 were also working under him with various other related duties as Deputy Chief Financial Officer, Assistant General Manager - Accounts, Secretary to Managing Director, Executive Accounts, Senior Manager - Finance, Assistant General Manager - Finance, Senior Manager - Imports and Logistics and Assistant General Manager - Materials, respectively. The annual turnover of the Company was in excess of Rs.200 crores. The Company's credit requirements were funded by four nationalized banks in consortium, led by State Bank of India followed by Punjab National Bank, Corporation Bank and UCO Bank.



6. It is contended by the informant that as Managing Director of the Company, he was alone authorized to sign the cheques for the four Banks in accordance with the Resolution that was passed by the Board of Directors dated 14.04.2008. It is further stated that during 2005 to 2013, the Company undertook major expansion in Himachal Pradesh and business of the Company grew considerably. It extended its commercial activities including imports and vendor payments. However, at the end of 2013, the Company started experiencing constraints in working capital. There was default in payment of installments to the Banks and finally the accounts were declared as Non Performing Assets (NPA). The informant was shocked to know the financial status of the Company. However, he pumped in the funds by mortgaging his houses, withdrawing his savings etc., Even then he was unable to revive the Company and finally he was compelled to stop its operations. The salaries of the employees could not be paid and they were laid off. The Banks have initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act').



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7. The informant stated that, looking at the condition of the Company, he went into depression and was hospitalized. Later, he started securing several financial records and documents including that of banks, loan papers, payment made to the suppliers, cheques issued by the Company, dishonor of cheques and also the general appraisal of the financial status. He discussed with Banks and tried to obtain records wherever possible. He came to know that accused No.1 being the Chief Financial Officer with the connivance of accused Nos.2 to 9 had fraudulently and dishonestly operated finances of the Company for about 4 years. The *modus operandi* adopted by the accused was to get Photostat copies with his specimen signature and to fix it in different printed block on cheques and other documents. The informant found cut outs of the signatures of the informant and his wife. He also found self signed cheques of Rs.10,00,000/- each in the chamber of accused No.1. Those cheques were in the handwriting of accused No.3.

8. The informant also found various withdrawals of around Rs.75,00,000/- made in cash between 25.02.2014 till 16.06.2014 and credited to fictitious account called BP holdings



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(CT), which are proved to be fraudulent withdrawals. Accused No.4 being the Secretary of the informant managed to draw Rs.28,19,987/- from the Company's bank account held with Kotak Mahindra Bank. She also withdrew USD 8264 on 24.02.2012 from Kotak Mahindra bank using the name of the daughter of the informant and using her passport number through a demand draft drawn on her personal saving bank account held with Karnataka Bank. She was also using the credit card of the informant issued by Citi Bank and Indus Bank for purchase of goods worth Rs.1 to 2 lakhs.

9. It is stated that till 2008-09, the payments were generally made through cheques and later, the payment exceeding Rs.2,00,000/- upto Rs.10,00,000/- were made through the new system i.e., RTGS/NEFT by submitting the standard forms prescribed for remittance along with the format duly filled in and signed by the authorized signatory. A cheque duly signed by the authorized signatory i.e., the informant was also insisted to be provided in support of RTGS/NEFT forms. On verification, the informant came to know from Corporation Bank, Sarakki Branch that, the Bank used to pass payments



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casually by accepting the signatures of accused No.1, while he has never authorized to sign the cheques. Thereafter, accused No.1 managed to concoct the Resolution dated 25.08.2012 authorizing himself to operate the current account, by forging the signature of the informant. The Banks have allowed such payments to a tune of around Rs.75 crores in 4½ years with the fraudulent scheme framed by the accused. These payments were never towards Company's liability or obligations. It is suspected by the informant that along with accused Nos.1 to 9, the bankers and suppliers have also joined hands in committing fraud.

10. It is further contended that from 2001 till 2012, Steel was imported from Japan. The accused have diverted such materials to the open market and a Korean Company was encouraged by the accused during 2012 with whom they had special understanding. The informant learnt that accused Nos.1 and 2 who were handling import of goods and handling the agents, managed to sell some consignments of Steel forging the signatures of the informant. The payments towards such goods were made on behalf of the Company through



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Letter of Credit issued by Company's bankers. The informant found that some of the documents of shipments extended by SBI were forged to show it as covered under one Trade Chartered Bank and some consignments were directed to open market and to the competitors.

11. Accused Nos.1 and 2 unauthorisedly entered into some contract with Trade Chartered Bank and managed to get Letter of Credit and Letter of Undertaking with the guarantee of accused No.1. Accused No.1 has also made unauthorised payments to Shenton Consulting for services in connection with opening of Letter of Credit with Trade Chartered Bank. Within a period of just 2 months, a sum of Rs.1.15 crores were paid and was accounted as bank charges without any basis through RTGS by forging the signatures of the informant on the cheques claiming to be the payments are against bills, when no such bills have been submitted to the Company. The signatures of the informant were also forged for issuing the cheques dated 30.06.2014 on Corporation Bank, totaling to more than Rs.2 crores. Accused No.1 has made various other payments by forging the signatures of the informant. He has also



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manipulated the books of account of the Company by conspiring with other persons.

12. Accused No.1 along with other accused stolen some vital statutory documents while leaving the job. The informant stated that when the informant started enquiring about the misdeeds of the accused for last 6 months, accused Nos.1 and 2 held out threats through anonymous telephone calls and text messages referring to them as Korean mafia. Few calls were received by the informant enquiring as to why he is harassing accused No.1. The informant came to know that accused No.1 had made heavy investments in real estate business in benami names and by using such links, he was threatening the informant. It is stated that accused No.4 had fled the Country. Accused No.8 after withdrawing foreign exchange of USD 8264 along with another sum of Rs.28 lakhs is planning to leave the Country. Therefore, the informant stated that accused No.1 hatched criminal conspiracy with accused Nos.2 to 11, forged the signatures of the informant and cheated the Company fraudulently and dishonestly. They have misappropriated huge sums of money, which runs into



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couple of crores. Therefore, he requested the police to investigate into the matter.

13. The first information dated 16.07.2015 was filed before the police on 22.07.2015, upon which, Crime No.486 of 2015 came to be registered and the investigation was undertaken. The Investigating Officer filed the chargesheet on 07.12.2018 against accused Nos.1 to 34 for the above said offences.

14. The petitioners - accused Nos.10, 11 and 26 have filed these writ petitions invoking Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C. seeking to quash the criminal proceedings initiated against them and also to quash the order taking cognizance of the offence and registration of CC No.32746 of 2018 pending on the file of the learned I Additional Chief Metropolitan Magistrate, Bengaluru city.

15. Brief facts of the case in relation to Crime No.580 of 2016 are that, the respondent - Prashanth Hegde lodged the first information with Subramanyapura Police Station against accused Nos.1 to 9 alleging commission of the offences



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punishable under Sections 120-B, 403, 408, 409, 447, 381, 420 read with Section 37 of IPC. It is the allegation made by the informant that he was running a Company which was funded by consortium of Banks consisting of State Bank of India (SBI), Punjab National Bank (PNB), Corporation Bank and UCO bank, with SBI as the lead Bank. The genesis of the fraud could be traced around April 2014, when it was found that SBI was informed about large scale fraud involving the employees of the informant Company and some executives of the Bank. Since then, the bankers were bent to close down the business of the Company by using the draconian law i.e., the SARFAESI Act.

16. It is alleged by the informant that the SBI being the lead Bank, on 28.05.2014 declared the account of the Company as NPA and brought the Company under the SARFAESI Act. SBI appointed a concurrent Auditor - Mr. V V Krishnamurthy being the partner of M/s Sankaran and Krishnan on 01.08.2014. SBI also appointed security agency - M/s Kashi Security and Consulting Private Limited on 05.08.2014. These steps taken by the Bank disclose that the physical possession



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and administrative control of the factory was taken over by SBI and it also took over the affairs of all the three factories situated at Bengaluru, Kunigal and Kala Amb at Himachal Pradesh. The concurrent Auditor started exercising his complete control against the administration and went to the extent of stopping the salary payable to Mr.Rohan Hegde, the son of the informant. The Banks have not permitted his presence in any of the meetings and prevented him from being any hurdle for their pre-planned acts. Thus, it is contended that the Banks were in physical possession of all the three plants from 12.08.2014 till 08.06.2016.

17. It is contended that the Company's operations came to a grinding halt during the last quarter of 2014 due to the financial constraints to pump in the working capital, which was due to the fraud by the Banks and theft of materials. During August 2015, the first information was filed with Ashoknagar Police Station against eight Company employees for the fraud committed by them in collusion with the executives of the Banks, which was now referred to CBI for further investigation.



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18. It is contended that during May 2016, the Company's employees staying in the Company's Staff quarters situated nearby, complained that the Banks' security and other supporting agencies including the CFO - Mr. Mahesh with the help of Bank's Executives were moving out goods from the premises during night hours. The Bank, had in fact, assured that no employees of the Company were in the premises. In fact, the Bank had their own security in place and had taken over the day-to-day administration of the Company. Moving out of the goods from the factory premises was never accounted in any books maintained by the Company. When this fact was brought to the notice of the informant, being the Managing Director, he confronted with the bank officials and got an evasive explanation and the informant was compelled to file a complaint regarding theft of goods. The informant had in fact written a letter on 16.09.2015 requesting the Bank to file a police complaint. In spite of that, the Bank had not chosen to file any complaint, but had given a reply on 21.09.2015 stating that they are not bound to guard the gates of his factory, only to cover up the criminal acts of taking away the goods illegally by the Company employees in collusion with the bank officials.



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The informant contended that the Bank appears to have carried out the physical verification of stock through concurrent Auditor as though the same have been conducted in the month of July-August 2014 and valued the stock as on 31.05.2014 showing the stock much lower than what was declared by the Company in the Company's Stock Statement, which was in fact accepted by the Bank. No periodic stock statements were taken. With all these frauds and mismanagement, the informant being the Managing Director had gone into depression and was hospitalized.

19. It is contended that, taking advantage of the absence of the informant around the factory, the Banks made illegal payment of Rs.3,04,47,111.77/- to a Company called Tinko, in connivance with the Chief Financial Officer of the Company by name Mahesh Hegde, through Kotak Mahindra Bank. There was illegal removal of goods from Inland Container Depot (ICD), Bengaluru and sold as seen in Bill of Entry dated 22.05.2014. The signatures of the informant were fabricated and forged even when he was taking treatment as an in-patient at St. John's Hospital. The statement of the security agency



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posted at Kunigal factory shows that the Bank's security was in complete charge of the Company's Kunigal works ever since the Bank had taken over possession. It is stated that on 22.05.2016, the security personnel of Bengaluru working along with the security personnel of neighbouring factory, were found removing the goods and a complaint in that regard was made with the jurisdictional police, upon which, the FIR No.0316 came to be registered on 23.05.2016.

20. It is contended that the Company had declared stock of Rs.71.97 crores in the monthly stock statement on 31.05.2014 and the same was accepted by the Bank on 07.06.2014. Since then, the Bank through its security agency was in complete charge of the inventory even at the point of closure of the Unit.

21. The informant contended that, after realizing that the Bankers were irresponsible and were hostile towards him and by showing themselves unaccountable, the Company in its letter dated 25.05.2016 has written to the Bankers suggesting to carry out a stock verification in the presence of an independent Valuer and the Chartered Accountant. But the



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Banks did not present themselves for verification. However, the stock was taken at Bengaluru, Kunigal and Himachal Pradesh Units on 03.06.2016, 05.06.2016 and 08.06.2016 respectively and found the value of stock at Rs.1.14 crores. It is stated that, as on 31.05.2014, the stock was valued at Rs.71.97 crores and therefore, Rs.70.83 crores was the stock deficit. Thus, it is contended by the informant that, this stock which was in deficit was stolen from three factory locations in Bengaluru, Kunigal and Himachal Pradesh units and also ICD Bengaluru. The security agency along with concurrent Auditor, the CFO and Deputy CFO of the informant -Company with the Bank Executives who are instrumental in appointing the security agency are all responsible for the conspiracy, cheating and committing theft of stocks.

22. The informant has named 9 accused persons-accused No.1 being the Chief Financial Officer; accused No.2 being the Deputy Chief Financial Officer; accused Nos.3 and 4 being the Executives of SBI; accused Nos.5 to 7 being the Executives of Punjab National Bank; accused No.8 the Concurrent Auditor; and accused No.9 the Consultant of M/s



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Kashi Security and Consulting Pvt. Limited. Therefore, the informant requested the police to register the case and to initiate legal action against all the 9 accused. Accordingly the FIR in Crime No.580 of 2016 came to be registered. After investigation, the final report came to be filed.

23. The petitioners being accused Nos.3, 4, 6 to 8 have filed Criminal Petition No.6885 of 2018; Criminal Petition No.5159 of 2018; Writ Petition No.40308 of 2018; Writ Petition No.35925 of 2018; Criminal Petition No.5157 of 2018 respectively, invoking Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C are seeking to quash the criminal proceedings initiated against them, to quash the order taking cognizance of the offence and registration of CC No.11073 of 2018 pending on the file of the learned I Additional Chief Metropolitan Magistrate, Bengaluru city.

24. Heard Sri M S Shyam Sundar, learned senior advocate for Sri S Prasanna Kumar, learned counsel for the petitioners in Writ Petition Nos.40308, 35925 of 2018 and Sri M S Shyam Sundar, learned senior advocate for Sri M Subramanya, learned counsel for the petitioners in Writ Petition



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Nos.7492, 7493 and 7494 of 2019, Sri S S Naganand, learned senior advocate for Sri S Sriranga, learned counsel for the petitioners in Criminal Petition Nos.5157 and 5159 of 2018, Sri Murthy D Naik, learned senior advocate for Sri G Mahendra, learned counsel for the petitioner in Criminal Petition No.6885 of 2018, Sri Rajath Subramanya, learned High Court Government Pleader for respondent No.1, Sri Dhyan Chinnappa, learned senior advocate for Sri H N Vasudevan, learned counsel for the respondent - informant in Criminal Petition Nos.5157, 5159 and 6885 of 2018 and Sri Anant Mandagi, learned Senior counsel for Sri H N Vasudevan, learned counsel for the respondent - informant in Writ Petition Nos.7492, 7493, 7494 of 2019 and Writ Petition Nos.40308, 35925 of 2018. Perused the materials on record.

25. Sri M S Shyam Sundar, learned senior advocate in Writ Petition Nos.40308 and 35925 of 2018 has produced the copy of the order dated 21.03.2024 passed in TSA No.9/2023 by the Debts Recovery Tribunal-I at Chennai (for short 'DRT-I') and contended that M/s Metal Closures Private Limited, represented by the informant as its Managing Director along



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with his wife, filed the petition under Section 17(1) of the SARFAESI Act, seeking to quash the impugned demand and possession notices issued by the Bank and to set aside the actions whatsoever, taken by the Banks and also claiming damages caused due to illegal actions of the Banks. Learned counsel contended that, several grounds were raised by the informant in the said petition alleging fraud and forgery. He also states regarding the criminal complaint filed against his officials with Ashoknagar Police Station. The possession notice issued by the Banks was also challenged by the informant on the ground that reply given by the informant was not taken into consideration, as the fraud played by the Chief Financial Officer of the Company in collusion with the officials of the Bank was alleged in the reply notice. It was also contended that there was no proper authorization to the transactions held by the Chief Financial Officer. The informant has also pleaded that there was theft of stocks which is referred to in the charge sheet.

26. Learned senior advocate further contended that the DRT-I had considered all the materials that are placed



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before it and recorded its satisfaction regarding compliance of mandatory provisions of Section 13(3)(A) of the SARFAESI Act and held that it cannot be said that there has been violation of statutory duty on the part of the defendant - Bank. Placing reliance on this order, learned senior advocate contended that the contention now taken by the informant regarding the fraud committed by the Bank Officials in initiating proceeding on the SARFAESI Act, cannot be accepted as the DRT-I has out-rightly rejected all such contentions.

27. Learned senior advocate contended that the prosecution has cited in all 19 witnesses in the chargesheet. CWs.1 to 11 are the employees of the informant himself. CWs.12 and 13 are not the material witnesses and the remaining CWs.14 to 19 are the official witnesses. Therefore, there are no independent witnesses to speak about commission of the offences by the accused. He also contended that there was no proper in-depth investigation, but casually the final report is filed based on the statement of the interested witnesses.



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28. Learned senior advocate for the petitioners in Writ Petition Nos.7492, 7493 and 7494 of 2019 contended that the grievance of the respondent - informant was only against his employees. There is no reference of involvement of any of the petitioners in commission of the offences. There is inordinate delay in lodging the complaint, but the same is not explained. In spite of that, FIR came to be registered and the investigation was undertaken, expanding the scope of such investigation. No preliminary investigation was held violating the directions issued by the Hon'ble Apex Court in ***Lalitha Kumari Vs Government of Uttar Pradesh and Others***¹. Learned counsel submitted that even though the first information runs into several pages and even though the informant is a qualified Chartered Accountant, there is absolutely nothing to connect any of the bank officials or third parties in the commission of offences. It is hard to believe that the informant a qualified Chartered Accountant had allowed his employees - accused Nos.1 to 11 to mismanage the financial affairs of the Company for about 5 to 6 years without him having even a clue about the same.

¹ (2014) 1 SCC (Cri) 524



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29. Learned senior advocate submitted that the Investigating Officer has cited as many as 20 witnesses in the charge sheet to substantiate the contention and to prove the guilt of the accused. CW1 is the informant himself. CWs.2, 3, 14 and 15 are the mahazar witnesses. CWs.4 and 5 are the employees of his own Company. CWs.6 to 8 are the officials of State Bank of India. CWs.9, 10 and 13 are the officials of Punjab National Bank. CWs.11 and 12 are the officials of UCO Bank, CW16 is the Technical Expert of Cyber Lab and CWs.17 to 20 are the Investigating Officers. Even though, serious allegations are made in the first information against these petitioners, not even a single witness is cited to speak about any of these allegations.

30. Learned senior advocate contended that, admittedly the informant who is the Managing Director of the Company had borrowed huge sums of money from the consortium of the Banks, of which, State Bank India is the lead Bank. Since from 2013-14, the Company has become a defaulter and its accounts were treated as NPA. Frequent meetings were held by the bank officials with the informant and



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his officials, bringing it to the notice of the informant about the financial status of the Company and the default that is being committed in repaying the amount. A forensic audit was ordered which was undertaken by a prestigious Auditor who submitted his report. In various meetings held by the Banks since from 2014 to discuss about the financial status of the Company, the informant was part of the meeting. As per Resolution of the meeting, the informant was directed to furnish audited accounts for the financial years 2013 - 14 on or before 15.09.2014. He was also asked to produce audited balance sheet for the years 2011-12 and 2012-13. In spite of that, the informant had not taken any steps to furnish the documents as required by the Banks. A decision was taken in the meeting held on 14.10.2014, which was attended by the informant to have forensic audit. The report was submitted on 17.03.2016, wherein, it is specifically stated that the informant had not co-operated in such audit.

31. Learned senior advocate submitted that looking to the default committed by the Company and its inability to revive, a decision was taken in the meeting that was held on



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14.09.2015 to initiate proceedings under SARFAESI Act. Accordingly, the notices were issued, the symbolic possession of the properties were taken by the Banks. It is only thereafter, the informant came up with the complaint against his employees. The Investigating Officer has filed the charge sheet referring to so many misdeeds by the bank officials without there being any basis. Even the forensic audit report which was admittedly submitted by a reputed Auditor was never taken into consideration by the Investigating Officer.

32. Learned senior advocate submitted that the Investigating Officer who is not qualified in financial matters proceeded to refer to the words 'custom scrips' and 'round tripping'. Learned senior advocate contended that scrip means an advance payment or it is like value attached ticket. It is not an offence to get scrip at a reasonable rate and to make use of the same at a later period to make some profit out of it. But the Investigating Officer referred to the word 'scrip' which is out of context. Similarly, round tripping also has no relevance to the facts of the case as it is not explained as to how these petitioners have managed round tripping. Moreover, none of



the chargesheet witnesses have spoken to about any of these serious allegations. No witness is cited to speak about formation of Shell Company or a fictitious Company by accused No.26 or such Company having any dealings with the informant Company or for having evaded VAT.

33. Learned senior advocate submitted that, even though there is reference to the word 'round tripping', the Investigating Officer has not explained as to what it means and how the same was committed. There is absolutely no foundation for making any such allegations.

34. Learned senior advocate refers to the memo dated 24.09.2024 and contended that as per the scheme formulated by Ministry of Commerce and Industry Scrip, which is known as Merchandise Exports from India Scheme (MEIS) (hereinafter referred to as the 'scheme'), Duty Credit Scrips will be granted as rewards which is freely transferable and it can be used for various purposes as stated in this scheme. It can be used for payment of basic customs duty, additional customs duty, central excise duties on domestic procurements of inputs or goods, etc. When Duty Credit Scrips are freely transferable as



per the scheme, no offence is made out by transferring the scrips from one another.

35. Learned senior advocate further submitted that, the informant initially filed the first complaint on 16.07.2015 after receipt of the notice under Section 13(2) of SARFAESI Act, which was issued on 12.08.2014 by State Bank of India. At the beginning, he made allegations only against his employees, but subsequently, the second complaint came to be filed on 03.09.2016, making allegations against his employees as well as the officials of the Bank, for which the FIR came to be registered on 23.09.2016. The Investigating Officer deliberately filed the charge sheet on 05.05.2018 in the second complaint that was filed on 03.09.2016. But the charge sheet of the first complaint dated 16.07.2015 came to be filed much later on 07.12.2018. The present complaint came to be filed by the informant to somehow or the other escape the liability under SARFAESI Act. SARFAESI proceedings are still pending, but the recovery of the same is stayed by this Court at the instance of the informant in another proceedings.



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36. Learned senior advocate contended that CW1 is the informant himself. CWs.2, 3, 14 and 15 are the pancha witnesses. CWs.4 and 5 are the employees of the informant - Company, CWs.6 to 13 are the officials of the Bank. None of these witnesses inculcate the accused. They do not speak about accused No.26, running a Shell Company or receiving huge amount of over Rs.6 crores and not providing customs scrips. Under such circumstances, absolutely no offence is made out against any of these petitioners. It is sheer misuse of the system by the informant to rope in the petitioners.

37. Learned senior advocate contended that even though serious allegations are made against accused Nos.10, 11 and 26 in Crime No.486 of 2015 and as accused Nos.6 and 7 are arrayed as accused in Crime No.580 of 2016, there is absolutely no such allegations, or basis to make allegations and none of the charge sheet witnesses speak about the same. Under such circumstances, it is clear that the criminal proceedings were initiated only to wreck vengeance against the bank officials and their family members to see that the SARFAESI proceedings initiated against the informant is stalled.



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He further submitted that the consortium of Banks filed a complaint with CBI which had undertaken investigation into the fraud committed by the informant. But the informant approached this Court and got stayed the CBI investigation. This is the tactics adopted by the informant to arm twist the bank officials, which is deprecated by the Hon'ble Ape Court in a case of similar nature in ***Priyanka Srivastava and another Vs State of Uttar Pradesh***². The Hon'ble Apex Court has came down heavily in entertaining such criminal complaints without any responsibility, where the bank through its officials proceeded to invoke the provisions of SARFAESI Act against the defaulting unscrupulous complaint. Therefore, it is the contention of the learned senior advocate that the decision in ***Priyanka Srivastava (supra)*** is aptly applicable to the present case and hence, initiation of criminal proceedings is in clear abuse of process of law and therefore, the same is to be quashed.

38. Learned senior advocate further submitted that the learned Magistrate has never applied his mind to any of these

² (2015) 6 SCC 287



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facts and circumstances, but proceeded to take cognizance of the offences mechanically. Therefore, even the order taking cognizance of the offences is liable to be quashed. Accordingly, he prays for allowing all the petitions, in the interest of justice.

39. Sri S S Naganand, learned senior advocate for the petitioners in Criminal Petition Nos.5157 and 5159 of 2018 submits that the petitioner in Criminal Petition No.5157 of 2018 is arrayed as accused No.8. He is the Chartered Accountant by profession and was appointed as concurrent Auditor. As the name suggests, his appointment was concurred both by the informant as well as by the consortium of Banks. He submits that, there was allegation of theft of materials, conspiracy by the informant and his officials, which resulted in the Company becoming NPA, without following the repayment schedule. A meeting was held by the Banks, which was attended by the informant where a collective decision was taken for appointing accused No.8 as a concurrent Auditor. The role of the Auditor was specified in the letter dated 04.07.2014. He is required to monitor the transactions carried out by MCPL and is required to verify the compliances of the same. The Auditor was required



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to physically verify the stocks in MCPL and accordingly, he verified and submitted the audit report dated 27.08.2014. The audit report indicates that there was significant variance in the stock declared by the informant in his routine stock declaration and the stock that was present in the premises when verified. The appointment letter dated 01.08.2014 explicitly states the scope of audit to be done by the petitioner - accused No.8. He is required to verify the cash flow, inventory of the raw materials, auditing compliances, verification of statements monitoring sale of fixed assets etc.,

40. Learned senior advocate contended that even though the respondent - informant had taken part in the meeting, where the petitioner was appointed as concurrent Auditor, he never raised any objection. On the other hand, he conceded for appointment of the petitioner. The findings recorded by the petitioner in the stock audit report as well as concurrent audit was later confirmed by the Forensic Audit Report dated 17.03.2016, submitted by M/s Risk Richter, which reveals the fraud perpetuated by the respondent - informant



41. Learned senior advocate further submitted that the petitioner was not the servant of the respondent - informant nor of the Banks. Under such circumstances, Section 381 of IPC could not have been invoked against the petitioner. Even after sale of stocks to Zarhak Steels, the petitioner has not received any money. When the role of the petitioner as concurrent Auditor was very much explicit and limited, and when he had no access to the goods nor had the Bank had taken physical possession of the property, the allegations against the petitioner are baseless.

42. Learned senior advocate further submitted that the allegations against the petitioner that, he approved the sale of machinery worth Rs.72,00,000/- to Aura Polyfex for Rs.10,00,000/- is also baseless as it is MCPL, which requested the Bank for approval of the sale for Rs.10,00,000/-. Under such circumstances, the allegations are not only baseless but are malafide. Learned senior advocate further submitted that the petitioner being the Auditor never had any control over functioning of MCPL. He was not entrusted with any property. Under such circumstances, Sections 403, 408 and 409 of IPC



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could not have been invoked. Similarly, Section 420 of IPC is also not applicable to the petitioner as no allegation of deception or inducement is made against him. The petitioner as an Auditor, lawfully entered the premises for the purpose of conducting stock audit and after completion of the mandate, he ceased to conduct the concurrent audit and under such circumstances, Section 447 of IPC alleging trespass also could not have been invoked. Respondent - informant never called upon the petitioner to withdraw from the alleged unauthorized deposition as required under amended Section 441, vide Karnataka Act 21 of 2014, which came into effect on 02.06.2014. Hence, absolutely there is no allegation against the petitioner for having conspired with anybody to commit an offence and therefore, initiation of criminal proceedings is in clear abuse of process of law.

43. Learned senior advocate also contended that there is inordinate delay of more than two years in filing the complaint and there is no explanation for the same. Even though, it is contended that the respondent - informant was hospitalized and he could not have filed the complaint on time,



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the materials produced before the Court by the respondent - informant discloses that, he was hospitalized from 05.09.2014 till 21.09.2014 and the same cannot be an explanation for the inordinate delay of more than 2 years. Moreover, even though similar explanation was given by the respondent - informant before the Institute of Chartered Accountants, it has disbelieved the same as per Order dated 02.11.2022 wherein, the respondent - informant was held guilty of misconduct and he was sentenced for the same.

44. Learned senior advocate contended that, if at all the respondent - informant, who is the borrower is aggrieved by the actions of the authorities under SARFAESI Act, he should have recourse as provided under the enactment, but he could not have invoked the penal provisions to arm twist the petitioner. In this regard, he placed reliance on the decision of the Hon'ble Apex Court in ***Priyanka Srivastava (supra)***.

45. Learned senior Advocate also contended that, all the issues now raised by the respondent - informant were considered by DRT-I, Chennai in TSA No.9 of 2023, which upheld the actions of the Banks as the same are in accordance



with SARFAESI Act. Even though the said order was challenged by MCPL before this Court, the same is now pending consideration.

46. Learned senior advocate contended that, the Investigating Officer has filed the charge sheet without there being any basis, but being the mouthpiece of the respondent - informant. The statement of objections filed by respondent No.1 reads as though it is drafted by the respondent - informant. The Investigating Officer had no occasion to know all those details which are highlighted in the statement of objections. Therefore, it is obvious that, no investigation worth mentioning was undertaken by the Investigating Officer. The collusion between the Investigating Officer and the respondent - informant is obvious and the Investigating Officer has exceeded his limitations in determining the validity of the SARFAESI recovery proceedings initiated by the consortium of Banks.

47. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***K Virupaksha Vs State***



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of Karnataka³ to contend that the police complaints and investigations are not to be entertained in cases where borrowers have grievance, as the same would amount to reviewing the jurisdiction of DRT and the competent Courts under the SARFAESI Act. The learned Magistrate has also not applied his mind while taking cognizance of the offences and therefore, it is clear that the petitioner is baselessly implicated in the matter and forced to face the trial. Since initiation of criminal proceedings and its continuation is in clear abuse of process of the law, the same is liable to be quashed. Accordingly, prays for allowing the petition.

48. Similarly, Sri S S Naganand, learned senior advocate contended that the petitioner in Criminal Petition No.5159 of 2018 is accused No.4 and he is the Authorized Officer under SARFAESI Act. The recovery proceedings under SARFAESI Act was initiated and the notice under Section 13(2) was issued on 12.08.2014 and the possession notice dated 20.02.2015 was also issued, but however, the same were withdrawn by the petitioner by giving a public notice dated

³ (2020) 4 SCC 440



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22.06.2015. A fresh notice under Section 13(2) was issued on 15.09.2015 and possession notices on 11.12.2015 and 14.12.2015. The petitioner obtained an order dated 02.08.2016 from the jurisdictional Magistrate in Crl.Misc.No.13066 of 2015 under Section 14 of SARFAESI Act, directing him to take over physical possession of the premises. But the petitioner had never taken physical possession of the premises. The DRT in SA No.152 of 2016 directed the parties to maintain *status quo* with regard to the property till 13.09.2016. In the meantime, the complaint was filed on 03.09.2016. A concurrent Auditor was appointed in the meeting that was held on 01.08.2014, which was attended by the respondent - informant. Under such circumstances, the respondent - informant could not have taken the contention that the petitioner had taken the physical possession of the property.

49. Learned senior advocate contended that there is inordinate delay in making the allegations against the petitioner, who was discharging his duty as an authorized officer by following the procedure as contemplated under SARFAESI Act. For discharging the official duty, the petitioner



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cannot be made liable for the offence under Section 381 of IPC and by no stretch of imagination, it can be said that he has committed theft of any materials. The email dated 20.03.2015 produced as per Annexure-BL clearly shows that it was the respondent - informant, who requested the Bank to remove the LPG facility. It also shows that it was the respondent - informant, who was in physical possession of the factory. When the bank officials were permitted to take out the servers from EDP room by the respondent - informant, it cannot be said that they have committed theft of any articles. Sections 403, 408 and 409 of IPC also could not have been invoked against the petitioner as there is no dishonest misappropriation or conversion of any property entrusted to him. Additional security was provided to MCPL in order to protect the assets in the factory, where the respondent - informant continued to remain in physical possession, which is evident from the letter dated 19.08.2014 produced as per Annexure-K and the letter dated 20.03.2015 Annexure-BL issued by the respondent - informant himself. The ingredients of Sections 420, 447, 37 and 120B of IPC are also not attracted to the facts of the case. The informant has not raised any grievance alleging that there was



shifting of NPA date from 28.05.2014 to 31.01.2010. It is for the first time, such an issue was raised while addressing the arguments before this Court.

50. Learned senior advocate further contended that as per letter dated 11.08.2014, the informant acknowledges appointment of security guards and thank the Bank for the same. Under such circumstances, he cannot find fault with the appointment of the security guards. Moreover, as per Annexure-AC dated 13.11.2015, the informant has written to the Bank and acknowledges that he was present in the meeting where concurrent Auditor was appointed.

51. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***K Virupaksha*** (*supra*) to contend that, there is a procedure as contemplated under SARFAESI Act, which is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. Placing reliance on this decision, learned senior advocate contended that in paragraph 15 of the judgment, the Hon'ble Apex Court made it clear that, if there is any discrepancy in the



manner of classifying the account of the appellant as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set aside the said auction at the stage after the secured creditor invokes the power under Section 13 of SARFAESI Act.

52. Learned senior advocate submitted that the Hon'ble Apex Court has re-iterated that DRT is the forum provided to assail the procedure that was followed under the special enactment. The Hon'ble Apex Court also referred to the tendency on the part of the borrowers to invoke the penal provisions by filing a complaint after failing in their attempt before DRT or the High Court as the case may be. The Hon'ble Apex Court has cautioned that, if the grievance as put forth by the respondent - informant is to be taken note of by invoking the penal provisions and the respondent - informant is allowed to agitate through a criminal complaint and the investigation is allowed to continue, it would amount to permitting the jurisdictional police to read over the process which would be in the nature of reviewing the order passed by the High Court or any other Court competent under SARFAESI Act which is



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neither desirable nor permissible. The Hon'ble Apex Court has categorically held that by taking such stand, the banking system cannot be allowed to be held to ransom by such intimidation. Therefore, it is contended that the proposition of law on the subject is very well settled. The initiation of criminal proceedings could not be sustainable when the proceedings under SARFAESI Act is already initiated. Therefore, registration of the criminal case, filing of the charge sheet and taking cognizance cannot be justified on any ground as it is done only to intimidate the petitioners. Therefore, learned senior advocate contended that it is a clear abuse of process of law and hence, the petitions are to be allowed. When no motive is attributable to the petitioner and no criminal offence is made out, the criminal proceedings is liable to be quashed and accordingly, prays for allowing both the petitions.

53. Sri Murthy D Naik, learned senior advocate for the petitioner in Criminal Petition No.6885 of 2018 contended that the petitioner is accused No.3. Admittedly, the respondent - informant borrowed the amount from the consortium of Banks and he committed default. When the borrower fails to pay the



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installments as scheduled for three consecutive months, such accounts will be treated as NPA. The respondent - informant committed default in payment of installment as agreed during October to December-2009. Therefore, with effect from 31.01.2010, the loan account was treated NPA. Later there was restructuring of the loan account as provided under the Master Circular issued by RBI. Learned counsel produced copy of the Master Circular No.DBOD.No.BP.BC.1/21/01.018/2013-14 dated 01.07.2013 issued by RBI and referred to paragraph No.4 in part-A i.e., asset classification to highlight different categories of assets while classifying NPAs such as substandard assets - that it remained NPA for a period less than or equal to 12 months, doubtful assets - when it remained in substandard assets for a period of 12 months or more and less assets - where loss has been identified by the Bank or internal or external auditors or the RBI inspection, but the amount has not been written off wholly. He has also drawn the attention of the Court to paragraph No.5.1.2 relating to Provisioning Norms to contend that, if the advance as remained in doubtful category upto one year, the provision i.e., required to be made is 25% to secure the portion and if it is between 1 to 3 years, it will be



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40% and beyond 3 years it will be 100%. Learned counsel contended that as per Annexure-AL produced along with the additional documents dated 12.12.2024, SMCB Branch, Bengaluru had accorded approval for revising the date of NPA. The reason for change in date of NPA is also mentioned therein by the Bank, according to which, the term loan account was restructured on 17.02.2010 and the repayment was re-scheduled by 6 months due to delay in completion of the project. This document makes it clear that as per original repayment schedule, the term loan was to be repaid commencing from October-2009 which was postponed to April-2010. It is stated that the Company's profitability was under strain for atleast 2 years. However, it is stated that the performance of the account during specified period was satisfactory. As the restructured account has become NPA as on 28.05.2014 due to continues irregularities in the account and since the structure has failed and the account has become NPA, the date of NPA was reckoned with reference to the pre-restructuring repayment schedule. Therefore, there was change in the date of NPA from 28.05.2014 to 31.01.2010.



54. Learned senior advocate submitted that similar contentions were taken by the respondent - informant before National Company Law Appellate Tribunal (for short 'NCLAT'), Delhi in Company Appeal (AT)(Ins).No.68/2019 and also before the Debts Recovery Tribunal-I at Chennai (DRT) in TSA No.9 of 2023. In both the proceedings, similar contention taken by the respondent - informant either as appellant or as applicant were considered threadbare and the same were rejected by the appropriate authorities.

55. Learned senior advocate contended that both the forums have categorically held that shifting the date of NPA from 28.05.2014 to 31.01.2010 cannot be found fault with and on that ground, the possession notice cannot be treated as opposing the provisions of SARFAESI Act and Security Interest Act (Enforcement) Rules, 2002. Even though such a categorical finding is given by both the appropriate forums, the respondent - informant is making similar allegations before this Court with malafide intention. Hence, such contention is liable to be rejected.



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56. Learned senior advocate contended that in view of the facts and circumstances highlighted by the respondent - informant, he cannot place reliance on APITCO's report filed on 10.05.2014 to contend that even on that day, the account was still not treated as NPA and that even according to the report, the Company was having good financial health. This report was submitted immediately after restructuring of the schedule and therefore, cannot be the basis to support the contention of the respondent - informant.

57. Learned senior advocate contended that admittedly, an ESCROW account was opened to the advantage of the respondent - informant with an understating that the inflow of money should first go to the ESCROW account and later, it will go the loan account without diverting the fund. The decision was taken to open the ESCROW account in the consortium meeting held on 19.02.2014. Minutes of consortium meeting is produced as per Annexure-AP and it is evident that the respondent - informant being the Managing Director of the Company was physically present in the meeting. After deliberations, it was decided mutually that the accounts with



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the consortium banks are to be maintained as regular and the same sale proceedings are to be routed proportionately. If the irregularity is persisting, Escrow Mechanism will have to be implemented. When such irregularity found to be persisting, the ESCROW account was opened to route the funds. The fact that irregularity was persisting was never denied by the respondent - informant. It is also not denied that when a decision to open ESCROW account was taken in the consortium meeting held on 19.02.2014, he was very much present and the respondent - informant cannot turn around to contend any irregularities committed by him.

58. Learned senior advocate also contended that as per Annexure-AQ the minutes of consortium meeting held on 07.06.2014, the respondent - informant as Managing Director of M/s Metal Closures Private Limited had attended the meeting and there was again discussions regarding opening of ESCROW account at SBI and it was decided to have such an account opened at SBI and the Company was advised to route all credits to ESCROW account only. The Company also advised their customers to route the payment through ESCROW



account. When the respondent - informant is a party to the said decision and subsequently, the ESCROW account was opened and the same cannot be found fault with by the respondent - informant, who alleged commission of any offence against the petitioner.

59. Learned senior advocate submitted that even though the respondent - informant being the party to the decision in various consortium meetings, more particularly, in the meetings held on 19.02.2014 and 07.06.2014 to open the ESCROW account and to route the funds through the same, he started crying foul for the first time on 23.09.2016, which shows the malafide intention on the part of the respondent - informant in making such allegations.

60. Learned senior advocate submitted that much as stated against the petitioner and other accused alleging breaking open the door and the lock during April-2015, the statement of various witnesses do not disclose involvement of accused No.3 in any of such acts. Accused No.3 is responsible employee of Specialized Mid Corporate Brach (SMCB), Bengaluru. He has drawn the attention of the Court to



Annexure-AR, which is dated 20.12.2014 to contend that the migration of the account of M/s Metal Closures Private Limited to Stressed Assets Management Branch (SAMB) was as on 16.12.2014. Therefore, since from December 2014, the loan account was being handled by SAMB and not by SMCB to allege any foul play against the petitioner who was attached to SMCB. Admittedly, the petitioner - accused No.3 has nothing to do with SAMB and under such circumstances, the allegations against the petitioner is to be rejected in *toto*.

61. Learned senior advocate also drawn the attention of the Court to Annexure -AS, the certificate issued by SBI dated 20.06.2016 to contend that this certificate issued by the Bank at an undisputed point of time discloses that the petitioner was posted as Deputy General Manager at SMCB, Bengaluru even during June 2016. The petitioner has never worked in SAMB at any point of time and hence, the allegations made against him are baseless.

62. Learned senior advocate contended that Section 32 of SARFAESI Act gives protection to the officials of the Bank who act in good faith under the provisions of the Act. The



respondent - informant had never alleged that the petitioner had ever transgressed his authority as an employee of the Bank. Learned counsel has also drawn the attention of the Court to the statement of objections filed by the respondent - informant to contend that through out the allegation is that, the SBI through this petitioner committed the offences in question. The allegations made against the Bank and against the petitioner are one and the same. The petitioner acted in good faith and discharged his duties in accordance with law by following the due process of law. He is the representative of the Bank. Therefore, the petitioner has not acted individually. Under such circumstances, no malafide can be attributed to his action.

63. Learned senior advocate for the petitioner has placed reliance on the decision of the Hon'ble Apex Court in **K Virupaksha** (*supra*) to contend that when *prima facie* the action taken by the Banks under SARFAESI Act is neither unquestionable nor treated as sacrosanct, but it is always open to be assailed it in the forum provided and the respondent - informant has availed such forums by approaching NCLT and



DRT and was unsuccessful before both the forums. He cannot be permitted to file the complaint making baseless allegations of committing criminal offences which is apparently to intimidate the bank officials. Since there is delay in raising such plea, it was an after thought, which is an abuse of process of law.

64. Learned senior advocate has highlighted the observations made by the Hon'ble Apex Court in paragraph 16 of the judgment to highlight that, if such allegations are allowed to be agitated by filing criminal complaint and an investigation is allowed to continue, it amounts to permitting the jurisdictional police to redo the process which would be in the nature of reviewing the order passed by the competent authority under the SARFAESI Act, which is neither desirable nor permissible.

65. Learned senior advocate contended that the Hon'ble Apex Court made it very clear that if such things are permitted, the banking system will be allowed to be held to ransom by such intimidation. Under such circumstances, the Hon'ble Apex Court exercise its extraordinary power to quash



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the criminal proceedings. Thus, he contends that it is yet another classic example for misuse of process of law only to intimidate the bank officials and to get the relief which the respondent - informant could not get either before NCLAT or before DRT on the basis of similar allegations.

66. Learned senior advocate has also placed reliance on the decision of the Hon'ble Apex Court in **HDFC Bank Ltd Vs State of Bihar and Others**⁴ in support of his contention that, SBI is a juristic person and no *mens rea* could be attributed against the juristic person, when *prima facie* nothing is placed on record to show that either bank or its staff have committed dishonestly and that the *mens rea* required to invoke penal provisions were existing while discharging their duty. They cannot be made liable to face the investigation and trial in criminal proceedings.

67. Learned senior advocate also placed reliance on the decision of the Hon'ble Apex Court in **Mukesh & Others Vs State of Uttar Pradesh**⁵ in support of his contention that,

⁴ (2024) SCC Online SC 2995

⁵ Slp No.12354/2020 DD:29.11.2024



while seeking quashing of the criminal proceedings, the petitioner can rely on the documents which are not part of the charge sheet, unlike the accused is barred from relying on such documents while seeking discharge. The documents that are relied on by the petitioner in the present case are all admitted documents and under such circumstances, filing of the charge sheet without referring to those documents will have to be taken into consideration while gathering malafides on the part of the respondent - informant.

68. Learned senior advocate contended that even though reckless allegations are made regarding the action taken by the petitioner under SARFAESI Act during 2014, the FIR came to be registered during 2016, that too, after the complaint was filed by SBI with CBI and criminal proceedings were initiated against him. Therefore, the malafides are *prima facie* evident for the respondent - informant to file the criminal complaint by invoking penal provisions.

69. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***Manoj Kumar Sharma***



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and Others Vs State of Chhattisgarh & Another⁶ in support of his contention that delay in lodging FIR often results in embellishment which is a creature of an after thought. Such delay in lodging the first information lacks spontaneity, but there is always a danger of introduction of a coloured version or an exaggerated version. Under such circumstances, the Hon'ble Apex Court categorically held that registration of FIR with extraordinary delay is an abuse of process of law and therefore, the same is to be quashed.

70. Learned senior advocate also placed reliance on the decision of the Hon'ble Apex Court in **Dinesh Kumar Mathur Vs State of MP and Another**⁷ in support of his contention that, mere alleging and making bald allegations of criminal conspiracy and without placing any materials to probabalize the same even after investigation and by filing the charge sheet cannot bind each and every accused, including the petitioner who is the public servant working as a responsible officer with SBI and discharged his duties in accordance with law by following the due process of law. Relying on these

⁶ (2016) 9 SCC 1

⁷ SLP(Crl.)No.5248/2017 DD 02.01.2025



decisions, learned senior advocate contended that unless the informant makes specific allegations against the petitioner for having conspired with the other accused or for having committed cheating etc., he is not bound to face the trial on such bald allegations.

71. Learned senior advocate also referred to the decision of **Priyanka Srivastava** (*supra*) to contend that registration of the FIR is out of vengeance and therefore, the criminal proceedings is liable to be quashed.

72. Learned senior advocate also placed reliance on the decision of the Hon'ble Apex Court in **Salib Alias Shalu Alias Salim Vs State of UP and Others**⁸ in support of his contention that when frivolous or vexatious proceedings are initiated, the Court has a duty to consider the materials that are placed before the Court very carefully even by reading it between lines.

73. Learned senior advocate also placed reliance on the decision of the Hon'ble Apex Court in **Mary Angel and**

⁸ 2023 SCC Online SC 947



Others v/s State of Tamil Nadu⁹ in support of his contention that it is a fit case for imposition of cost against the respondent - informant for abuse of process of law.

74. Learned senior advocate contended that, all of a sudden the account of a borrower will not be treated as NPA, the standard accounts classified as NPA could be restructured by the Banks to upgrade them when all the outstanding loan facilities in the account perform satisfactorily during the specified period. Only if such a pre-restructuring facilities were classified as substandard and doubtful, then its assets classification will be recalled from the date when it became NPA on the first occasion. The general principles and procedural norms pertaining to advances issued by Reserve Bank of India pursuant to the Master Circular makes this position very clear by holding that advances restructured on second or more occasion may be allowed to be upgraded to standard category after the specified period in terms of the concurrent restructuring package subject to satisfactory performance. Therefore, it is contended by learned senior advocate that the contention taken by the respondent - informant that the date of

⁹ (1999) 5 SCC 209



the account becoming NPA was preponed from 2014 to 2010 cannot be accepted even for a moment. Moreover, such contentions were never entertained by DRT and under such circumstances, the criminal proceedings against the petitioners will have to be quashed.

75. Learned senior advocate further contended that admittedly, the respondent - informant availed financial help from consortium of Banks with State Bank of India, being the lead bank. It is also not in dispute that the respondent - informant committed default in repayment of the amount. The account was treated as NPA. The consortium of Banks with consent of the respondent - informant appointed the concurrent Auditor to monitor the cash flow and to audit the accounts of the defaulting Company and security agency to secure the Company and its assets. A stock Auditor was appointed to verify the stocks and receivables. The stock audit report was submitted by the Auditor on 27.08.2014 highlighting several irregularities like huge depletion in stock over statement of debtors, diversion of funds, operating current account outside the consortium on the part of the Company. After receipt of



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such report, clarification was sought by the respondent - informant. In spite of that, the Company never came up with any clarification nor submitted any plan for Resolution. Therefore, the account was transferred to Stressed Asset Management Branch(SAMB) for initiating recovery action in December 2014.

76. Learned senior advocate submitted that during February 2015, SAMB took symbolic possession of the assets for issuing the notice under Section 13(4) of SARFAESI Act. A decision was taken in the joint meeting to have forensic audit to be done by RISK RICHTER. In spite of that, the respondent - informant had not co-operated with forensic Auditors. Accordingly, a report was submitted by the forensic Auditors to the consortium on 17.03.2016. As per the opinion of the Auditor, there were serious irregularities and fraudulent actions that were taken place in the Company of the respondent - informant. In the meantime, the consortium initiated action under SARFAESI Act and also launched proceedings before Debt Recovery Tribunal-I, Bengaluru.



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77. Learned senior advocate submitted that based on the forensic audit report, the consortium decided to treat the account of the Metal Closures Company as a fraudulent one and accordingly, a complaint was filed with CBI as per the guidelines of Reserve Bank of India. Such complaint was filed by SAMB with CBI. The RBI vide its letter dated 07.09.2016 advised SBI to lodge complaint with CBI. It is submitted that at the relevant point of time, the petitioner was working as Deputy General Manager and in his official capacity, he lodged the complaint with CBI. CBI sought clarifications from the consortium represented by the petitioner. Accordingly, he filed a revised written information dated 27.09.2016 and further information was provided on 06.10.2016. However, CBI again requested SBI to file more elaborate complaint and accordingly, a revised complaint was filed on 18.04.2017. Further information was also furnished to CBI on 16.10.2017. Accordingly, an FIR came to be registered in Crime No. 11 of 2017 against the respondent - informant and 4 others for the offence under Sections 120B, 406, 420, 468 and 471 of IPC and under Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The respondent -



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informant, in the meantime, filed the first information with respondent No.1 alleging commission of the offence against his own employees. The FIR in Crime No.580 of 2016 of Subramanyapura Police Station was registered and the investigation was undertaken by CID. The charge sheet came to be filed against accused Nos. 1 to 7 including the petitioner who is arrayed as accused No.3.

78. Learned senior advocate submitted that initiation of criminal proceedings at the instance of the respondent - informant against officials of consortium Bank is to spite vengeance against them. It is only with an intention to stall SARFAESI proceedings pending before DRT and the complaint registered with CBI.

79. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***State of Haryana and Others Vs Bhajan Lal and Others***¹⁰ to contend that as per the directions issued by the Hon'ble Apex Court, it is a fit case for quashing the criminal proceedings. Learned senior advocate submitted that the allegations made in the complaint are so

¹⁰ 1992 Supp(1) SCC 335



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absurd and not fit to go for trial. The role of the petitioner is limited to the official action of initiating proceedings under SARFAESI Act for which, the petitioner is made as a scapegoat. Since false and frivolous allegations are made against this petitioner without there being any basis, the criminal proceedings is liable to be quashed.

80. Placing reliance on these decisions, learned senior advocate for the petitioner - accused No.3 contended that registration of FIR and initiation of criminal proceedings against the petitioner belatedly i.e., after long lapse of 4 years, that too, after bank registering FIR and initiating criminal proceeding through CBI against the respondent - informant is apparently an abuse of process of law to wreck vengeance against the officials to pressurize them to dance to his tunes. The act on the part of the respondent - informant is nothing but arm twisting tactics adopted by him without any basis. Therefore, he prays for allowing the petition to prevent abuse of process of law.

81. Learned High Court Government Pleader for respondent No.1 - State opposing the petitions submitted that



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specific allegations were made by the informant while filing the first information. The Investigating Officer has thoroughly investigated the matter, collected sufficient materials to constitute the offences in question. When there are sufficient *prima facie* materials to constitute the offences, the petitioners are not entitled for quashing the criminal proceedings initiated against them. Therefore, he prays for dismissal of the petitions.

82. Sri Dhyan Chinnappa, learned senior advocate for the informant - Prashant Hegde in Criminal Petition Nos.5157, 5159 and 6885 of 2018 opposing the petitions submitted that it is a peculiar case which forced the informant to initiate criminal action against the accused, who initiated SARFAESI proceedings only for the purpose of covering their illegal acts in collusion with Chief Finance Officer and other officials of the Company. He further contended that the informant - Prashant Hegde being the founder of the Company was the leader in the market. He availed financial assistance from four different nationalised Banks, which formed consortium of Banks. He further submitted that the Company was doing well till the mid



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of 2014. The letter dated 10.05.2014 issued by State Bank of India offering fresh enhancement of credit facilities upto 10 crores towards working capital. In fact, the Bank was intending to enhance the working capital limits by 10 crores. But the said offer was not accepted by the Company as per letter dated 16.05.2014. But strangely, in the first possession notice issued by the Bank, the Company became NPA with effect from 28.05.2014.

83. Learned senior advocate has also drawn the attention of the Court that, at the instance of Bank, a viability study was undertaken and as per the viability report, the Company was performing extremely well. Its performance was estimated at 17%, while the general industry standard was only 12%. It is only on the basis of this viability study, declaring that the respondent - informant is doing extremely good and is the leader in the market, SBI proposed to enhance the working capital limits by 10 crores on 10.05.2014. But within 18 days from there, the Company was declared as NPA, which is unbelievable. No reasons whatsoever is assigned for the same.



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84. Learned senior advocate contended that even though the first notice was issued declaring that the Company has become NPA on 28.05.2014, subsequently, the legal opinion was sought on 15.06.2015. On the basis of legal opinion, the notice issued for initiation of action was withdrawn and thereby the stand of the Bank that the Company has become NPA was withdrawn. The paper publication to that effect is published categorically stating that the possession notice issued earlier was withdrawn. It is thereafter, the second notice for possession under Section 13(2) of SARFAESI Act was issued on 15.09.2015 as per Annexure-AB. In this notice, SBI strangely declared that the Company became NPA from 31.01.2010 that was about five years earlier to the notice. Admittedly, first such notice was issued on 12.08.2014, according to which, Company became NPA on 28.05.2014. After withdrawal of the said notice as per the advice given to the Bank vide Annexure-B, the second notice under Section 13(2) was issued by anti-dating the date of NPA. There is absolutely no reason assigned for the same. It cannot even be imagined that within 15 days, a Company which was the leader in the market and its performance was extremely good,



became NPA. There must be some reason for the same, which is not forthcoming.

85. Learned senior advocate contended that, if in-fact, the Company had become NPA with effect from 31.01.2010, that should have been reflected in the viability report that was obtained by the Bank voluntarily from the independent agency. But contrary to that, the viability report states that the Company was performing extremely good. If the Company was NPA with effect from 31.01.2010, the Bank would have taken necessary action initiating the proceedings under SARFAESI Act within no time. Why the Bank has kept quite for five long years is also a question remains unanswered. If the Company was a NPA with effect from 31.01.2010, why the Bank has offered enhancement of working capital limits by 10 crores on 10.05.2014 is also a mystery. As per the account statement, the Company had repaid not less than 107 crores during 2013-14. Under such circumstances, what was the yardstick used by the Bank to declare the Company as NPA is not forthcoming.

86. Learned senior advocate submitted that on 01.08.2014, SBI took forcible physical possession of the



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Company by appointing accused No.8 - V V Krishnamoorthy, Chartered Accountant as the concurrent Auditor. It also appointed M/s Kashi Security by replacing the Company's security i.e., Eagle Eye Security, which had served the Company for over a decade. This shows the fact that the Bank has actually taken physical control of the Company in true terms.

87. Learned senior advocate has drawn the attention of the Court that appointment of the concurrent Auditor and appointing the security agency replacing the earlier one, was the unilateral decision of the Bank. In none of the meetings, the respondent - informant was invited or he was taken part. Some documents were concocted to show that the respondent - informant took part in the meeting. But the letters written by the Bank at an undisputed point of time discloses that it was the unilateral decision of the consortium Banks and the respondent - informant had no voice in it. The word 'concurrent Auditor' does not mean that his appointment was with the concurrence of the informant. But one more Auditor was appointed by the Bank, when there was already an Auditor for



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the Company. Therefore, the Company has not played any role either in appointing concurrent Auditor or in appointing a new security agency replacing the earlier one.

88. Learned senior advocate has drawn the attention to various correspondences, which are part of the charge sheet to disclose that for each and every petty payments, such as, BESCOM bills, LIC premium payment, the Company was required to write to the concurrent Auditor and get his approval. Only after getting the approval from the concurrent Auditor, the Bank was releasing the amount for payment from the ESCROW account. This shows the fact that the Bank had virtually taken over the physical possession of not only the property, but also the actual running of the business. Even the routine payments were not permitted to be made by the Company, but it was through concurrent Auditor and the ESCROW account by the Bank.

89. Learned senior advocate drawn my attention to the letter dated 05.08.2014 to contend that accused No.8 was appointed as concurrent Auditor with effect from 01.08.2014 to verify the cash flows and a specific restriction was levied on the



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Company stating that no payments are to be made to non-banking finance Companies, unsecured creditors, unsecured loans and on account of capital goods, the concurrent Auditor was authorized to monitor the payments to the managerial officials to ensure that they are in tune with Past Salary and Remuneration paid.

90. Learned senior advocate has drawn the attention of the Court to document No.18 in the compilation to support his contention that even for payment of BESCO dues, long procedure of writing to the concurrent Auditor seeking permission and getting his approval in writing was insisted. Even after approval from the concurrent Auditor, the same was to be communicated to the Bank, which in turn, was to make payment through ESCROW account. So virtually, the Company was at the mercy of the concurrent Auditor and the Bank. If at all, the Bank had not taken actual possession of the Company and it was only with the symbolic possession, there was absolutely no reason for taking all these harsh steps against the Company, that too, when the Company was doing well in its business. As per the viability report itself, the Bank had



came forward to enhance the working capital capacity by 10 crores. Within six months from the date of the viability report, which highlighted that the Company's growth is about 17% much more than the usual growth, the Company was declared as closed down. The Chief Financial Officer i.e., accused No.1 in collusion with the other employees and the bank officials along with the concurrent Auditor managed to strangle the neck of the Company systematically under the guise of taking action under SARFAESI Act. The intention on the part of all the accused was very clear. It was only to close down the business by making wrongful gain for themselves.

91. Learned senior advocate has also drawn the attention of the Court to Annexure - AR produced by the petitioners i.e., the complaint filed by SBI with CBI against the Company alleging fraud, has specifically stated that the account of the Company initially became NPA, but it was restructured on 17.02.2010. Later, even though the account was irregular and it was classified as substandard on 25.11.2013 by the Bank, the account was upgraded as a standard asset on 28.01.2014 by recovery of over dues fully. The complaint also



highlights that similar situation prevailed with the other Banks also. Therefore, even according to SBI, all the dues were paid to all the Banks and the account was upgraded as a standard asset on 28.01.2014. Under such circumstances, the contention of the Bank that it has become NPA either on 28.05.2014 or on 31.01.2010 cannot be believed even for a moment.

92. Learned senior advocate referring to the charge sheet filed by the Investigating Officer contends that specific *overt act* of each of the accused is explained in-detail. The criminal acts narrated by the Investigating Officer on the basis of materials collected by him during investigation discloses that, it was with the malafide intention to close down the business the accused have committed fraud and cheating. Specific allegations are made against each of the accused regarding commission of the offences. CW6 - an employee of the Company has given statement before the Investigating Officer about breaking open the lock of EDP room and taking away the servers in the car by Vinod Kumar, who is accused No.5. CW7 is also another witness who gave statement along similar lines. CW11 is the Assistant Manager in the Company,



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who also states that the servers and the software in EDP room was removed by the bank officials and to enable these high-handed criminal acts of committing theft. The security agency that was working in the Company for decades together was removed and they were replaced by their own security agency. Payment for the security agency was being made by the Bank. When the informant complained of theft of the materials, servers and softwares, the Bank washed its hands by saying that it is the headache of the Company and Bank is no way concerned.

93. Learned senior advocate further submitted that under SARFAESI Act, there is no dichotomy between symbolic and physical possession. Section 13(4)(a) of the SARFAESI Act refers the word 'possession simplicitor'. Generally, the Banks will refer to the word 'symbolic possession', if they take only the symbolic possession. In the present case, the Banks have never referred to the word 'symbolic possession' in any of its correspondence.

94. Learned senior advocate referred to the photos produced along with the compilation to contend that the bank



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officials have physically came to the spot, displayed a board declaring that the property has been taken possession under the SARFAESI Act on 20.12.2015. The very fact that the concurrent Auditor was appointed to deal with each and every dealings of the Company, requiring his consent in writing for payment of petty amounts, change of the security agency of their choice, disclose that the Bank was in physical possession of the Company, which led to its close down within four months. The concurrent Auditor and the security agency were appointed by the Bank on 01.08.2014, but it is stated that the Company had come to be a grinding halt and virtually closed down its activity during December 2014. Accordingly, the possession of the Company was taken over by the Bank on 20.02.2015. Nothing was left in the hands of the Company to manage or to run the business and under such circumstances, the contention of the petitioners that they have taken only the physical possession of the property, cannot be accepted. All these illegal acts which forced the Company to come to a grinding halt was committed only from 01.08.2014, and within four months they managed to close down the Company by



committing various criminal acts including theft, fraud, cheating etc.

95. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***M/s.Transcore Vs. Union of India and another***¹¹ in support of his contention that, drawing of dichotomy between symbolic and actual possession does not find a place in the scheme of NPA read with 2002 Rules.

96. Learned senior advocate referred to Section 32 of SARFAESI Act to contend that such a protection under this provision of law will be available to the officials of the Bank, only if they discharge their duty in good faith. The acts complained of against the accused glaringly lacks any good faith or bonafides. On the other hand, the intention on the part of the accused was very obvious in causing loss by committing theft and preventing the respondent - informant from saving his Company.

97. Learned senior advocate contended that even though concurrent Auditor was appointed on 01.08.2014,

¹¹ 2008 1 SCC 125



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similarly, the security agency was replaced on the same day, but it was informed to the Company only on 05.08.2014. Within four months, according to the Bank, the Company closed down its activities. During April 2015, the servers and the softwares were stolen. It was obviously after taking possession of the property on 20.02.2015, when the first possession notice was withdrawn by the Bank during June 2015 by publishing a paper publication and the second possession notice was issued only during December 2015, the Bank could not have removed the servers and the software from the Company premises. Even according to the Bank, when it withdrew taking possession of the Company on 20.02.2015, the possession was restored to the respondent - informant. Under such circumstances, how the Bank entered the Company premises to remove the software in the servers remains unexplained. Therefore, the act committed by the accused i.e., the officials of the Company as well as the officials of the Bank is *prima facie* illegal and with ulterior motive. No bonafides can be attached to it.

98. Learned senior advocate contended that while exercising the inherent powers of this Court under Section 482



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of Cr.P.C., this Court cannot venture to appreciate the evidence that are collected by the Investigating Officer and evaluate the materials to find out as to whether the trial will end in conviction or acquittal of the accused. Such evaluation of the material documents could be done only for the satisfaction of the Court to find out as to whether there are *prima facie* materials or not. In support of his contention, the learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***Umesh Kumar v. State of AP.***¹² .

99. Learned senior advocate also placed reliance on the decision of the Hon'ble Apex Court in ***Saranya Vs. Bharati and another***¹³ to support his contention, that this is not the stage to hold a mini trial to appreciate the evidence on record and to consider the allegations on merits to form an opinion as to whether the accused is likely to be convicted or not. This Court acting under Section 482 of Cr.P.C. cannot exercise the jurisdiction as an Appellate Court.

100. Learned senior advocate contended that the materials on record disclose that there are strong *prima facie*

¹² 2013 part 10 SCC 591

¹³ 2021 8 SCC 583



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materials against the accused to proceed against the petitioners. He further submitted that the Bank has declared that the informant is a willful defaulter and the same was challenged by the respondent - informant before this Court by filing Writ Petition No.28058 of 2018. The said petition came to be allowed vide order dated 16.03.2023. Therefore, the contention of the Bank that the Company is a willful defaulter was turned down by this Court. The cumulative effect of all these facts and circumstances discloses that there is something more than what meets the eye. The Investigating Officer cited as many as 19 witnesses and collected voluminous documents. The witnesses are required to appear before the Court and give their statement. At this stage, this Court cannot refer to the defence taken by the accused by placing reliance on the documents that are produced by the petitioners to form an opinion that they have a good defence, and therefore the criminal proceedings is to be quashed.

101. Learned senior advocate also contended that none of the additional documents produced by the petitioners were brought to the notice of the Investigating Officer during



investigation nor they were produced along with the petitions to contend that those documents were produced before the Investigating Officer, but he has not taken into consideration the same. Additional documents are being produced as and when the arguments advanced and reply arguments on behalf of the respondent - informant was addressed.

102. Learned senior advocate contended that even though heavy reliance is placed on the minutes of meeting to contend that the informant was present in the meeting where a decision to appoint the concurrent Auditor was taken, he seriously disputes such contention. On the other hand, it is contended that the signatures of the petitioners found on such proceedings of the meeting were forged to give an impression that the informant was present in the meeting and he concurred or consented for appointment for such an Auditor. The word 'concurrent Auditor' was in fact used by the Bank as he was appointed concurrently or in addition to the Auditor who was regularly auditing the accounts. When the petitioners are placing reliance on the forged documents which were never



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produced before the Investigating Officer for his consideration, the same cannot be considered by this Court.

103. Learned senior advocate referring to the Master Circular produced by the learned counsel for accused No.3, contended that this Circular speaks about the norms on income recognition, asset classification, definition of non performing assets, standard accounts classification, definition of the word 'specified period' etc., Referring to this Circular, learned senior advocate contended that as per the definition of the word 'non performing assets', as per Clause - 2.1.2, if the interest and/or installments of principal remain overdue for a period of more than 90 days in respect of the term loan, it could be classified as NPA. According to the Bank, the term loan obtained by the respondent - informant, Company was classified as NPA during January 2010. However, there was a re-structuring/re-scheduling of the loan account on 17.02.2010. Once such re-structuring/re-scheduling of the loan account was done, account would be considered as standard assets as per clause - 4.1.1 as the NPA remained for a period less than or equal to 12 months.



104. Learned senior advocate drawn the attention of the Court to Clause 12.2 of the Master Circular to highlight the norms or classification of the assets while restructuring the advances and contended that as per clause 12.2.3, the standard accounts classified as NPA and NPA accounts retained in the same category in re-structuring by the Bank is to be upgraded only when all the outstanding loan facilities in the account perform satisfactorily during the specified period i.e., both principal and interest on all facilities in the account are serviced as per terms of payment during that period. Referring to the very same clause 12.2.3, the attention of the Court was drawn to Annexure- 5, where the word 'specified period' is defined to mean a period of one year from the commencement of the first payment of interest or principal whichever is later on the credit facility. Therefore, it is contended that when admittedly the respondent - informant had not committed default in following the repayment schedule from 2010 till 2014, such loan account could not have been treated as NPA by dating it back to 2010. The Master Circular relied on by the respondent - informant do not permit such an exercise.



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105. Learned senior advocate also referred to Annexure-AL produced by accused No.3 which is the letter sent by SBI, SMCB, Bengaluru dated 08.07.2014 signed by accused No.3 as Deputy General Manager who accorded approval for change of NPA from 28.05.2014 to 31.01.2010. Learned senior advocate highlighted the reasons mentioned by accused No.3 for change to contend that even according to accused No.3, the performance of the account during the specified period was satisfactory and the re-structured account has become NPA only as on 28.05.2014. He would further contend that without admitting that the respondent - informant Company became NPA as on 28.05.2014, even if considered for the sake of arguments, accused No.3 could not have treated the account as NPA by changing the date from 28.05.2014 to 31.01.2010 as the same is not permissible even as per the Master Circular of the Bank. He further contended that when the performance of the account of the Company during the specified period was satisfactory after re-structuring the account from 31.01.2010 till 28.05.2014, there was absolutely no reason to treat the account as NPA. When the Bank itself offered to lend additional loan of Rs.10 crores as per its letter dated 10.05.2014 being



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satisfied with the financial viability of the respondent - informant Company, how the Company would slip into NPA within 15 days is not explained. All these facts and circumstances goes to show the malafide on the part of the bank officials who are arrayed as accused in collusion with co-accused to throttle the healthy Company into a NPA.

106. Learned senior advocate contended that even according to the Bank, the revised repayment schedule is to commence from April 2010 and it will end on March 2015. When admittedly the Company has not committed fault in following the repayment schedule from April 2010 till May 2014, there is absolutely no justification for treating the account as NPA. Even according to the Bank, the Company which was financially viable till 10.05.2014 suddenly slipped into NPA as on 28.05.2014 and as per the letter dated 15.12.2014, the Bank has written to the concurrent Auditor that his services are no more required as there was no activities in the Company. Therefore, the Company was brought to a grinding halt within a period of 6 months. The reason for such stoppage of activity in the Company is to be explained by



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the accused. The respondent - informant has made it clear that introducing the concurrent Auditor on 01.08.2014, appointing the security guards on 05.08.2014, resulted in permanent closure of the Company which was hale and healthy just about 2 months before. Therefore, it is clear that a systematic efforts was made by the accused collectively to see that the Company is closed permanently by branding it as NPA within 15 days after declaring the Company as financially viable and offering the additional loan of Rs.10 crores. All efforts are made by the accused collectively to cover up their illegal actions. As a part of it, the Bank had withdrawn the notices issued to the Company at the first instance under Sections 13(2) and 13(4) of SARFAESI Act after the informant approached DRT and challenged the said notices. It is only thereafter, the accused have manipulated the records to treat the account as NPA since from January 2010. Once the activities of the Company was brought to a grinding halt, the Bank became very active in issuing the notices by invoking the provisions under SARFAESI Act and to contend that such action were the bonafide acts of the accused. The facts and



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circumstances of the case disclose that there were no bonafides in any of the action of the accused.

107. Learned senior advocate submitted that even though it is contended that the scope of concurrent Auditor was only to audit the account, the materials on record disclose that even for payment of petty electricity bills, the permission from concurrent Auditor as well as by the Bank was required to be obtained. Under such circumstances, there was threat of disconnection of electricity and finally the accused have achieved their object and the electricity supply was disconnected.

108. Learned senior advocate referring to the letter dated 27.02.2014 produced as document No.25 contended that according to accused No.3 there was no activity in the Company w.e.f. 16.12.2014 and therefore, he informed the concurrent Auditor that his services are no more required. He further contended that when the Bank takes up a stand that it was never in physical possession of Company premises, there was no occasion for the bank officials to open the gates and doors of the Company entering the premises, removing the



computers and the servers to take it outside for the purpose of retrieving the data. If at all, they were not in physical possession of the premises, the Bank or the concurrent Auditor would have asked the respondent - informant for permission to access the computers and servers and to retrieve the data. When admittedly the Bank has not asked any permission and directly entering the premises, removing the computers and servers, evidences the fact that the Bank was in actual possession of the premises.

109. Learned senior advocate also contended that the Bank has invoked Section 14 of SARFAESI Act and approached the learned Magistrate for passing necessary orders. The Bank was successful in getting the order on 12.12.2016, but thereafter never implemented the order, for the simple reason that the Company was already in physical possession of the Bank and by calculated efforts of the accused, it was shut down during December 2014. Under such circumstances, there was absolutely no reason for the Bank to get the order under Section 14 of SARFAESI Act.



110. Learned senior advocate contended that for all the highhanded acts committed by the accused, it is only the respondent - informant and the employees of the Company are the witnesses. There cannot be any other person who will come to know about the action initiated by the Bank which resulted in closure of the Company. Therefore, the Investigating Officer has cited the respondent - informant and the employees of the Company as witnesses. The same cannot be found fault with.

111. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***Kishan Singh (dead) Through LRS vs. Gurpal Singh and Others***¹⁴ in support of his contention that the findings of the fact recorded by the Civil Court do not have any bearing so far as criminal case is concerned and *vice versa*, since the standard of proof is different in civil and criminal case. Therefore, it is contended that the order passed by DRT cannot have any bearing on the merits of these petitions. Even otherwise, the order of DRT is stayed by this Court and the same is pending consideration.

¹⁴ 2010 (8) SCC 775



Under such circumstances, the petitioners cannot take advantage of the findings recorded by the DRT for any reasons.

112. Learned senior advocate further contended that the arguments addressed by the learned senior advocate or advocate for the petitioners are to be addressed before the Trial Court and not before this Court. When *prima facie* sufficient materials are placed before the Court, which are sufficient to proceed with the trial, the criminal proceedings cannot be quashed. Simply because the steps were taken under the SARFAESI Act, the bar under Section 32 of the Act cannot be used as a shield unless the petitioners show good faith in their actions. Having good faith in each of their action is *sine qua non* to seek protection under Section 32 of the SARFAESI Act, which is conspicuously lacking in the present case.

113. Learned senior advocate again referring to the order of DRT referred to above made by the informant regarding commission of the offences, contended that, it is categorically held by DRT that the proceedings under SARFAESI Act is entirely different from the proceedings under criminal law, which can run side by side. It is also held that the two



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remedies differ in their content and consequences. However, an opinion is formed that mere launching of criminal prosecution or filing of the charge sheet making allegations against its own employees and the bank officials cannot prevent recovery of the public money. He would further contend that this order of DRT is challenged before this Court by the informant by filing the writ petition and the same is pending consideration.

114. Learned senior advocate submitted that even though the Bank had approached the learned CJM, Bengaluru on 29.12.2015 under Section 14 of the SARFAESI Act, the informant had filed the objections at the earliest possible time contending that taking second possession is not permissible under law. However the learned CJM has passed an order permitting the Bank to take physical possession of the property. Thereafter, admittedly the Bank has not initiated any action for taking physical possession of the property as it was already in physical possession of the property. Therefore, what was taken after publishing the possession notice is the actual possession and not the symbolic possession of the property.



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115. Learned senior advocate contended that as per Annexure-AB, a notice dated 15.09.2015 was issued by the State Bank of India under Section 13(2) of the SARFAESI Act, according to which, State Bank of India treated the account as NPA about 5 years back i.e., on 31.01.2010, the Punjab National Bank had treated the account as NPA on 31.01.2010, the Corporation Bank on 30.06.2014 and UCO Bank on 31.12.2014. Therefore, the Banks themselves are not certain as to when the account of the Company became NPA, whether it was on 31.01.2010 as mentioned in the second notice, or on 28.05.2014 as mentioned in the earlier possession notice or as treated by Corporation - Bank or by UCO Bank.

116. Learned senior advocate would further contend that as per the materials that are placed before the Court, the Bank had once again issued the possession notice on 11.12.2015 when according to the informant, the physical possession was already taken during February 2015. In spite of request for joint meeting, the Bank was not ready to arrange for the same. The stock audit discloses that there was drastic reduce in the stock without any reasonable cause. The first



audit report dated 31.05.2014 disclose that there was stock of Rs.71.97 crores. The stock audit taken during May 2016 discloses that stock were only worth Rs.1.14 crores. The only reasonable explanation for drastic reduction in stock given by the informant is that, the stock was stolen from all the 3 factories by the officials of the Company in active collusion with the bank officials.

117. Learned senior advocate contended that inspite of repeated requests, the Bank had never co-operated in taking the stock of the informant -Company. Even the concurrent Auditor was not bothered to take stock of the ICD, only with an intention to show the value of the stock much below the value which was shown by the informant which was admitted and accepted by the Bank.

118. Learned senior advocate for the respondent - informant referring to the specific averments made against accused Nos.3, 4, 6 and 8, who are the petitioners in these petitions contended that the Investigating Officer has taken pains in collecting voluminous records to make specific allegations against each of the petitioners. When the



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allegations against the petitioners are supported by the materials that are placed on record, it is not proper to quash the criminal proceedings at the initial stage. The only course open is to go for trial before the Trial Court. Thus, in conclusion the learned senior advocate contended that it is not a fit case for quashing the criminal proceedings. But there are sufficient materials to proceed against the accused for trial.

119. Sri. Ananth Mandagi, learned senior advocate for the respondent - informant in Writ Petition Nos.40308 and 35925 of 2018 and Writ Petition Nos.7492, 7493 and 7494 of 2019 opposing the petitions submitted that the informant, lodged the first information only against accused Nos.1 to 11, who are the employees of his Company. The FIR was registered against the employees arraying them as accused Nos. 1 to 11. The informant in his complaint specifically stated the *modus operandi* adopted by accused Nos.1 to 11 in committing the offences. The informant even though a qualified Chartered Accountant is an aged man, who was managing the affairs throughout India. It is specifically stated that a Unit was started in Himachal Pradesh between 2005-2013 by expanding its



activities. The informant was busy in the affairs of the Company at Himachal Pradesh including imports and vendor payments. Taking undue advantage of the absence of the informant, accused Nos. 1 and 2 in collusion with other accused managed to forge the signatures of the informant, concocted several documents including the Resolution to authorise accused No.1 to be the authorized signatory to the cheques for drawing huge sums of money. The informant started realizing about the mismanagement in the Company only during 2013-14, when the Company started defaulting in payment of the installments and when the Company started experiencing the working capital constraints. Thereafter, the informant considered the financial health of the Company and he was shocked to see that, it was in very bad condition. The account was declared as NPA. The informant was forced to mortgage his residential houses to arrange money for the revival of the Company. In spite of that, the workers were laid off and the Company was forced to close down.

120. Learned senior advocate submitted that the informant specifically stated that due to shock, he went into



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depression and was hospitalized. After discharge from hospital, the informant started verifying as to what went wrong and where. It is at that time he started collecting various documents relating to the financial transactions of the Company and came to know the misdeeds of accused Nos. 1 to 11 in collusion with one another. The informant has stated about the offence committed by his employees in detail in the first information. If the informant had any intention to involve the petitioners and other bank officials, simply on the ground that they have invoked the provisions of SARFAESI Act, he would have included their names in the first information itself. But the informant had not done so, but specifically stated about the involvement of his employees in commission of the offences and requested the police to investigate to unearth the truth.

121. Learned senior advocate further submitted that accused No.10 was the Deputy General Manager(DGM) and accused No.11 was the Chief Manager in Punjab National Bank, the banker with whom the informant and its Company was having dealings. Accused No.26 is the son of accused No.10. During investigation, it was found that accused No.10 using his



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authority as DGM transferred huge sums of money to the account of his son accused No.26 as he started a Shell Company or a fictitious Company. There is absolutely no reason for accused No.10 to transfer such amount to the account of the fictitious Company of his son who is arrayed as accused No.26. The Investigating Officer has collected sufficient materials in this regard. Moreover, accused Nos. 10 and 11 have also played major role in permitting accused Nos. 1 and 2 in forging the signatures of the informant and concocting the documents. When the officials of the Bank were knowing very well that it was the informant alone who was authorized to sign the cheques, his signatures were forged by accused Nos.1 to 11 to submit the cheques and RTGS forms to the Bank, which were deliberately accepted by the bank officials, without any objections. Even the Photostat signatures of the informant were accepted by the bank officials, which clearly discloses the conspiracy between the employees of the informant - Company and bank officials.

122. Learned senior advocate submitted that the Shell Company started by accused No.26 with the help of his father



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accused No.10 managed to get huge sums of money to its account under the guise of custom scrips, when the Company had never received any such scrips from accused No.26. He further submitted that the accused have managed round tripping to give an impression that the Company that was floated by accused No.26 could get various financial benefits with the help of sham and fictitious transaction. Admittedly accused No.26 had never made payment towards VAT realizations and ultimately the Shell Company was closed down.

123. Learned senior advocate submitted that custom scrip is the tailor made scrip issued by the Department of Customs for the exporters to avail the benefit of the same while making payment of customs duty. It is available for purchase in the open market, therefore it is duty credit scrips. Accused No.26, who is none other than the son of accused No.10, who is the DGM of Punjab National Bank, floated few firms only to defraud the informant. He was having the backing of his father, who was working as DGM and transferred more than Rs.6 crores to the Shell Company run by his son - accused No.26. The other accused who are the employees of the informant -



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Company transferred this amount to accused No.26 at the instance of accused No.10. It is stated that it is for purchase of custom scrips, but the respondent is the importer of the raw materials for manufacturing of caps but he was not an exporter. Under such circumstances, payment of customs duty for export does not arise and the Company was not required to pay customs duty or purchase customs scrips. Specific allegations are made by the Investigating Officer regarding floating of firms by accused No.26, which are all Shell Companies and received more than Rs.6 crores from the Company belonging to the informant for the purpose of providing custom scrips which was never given. Therefore, *prima facie* it is a fraudulent transfer of the amount by the employees of the informant - Company to accused No.26 at the instance of accused No.10. He further submitted that after achieving the object of siphoning of more than Rs.6 crores, accused No.26 calmly closed down his firms. He was not having any dealings whatsoever for floating the firms.

124. Learned senior advocate further submitted that specific allegations are made against accused Nos.10 and 11,



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who are the petitioners herein. They are the responsible officers of the Bank and permitted payment based on the fax copy and xerox copies of the documents. When serious allegations are made against the petitioners, the Investigating Officer has gone deep into the matter and investigated for about three years for filing the final report. The allegations are supported by documents and the version of the witnesses. Hence, it is not a case for quashing the criminal proceedings.

125. Learned senior advocate further submitted that the Trial Court is required to hold full-fledged trial, consider the oral and documentary evidence that will be placed before it, and then only it can form an opinion as to the whether a case against the accused is made out or not. This Court while exercising the power under Articles 226 and 227 is not either a revisional Court or an Appellate Court and it cannot hold an enquiry regarding the averments made in the final report. He further contended that even though the Banks were also arrayed as accused, none of the Banks have approached this Court seeking quashing of the criminal proceedings. But



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accused Nos.10 and 11, being the officers of the Bank are seeking to quash the criminal proceedings.

126. Learned senior advocate further submitted that it is a white collar crime committed by the accused, which appears to be tip of the iceberg. The informant suspects larger financial fraud committed by the accused. The role played by the petitioners was unearthed only during investigation which went upto 3 years. The charge sheet runs into 2000 pages. The Investigating Officer has taken care of collecting each and every details regarding the role of each of the accused.

127. Learned senior advocate further submitted that the documents that were submitted by accused Nos.1 and 2 and other accused to various Banks with the so-called signature of the informant were sent for FSL examination. The questioned signatures were subjected to verification by the handwriting experts and a report to state that the questioned signatures are product of imitation, forgery produced in order to match the pictorial appearance of standard signatures is received. The FSL report issued by State Forensic Science Laboratory, Madiwala dated 10.08.2018 discloses that various signatures



produced as that of the informant were forged. Now the question arises, who forged the signature and for what purpose. It is pertinent to note that the bank officials including the petitioners - accused Nos.10 and 11 have accepted such forged documents to transfer huge sums of money to cause wrongful loss to the informant. The witnesses cited in the charge sheet depose about the involvement of various accused in commission of the offences. The learned Magistrate after taking into consideration the contention taken by the informant and the charge sheet filed by the Investigating Officer rightly took cognizance of the offences.

128. Learned senior advocate further submitted that it is the settled position of law that the learned Magistrate need not have to give a detailed reason for taking cognizance of offences, when there are sufficient grounds for proceeding with the matter. Such order taking cognizance cannot be found fault with by this Court, when there are *prime facie* materials including the FSL report issued by the Lab. When such strong *prima facie* materials are before the Court, it is a fit case to go for trial.



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129. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in ***Kaptan Singh Vs The State of Uttar Pradesh and Ors***¹⁵ in support of his contention that, while exercising the powers either under Articles 226 and 227 of the Constitution of India or under Section 482 of Cr.P.C., the Court is not required to hold a mini trial to form an opinion as to whether the accused are liable for conviction or not. If a petition under Section 482 of Cr.PC is filed, immediately after filing of the first information and registration of the FIR, the Court is required to consider the allegations made in the first information to form an opinion as to whether a cognizable offence is made out from out of the allegations or not. If on the other hand, if such petition under Section 482 of Cr.P.C. is filed after filing of the charge sheet, the Court is required to consider the materials collected during investigation. However, this Court is not required to go into the merits of the allegations to act as if it is considering the materials as an appellate Court or it is conducting a trial. If on the materials that are placed before the Court, a *prima facie* case is made out to proceed with the matter, the learned Magistrate will be justified in

¹⁵ AIR 2021 SC 931



taking cognizance and such criminal proceedings are not liable for quashing.

130. Learned senior advocate further submitted that, even if the petition is filed under Articles 226 and 227 of Constitution of India, it will not give any special right to the Court in quashing the criminal proceedings when *prima facie* materials are placed on record. After detailed investigation, there is absolutely no reason to ignore such clinching materials including the FSL report, which discloses that there is forgery in the documents that are submitted to the Banks, which were blindly accepted by the bank officials for the reasons best known to them. Under such circumstances, the real intention on the part of the accused could be known only after full-fledged -trial. It is premature to form an opinion that the accused are innocent and they have not committed any offences.

131. Learned senior advocate submitted that, even though heavy reliance is placed on the decision of the Hon'ble Apex Court in ***Priyanka Srivastava (supra)***, the facts and circumstances in the said case was entirely different. Even if



there is slight difference in the facts of the case, the case law cannot be considered as a precedent by this Court. The directions issued by the Hon'ble Apex Court in ***Priyanka Srivastava (supra)*** is to be considered under the peculiar facts and circumstances of the present case.

132. Learned senior advocate further submitted that the question which is pending before the DRT-I, Chennai, is entirely different. It was not an appeal that was pending before DRT-I, but it was the original application, which was filed at Chennai since the valuation exceeded Rs.100 crores. The DRT-I is not authorized to consider the forgery, cheating, misappropriation or criminal conspiracy by the accused. It is only the criminal Courts are authorized to try such offences. The informant is contesting the matter before DRT-I, Chennai on its merits. But simply because the matter is pending before DRT-I for consideration, cannot be the ground to quash the criminal proceedings, ignoring the voluminous documents that are collected by the Investigating Officer and placed on record in the form of final report and when the learned Magistrate after convincing about the sufficient grounds for proceeding with the



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matter took cognizance of the offences. Therefore, he prays for dismissal of the petitions.

133. In view of the rival contentions urged by learned counsel for both the parties, the point that would arise for my consideration is:

"Whether the petitioners have made out any grounds to quash the criminal proceedings initiated against them?"

My answer to the above point is in the 'Negative' for the following:

REASONS

134. The respondent - informant had filed the first information with Ashoknagar Police Station against accused Nos.1 to 11 alleging commission of offences punishable under Sections 408, 468, 471, 381, 420, 506 read with Section 34 of IPC. The same was registered in Crime No.486 of 2015. After investigation, the final report came to be filed. Now accused Nos.10, 11 and 26 are before this Court seeking to quash the criminal proceedings initiated against them.



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135. Let me consider the specific allegations made against accused Nos.10, 11 and 26 in the final report filed by the Investigating Officer in Crime No.486 of 2015.

136. Accused No.10 was working as Deputy General Manager and accused No.11 as Chief Manager in Punjab National Bank, which is a part of consortium of banks which lent the loan to the informant - Company. It is alleged that accused Nos.10 and 11 using their authority as DGM and Chief Manager transferred huge sums of money to the account of his son i.e., accused No.26, who started a Shell Companies or a fictitious Companies. Even though accused No.10 had no reasons to transfer any amount to the account of his son - accused No.26, he in collusion with accused Nos.1, 2 and 11 forged the signatures of the informant, concocted documents even though they were knowing that it was only the informant who was the authorized signatory to the cheques issued on behalf of the Company, his signatures were forged and the cheques so presented with forged signatures were accepted by accused Nos.10 and 11. They have also accepted RTGS forms signed by accused Nos.1 and 2 without any objections, even



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though they were not authorized to sign the same. Even the photostat signatures of the informant were accepted by the Bank which clearly discloses conspiracy between the accused *interse*. Accused Nos.10 and 11 said to have permitted unauthorized foreign letters of credit and handed over the title of goods in bill of lading to accused Nos.1 and 2, resulting in diversion of imported materials. The accused have even permitted drawing of supporting Bill of Lading in the name of Trade Chartered Bank, a Shell Company of Romania. It is further alleged that accused No.10 introduced his son - accused No.26, for business with the informant - Company in custom scrip with an understanding with accused No.1. Accused No.26 has received around Rs.6.26 crores in respect of custom scrips which were never supplied or used. Thus, it is contended that accused No.10 being DGM in collusion with accused Nos.1, 2, 11 and 26 committed fraud by increasing the drawing powers and inflating the debtor and also by reducing the liability and Letter of Credit.

137. Learned senior advocate submitted that as per the charge sheet, it is alleged that accused No.11 is the Chief



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Manager of Punjab National Bank between 2011-13, he colluded with accused No.10 to cheat the Company by accepting Photostat signatures of the informant on RTGS forms, accepting the signatures of accused Nos.1 and 2, who were never authorized to sign the cheques etc., and also in the matter of permitting unauthorized Foreign Letter of Credits and deliberately not disclosing declaration letters, outstanding letter of credits liability in the monthly stock and other current asset declaration. He also deliberately refused to act on the complaint that was filed by the informant alleging fraud committed by accused Nos.1 and 2 much before filing the first information.

138. It is alleged that accused No.26 is the son of accused No.10 and he found the Shell Companies viz., Shreeji Overseas, Shreeji Enterprises and AMS Enterprises along with his brother. These firms were established only for the purpose of trading in scrips with the informant - Company, but later closed down keeping the VAT collections unpaid after achieving his objects and usurping and misappropriating the amount belonging to the Company. It is the contention of the prosecution that accused Nos.10 and 11 being the responsible



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officers of the Punjab National Bank permitted payments, based on fax copy and xerox copy of the documents and thereby transferred crores of rupees from the account of the Company, including transfer of morethan 6 crores to the account of his son - accused No.26.

139. It is stated that the payments made to these Shell Companies found by accused No.26 were said to be for supply of custom scrips, which were never used by the Company. It is alleged that the informant is the importer of raw materials for the manufacturing of caps, but he was never an exporter. But accused No.26 is alleged to have managed round tripping for the purpose of granting various financial benefits with the help of sham and fictitious transactions. Thus, it is the allegation made by the informant that accused No.1 being the Chief Financial Officer, accused No.2 being the Deputy Chief Financial Officer along with other employees who are arrayed as accused joined hands with accused Nos.10, 11 and 26 in commission of the offences.

140. The informant filed another complaint which was registered in Crime No.580 of 2016 with Subramanyapura



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Police Station against accused Nos.1 to 9 alleging commission of offences punishable under Sections 120B, 403, 408, 409, 447, 381, 420 read with Section 37 of IPC. It is stated that, SBI being the lead bank, Punjab National Bank and Corporation Bank and UCO Bank being part of the consortium of Banks, involved in large scale fraud in collusion with employees of informant Company and executives of the Bank. The genesis of fraud was traced around April, 2014 which resulted in closing down the business of the Company and initiation of the proceedings under SARFAESI Act to cover up their guilt. On the basis of first information, investigation was undertaken and after investigation, the charge sheet came to be filed against accused Nos.1 to 9. Now accused Nos.3, 4, 6, 7 and 8 have approached this Court seeking quashing of the criminal proceedings initiated against them.

141. It is stated that accused No.3 was working as Deputy General Manager in SBI, Kumarapark who took over the charge of the loan account pertaining to M/s Metal Closures Private Limited i.e., informant Company during 2012 and was supervising the said account, being the head of consortium of



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Banks. It was this accused who cleared RTGS and cheque payments at the instance of accused Nos.1 and 2 based on forged and photocopies of the documents to help them even though they had no authority to deal with the financial matter and it was only the informant who was authorized as per the minutes of meeting of Board of Directors. It is stated that accused No.3 was in favour of enhancement of loan at the instance of accused Nos.1 and 2 and he played key-role in closing down the Company by invoking SARFAESI Act, so that the fraud committed by the Banks and others does not get disclosed. He declared the account of the Company as NPA against the norms set out by the Reserve Bank of India (RBI). Accused No.3 conspired with other accused to take over illegal physical possession of all the three factories of the informant by invoking Section 13 (2) of SARFAESI Act and by appointing accused No.8 as concurrent Auditor gave him the responsibilities to cover-up the misappropriation committed in the Bank transactions. Accused No.3 never informed the informant - Company that its account has become NPA and that the proceedings under SARFAESI Act is being initiated.



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142. It is stated that accused No.3 never carried out panchanama nor took inventory of the stock even after taking keys of the factory premises, for the purpose of taking physical possession of the assets of the Company under Section 13(4)(a) of SARFAESI Act, which resulted in misappropriation and criminal breach of trust. Accused No.3 helped accused No.8 to remove the Company security i.e., M/s Eagle Security and Services by non-payment of their dues. Accused No.3 stopped payment of salary to the son of the informant who was introduced into the Company as per succession plan proposed by SBI. He permitted accused Nos.1, 2 and 8 to sell stocks worth USD 7,33,181.25/- during September 2014 to Zarhak Steels, Mumbai and thus caused loss of over 4.50 crores to the informant Company by misappropriation. He has also sold machinery worth Rs.76,00,000/- for a paltry sum of Rs.10,00,000/- to Aura Polyfex and committed misappropriation. Accused No.3 asked accused No.8 to undervalue the stocks in three factories while submitting his report and managed to get such report on 27.08.2014. Accused No.3 opened EDP room with the help of accused Nos.1, 2 and 4 and taken away the server containing valuable information and



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software only to make sure that the Company does not start its operation once again. This was done to cover-up the fraud committed by him. Accused No.3 with the help of accused No.8 withheld the salary of the workers in Himachal Pradesh Unit without any authority and made the workers agitate during the visit of strategic investor. He also refused to release payment of Provident Fund (PF) and Employees State Insurance (ESI) deducted the salary of the employees which brought criminal action against the informant. Accused No.3 manipulated the notice issued under Section 13(3) of SARFAESI Act, by inserting the word 'without the Banks written consent'. Thereby, not permitting even the regular/routine transactions by the Company without the intervention of the concurrent Auditor and brought closure of the Company with malafide intention. He issued notice dated 20.02.2015 under Section 13(4) of SARFAESI Act for possession, even though the Bank had already in physical possession on 01.08.2014 and 05.08.2014, even though no procedure was adopted for taking such possession as prescribed under the SARFAESI Act.



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143. It is stated that with malafide intention, accused No.3 started contending that possession taken by the Bank was only symbolic and not physical. He managed to issue second demand notice dated 15.09.2015 to contend that the NPA of the account was not on 28.05.2014 as contended earlier, but it was on 31.01.2010. Between 2010 to 2014, the Bank had paid more than Rs.101 crores to the Banks, including interest and instalments and inspite of that the second demand notice was issued with malafide intention. Accused No.3 with the help of accused Nos.1, 2 and 7 made payment of Rs.8.89 crores to Corporation Bank, Saraki Branch, even though specific instructions were issued to operate only through ESCROW account and also it is the fact that Corporation Bank, Saraki was not the member of consortium.

144. It is also contended that accused No.3 had not given any reply to the objections raised by the informant to the second demand notice but gone ahead to take physical possession once again on 11.12.2015 by publishing the public notice on the same day. Accused No.3 was not ready to have the joint stock verification on 03.06.2016, 06.06.2016 or on



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08.06.2016 inspite of request made by the informant to confirm the exact stocks. Accused No.3 along with accused No.4 removed the Bank security vide his letter dated 08.05.2017, which confirms that the Bank had taken physical possession and misappropriated the available stock by selling the Company's machineries. This letter came after 2 years 10 months of taking physical possession as they paid security agency charges by debiting the companies ESCROW account, which proves Banks possession of the Units. Accused No.3 committed criminal trespass, criminal breach of trust, fraud, theft and misappropriation of stocks, machineries and other assets worth Rs.78.50 crores.

145. It is alleged that accused No.4 being the Chief Manager and Authorised officer under SARFAESI Act in Stressed Assets Management Branch, St. Marks Road, Bangalore, took over the charge of Metal Closures account on 03.12.2014 and he was hand in glove with accused No.3 and he never carried out the procedure for drawing panchanama and taking inventory for physical possession of the Units under Section 13 (4)(a) of SARFAESI Act and committed criminal breach of trust



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and permitted misappropriation of movable assets of the Company. Accused No.4 in collusion with accused Nos.1 to 3 illegally trespassed over EDP room, took over the server with tally software for manipulation of the accounts to make sure that the Company do not restart its operation. Accused No.4 had never taken physical possession of the Unit on 20.02.2015 as provided under Section 13(4) of SARFAESI Act, as it was already in physical possession of the Unit on 01.08.2014 and 05.08.2014. Accused Nos.3 and 4 have refused to lodge police complaint inspite of the request made by the informant regarding theft of movables and machineries and also the stock. Accused No.4 tried to sell the Company's machineries to M/s Shetron Metals and M/s Messelly. Accused No.4 withdrawn the physical possession that was taken by the Bank on 20.02.2015 by issuing public notice on 07.07.2015 without assigning any reason. This act of accused No.4 is irresponsible and illegal. Inspite of withdrawal of taking possession, he had not restored the Company with its physical possession by conducting a mahazar. Accused No.4 in collusion with accused No.3 and other accused is guilty of malafide actions. Accused No.4 joined hands with accused No.3 in issuing second demand



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notice to mislead the Company and to make unauthorised payments of over 101.14 crores to other Banks.

146. It is stated that no joint verification was held inspite of repeated demands made by the informant. Accused No.4 in collusion with accused No.3 removed the bank security, taken physical possession and misappropriated the stocks and the machineries. Accused Nos.3 and 4 gave the letter for having taken possession during the first week of August 2014 i.e., about 2 years 10 months after taking physical possession. Accused No.4 paid security agency charges by debiting companies ESCROW account, which proves its possession. Accused No.4 is responsible for criminal trespass, criminal breach of trust, theft, fraud, misappropriation of stocks and other assets worth Rs.78.50 crores.

147. It is stated that accused No.6 was the Chief Manager in Punjab National Bank, MG Road Branch, who took over the charge of Metal Closures Account and was supervising the accounts through accused Nos.3, 4 and 7. He cleared RTGS and cheque payment based on photocopies to help accused Nos.1 and 2. Accused No.6 also helped accused Nos.3 and 4 in



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taking physical possession of the factory. Accused No.6 along with accused No.7 tried to sell Company's machinery by publishing e-sale notification, which proves Bank's physical possession of the Units. Thus, he is responsible for criminal trespass, criminal breach of trust, theft fraud and misappropriation of stock and other assets worth Rs.78.50 crores.

148. It is stated that accused No.7 being the Deputy General Manager (DGM) of Punjab National Bank, MG Road Bank, took over the charge of Metal Closures Account during May 2014. He was supervising the accounts of the Company alongwith accused Nos.3 and 6. He cleared RTGS and cheque payments based on the photocopies to help accused Nos.1 and 2. He helped accused Nos.3 and 4 in taking physical possession of the factory along with accused No.6. Accused No.7 tried to sell Company's machineries by publishing e-sale notification which proves the physical possession of the Bank over the factory. Thus, this petitioner has also committed criminal trespass, criminal breach of trust, theft, fraud, misappropriation of stock and other materials worth Rs.78.50 crores.



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149. It is stated that accused No.8 being the Chartered accountant was the partner in M/s Shankaran and Krishnan, Chartered Accountants, who was appointed as Stock and Concurrent Auditor for Metal Closures Company by SBI. He had undertaken the administrative job of the Company as per the instructions of the Bank. On 01.08.2014, knowing fully well that the management of the Company was not taken-over by the Bank under Section 13(4) of SARFAESI Act, he helped other accused with criminal conspiracy to take over the physical possession and administrative charges of factory illegally and with malafide intention. On 01.08.2014, as they managed to appoint concurrent Auditor with special responsibilities, he looted an amount of Rs.8.89 crores through Corporation Bank, Saraki Branch, with the help of accused Nos.1 to 3. Even though there was instruction to operate only through ESCROW account, and even though the Corporation Bank, Saraki Branch was not the member of Consortium, accused No.8 along with other accused sold the stock worth USD 7,33,181.25/- equivalent to 4.50 crores to Zarhac Steels, Mumbai from Chennai port by photocopying the signatures of the informant in the letters issued to the customs authorities and shipping



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line for giving no objection for transfer the title of goods, when the informant was in the intensive care at St.John's Hospital, and the Company had not received any money on the said transaction. Thus, Company has suffered loss of about 4.50 crores. Accused No.8 approved the sale of machinery worth Rs.76,00,000/- to Aura Polyfex for just Rs.10,00,000/- and thereby committed misappropriation. Accused No.8 as Stock Auditor along with other accused undervalued the value of the stock as on 31.05.2014 and the report was submitted on 27.08.2014. He had not carried out the physical verification of the stocks as required. Accused No.8 helped accused No.3 to withhold the salaries of the workers in Himachal Pradesh Unit without any administrative authority only to make the employees refuse to work during the visit of strategic investor. He also refused to release the payment of PF and ESI deducted from out of their salary. Accused No.8 helped accused No.3 to remove Bank's security agencies i.e., M/s Eagle Security and Services by non-payment of their service charges, so that the obstacles for selling the Company goods is removed. Therefore, accused No.8 is responsible for criminal trespass, criminal



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breach of trust, theft and misappropriation of stock and other assets worth Rs.78.50 crores and for cheating.

150. The Investigating Officer who investigated both the criminal complaints filed the charge sheet first in Crime No.580 of 2016 on 05.05.2018 against accused Nos.1 to 9. Similarly, he filed the final report in Crime No.486 of 2015 against accused Nos.1 to 34 on 07.12.2018. It is pertinent to note that in Crime No.486 of 2015, the State Bank of India is arrayed as accused No.6, Punjab National Bank as accused No.9, Corporation Bank as accused No.12, UCO Bank as accused No.17 and Kotak as accused No.20. None of these Banks either nationalized or private have approached this Court seeking quashing of the criminal proceedings against them. It is also pertinent to note that the accused in Crime No.486 of 2015 i.e., the Chief Finance Officer, Deputy Chief Financial officer and other employees of the informant - Company have also not approached the Court seeking quashing of the criminal proceedings. But it is only the Deputy General Manager, Chief Manager of SBI, Deputy General Manager and Chief Managers of Punjab National Bank, the concurrent Auditor and proprietor



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of Shreeji Overseas i.e., the son of accused No.10 have approached this Court seeking to quash the criminal proceedings.

151. I have extracted the contentions raised by the learned senior advocates representing each of the accused who are seeking to quash the criminal proceedings, in detail. Similarly, I have highlighted the contentions taken by the learned senior advocates representing the informant and the learned High Court Government Pleader representing the State, in detail. On consideration of the first information filed by the informant both in Crime No.486 of 2015 of Ashoknagar Police Station and Crime No.580 of 2016 of Subramanyapura Police Station in light of the final report submitted by the Investigating Officer and the submissions made at the Bar, I proceed to consider the merits of the petitions.

152. Admittedly, the informant was the Managing Director of M/s Metal Closures Private Limited. He availed various loans from State Bank of India as lead Bank, Punjab National Bank, Corporation Bank and UCO Bank as the Banks constituting the consortium. It is the specific contention of the



prosecution that SARFAESI proceedings was initiated by the Banks only for the purpose of covering their illegal acts in collusion with one another and in active connivance of the employees of the Company including the Chief Financial Officer. The materials on record *prima facie* disclose that the Company owned by the informant was the leader in the market at one point of time i.e., till middle of 2014. The letter dated 10.05.2014 issued by the State Bank of India discloses that an enhanced credit facility of Rs.10 crores towards working capital was offered in favour of the informant. But the informant by his letter dated 16.04.2014 had refused to take additional credit facility. If at all, the informant had any evil idea of misappropriating the public money, definitely he would have accepted the offer for additional credit facility offered by State Bank of India. Therefore, till the mid 2014, the Company of the informant was doing good in the market.

153. It is pertinent to note that a viability study was undertaken at the instance of Banks to know the financial status of the Company. As per such viability study conducted during 2013-14, the Company was performing extremely well



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and its performance was estimated at 17%, when the general standard in the market was only 12%. It is obvious that only after receipt of viability study report, the State Bank of India had offered enhanced working capital of Rs.10 crores by its letter dated 10.05.2014, which was refused by the informant. But the very same State Bank of India issued its first possession notice proclaiming that the loan account of the Company has become NPA w.e.f. 28.05.2014 i.e., within 18 days from the date of its offering enhanced working capital.

154. It is strange to note that after issuing the possession notice to treat the account of the Company as NPA w.e.f. 28.05.2014, the legal opinion appears to have taken by the Bank on 15.06.2015. On the basis of such legal opinion, the action initiated treating the account of the Company as NPA was withdrawn. Meaning thereby, the assertion of State Bank of India that the account of the Company became NPA w.e.f. 28.05.2014 was unconditionally withdrawn based on the legal opinion that was obtained by the Bank. Thereafter, the second notice for possession under Section 13(2) of SARFAESI Act was issued on 15.09.2015 declaring that the account of the



Company became NPA wayback on 31.01.2010 i.e., about 5 years earlier to the notice. No convincing reasons are assigned for anti-dating the date of NPA to 2010, when the materials *prima facie* disclose that the Company was having sound financial status till the mid of 2014. There is also no reason as to why no action whatsoever was initiated by any of the Banks to treat the account of the Company as NPA during 2010 or 2011. There is also no explanation as to why the State Bank of India offered enhanced working capital of Rs.10 crores on 10.05.2014 when the account of the Company has already become NPA. The account statement of the Company produced before the Court discloses that during 2013- 14, the Company had repaid over 100 crores to the Banks. These facts do not reconcile with the contention taken by the Banks with regard to the financial status of the Company to treat its account as NPA.

155. A contention was raised that there was re-structuring of loan granted in favour of the Company. But at the same time, it is the contention taken by the Bank that after such re-structuring, the performance of the Company was good which remained a leader in the market till mid of 2014.



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However, with all these facts and circumstances, the account of the Company was treated as NPA by issuing the second notice for possession under Section 13(2) of SARFAESI Act on 15.02.2015, anti-dating the date of NPA w.e.f. 31.01.2010.

156. It is the contention of the informant that the Banks have taken physical possession of the Company and its administration, while it is the contention of the Bank that it has taken only the symbolic possession and the actual possession remained with the informant. The materials on record disclose that the Banks have appointed accused No.8 as the concurrent Auditor and also appointed a security agency replacing the Company security which was serving for morethan a decade. If at all the Bank had taken the symbolic possession, there was no need for the officials of the State Bank of India to hold a banner in front of the Company office to declare that they have taken over the possession and to take a photo of the same, which is produced before the Court. There was also no necessity for the Banks to appoint accused No.8 as concurrent Auditor and to have its own security agency replacing the Company security.



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157. A contention was taken that appointment of accused No.8 as concurrent Auditor was with the concurrence of the informant. At the same time, it is the contention raised on behalf of the informant that such an Auditor was appointed in addition to regular Auditor auditing the accounts of the Company. Learned counsel for both the parties addressed their arguments at length in this regard. But the fact remains that accused No.8 was appointed as concurrent Auditor to examine the real time financial transactions, which acts as internal control mechanism to detect any errors or irregularities. Accused No.8 was appointed as concurrent Auditor on 01.07.2014 who submitted his reports for the months of August to November 2014 noting significant decline in the stocks. The materials on record also disclose that an ESCROW account was opened for the purpose of routing the financial transaction of the Company. In the meantime, a forensic Auditor was also appointed. It is strange to note that the Company was made to seek the approval of concurrent Auditor even for payment of petty amounts towards BESCO bills, LIC premium etc., In turn, the concurrent Auditor would endorse his approval for such routine payments and such approval is required to be



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placed before the Bank for payment of the amount through ESCROW account. It is stated that in view of these strange system in place, even the BESCO bills could not be paid in time, which resulted in disconnection of electricity. I do not find any logic in exercise of such powers by the concurrent Auditor and *prima facie* it supports the contention of the informant that the Bank has taken over the physical possession of the Company into its fold and virtually the informant was at the mercy of the concurrent Auditor and the Bank for making any payments including the salaries to its employees.

158. It is also pertinent to note that the statement of the stock for the month of May 2014 showed the value as 71.97 crores. Even though this value was declared by the Company, the same was accepted by the Bank. However, the report of the concurrent Auditor disclose drastic decline in the stock for the months of August to November 2014 and during November 2014, it was only 1.07 crores. In the meantime, during December 2014 the Company came to a grinding halt as it stopped its functioning. It was only thereafter, a decision was taken during September 2015 to initiate the proceedings



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under SARFAESI Act. During 2016, it was projected as if the informant committed fraud and even a report was submitted to RBI on 30.05.2016. On the basis of this report, a complaint was filed on behalf of the consortium with CBI on 16.10.2017, but it is to be noticed that the informant had lodged his first complaint with Ashoknagar Police Station against his employees and the Banks making specific allegations of commission of various offences, which was registered in Crime No.486 of 2015 on 22.07.2015.

159. It is also pertinent to note that the second complaint came to be registered against the officials of the Banks including the high level executives of State Bank of India and Punjab National Bank, making specific allegations which came to be registered with Subramanyapura Police Station in Crime No.580 of 2016 on 23.09.2016. It is for the first time in the complaint that was filed with CBI, the Banks asserted that the Company became NPA in the year 2010, the loan was re-structured on 17.02.2010, even then the loan account was irregular and it was classified as sub-standard on 25.11.2013 by the Banks, later it was upgraded on 28.01.2014 by



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recovering the overdues fully and treating the account as standard assets. In this background, the Bank is required to explain the reasons for treating the Company as NPA either on 28.05.2014 or on 31.01.2010.

160. A specific contention is taken by the informant that the concurrent Auditor was appointed on 01.08.2014 and the security agency of the Bank had taken charge on the same day, which led to the closure of the Company within 3 - 4 months. It is also the specific contention taken by the informant that during April 2015, the servers and softwares were removed from the Company premises unauthorisedly by the Banks and virtually the movables were stolen. It is pertinent to note here that initially the first possession notice was issued on 20.02.2015, but the same came to be withdrawn during June 2015. This fact was published in the newspaper and the second possession notice was issued only during December 2015. Under such circumstances, moving out of servers and softwares from the Company premises during April 2015 assumes importance. The charge sheet witnesses depose



about such moving out of the movables which cannot be ignored at this stage.

161. Learned senior advocate for the informant referring to various clauses in Master Circular contended that the contention taken by the petitioners to treat the account of the Company as NPA is not justified in any manner when it is their own contention that the account of the Company was re-structured, treated as standard asset after the Company made the full payment of the dues. The materials on record discloses that more than 100 crores were paid by the Company towards the loan amount during 2013-14. As per the revised schedule, repayment is to be commenced from April 2010 and it should complete by the end of March 2015. It is not the contention of the petitioners that the Company has committed default in following the repayment schedule from April 2010 till May 2014. The viability report makes it clear that the Company was financially viable till 10.05.2014. But suddenly it slipped into NPA as on 28.05.2014 and as per the letter dated 15.12.2014, the Bank has written to the concurrent Auditor that his services are no more required as there is no activity in the Company.



Thus, the Company was brought to a halt within a period of six months. On consideration of these facts and circumstances, serious doubt arises about the conduct of the bank officials in treating the loan account NPA w.e.f. 31.01.2010 and initiating SARFAESI proceedings five years thereafter, which is to be considered by the Trial Court during full fledged trial.

162. Admittedly, the informant has challenged the proceedings initiated under SARFAESI Act by approaching DRT-I, Chennai. Even though similar contentions were raised by the informant, the same was rejected by DRT-I justifying initiation of SARFAESI proceedings. The DRT-I after considering all the materials on record, referred to the minutes of meeting of forum of joint lenders held on 22.07.2014 which was attended by the informant as the Managing Director of the Company and it was held that the Bank cannot be prevented from recovering the public money as the Bank is different from its officials. It is also observed that the management of the borrower i.e., the informant had not kept proper vigil nor monitored the day-to-day affairs of its finances and allowed the Chief Finance Officer of its own Company to meddle with the funds to the detriment



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of the Company. The DRT-I also specifically noted that the role of the lending Bank in the management of the borrower Company is unknown in practice and the Banks have no role to oversee the administration, management and day-to-day affairs of its borrowers. It is held that simply because a contention was taken that its Financial Officer resorted to malpractices and embezzlement of funds of borrower, it will not give rise to the informant to plead that onus to repay the debt ceases. Such contention raised by the informant was rejected by DRT-I. The contention of the learned senior advocate for accused Nos.6 and 7 that since DRT-I has already considered the contentions of the informant against the accused and has rejected such contentions, the criminal proceedings is to be quashed, cannot be accepted as the scope of the consideration of the materials before the DRT-I is entirely different from the scope of criminal proceedings, which are to be considered by the Trial Court by conducting full-fledged trial. The DRT-I will not go into the allegations of criminal conspiracy, fraud, forgery, theft, cheating, misappropriation etc., But the Trial Court is required to consider the materials on record to give a finding in that regard.



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163. It is quite natural for the DRT-I to consider the contentions of the informant and the Banks from the prospective of the Bank as lenders and the informant as the borrower who committed the default. What was paramount in such proceedings is the interest of the Banks which deals with public money. DRT-I is not supposed to consider the contentions of the informant regarding commission of criminal offences of fraud, forgery, criminal breach of trust, theft of the movables etc., It is pertinent to note that the SARFAESI proceedings initiated by the Banks is challenged by the informant before this Court and got it stayed. But there is absolutely no explanation as to why the Banks have kept quite without seeking vacating of such stay. Similarly, it is stated that the CBI has initiated enquiry against the informant as per the directions of RBI and it is also stayed by this Court. However, no steps whatsoever appears to have taken to vacate such stay orders. If the Banks are really interested in safeguarding its interest, definitely some measures would have been taken to expedite the matter or atleast to vacate such stay.



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164. The contention of learned counsel for accused Nos.6 and 7 that the Investigating Officer has cited only the employees of the informant - Company as witnesses to prove the allegations also cannot be a ground to quash the criminal proceedings, as the allegations made by the informant is of such nature that it could only be deposed either by the employees of informant - Company or anybody who is closely associated with the affairs of the Company. No independent witness or outsiders could speak about those facts. Therefore, it is premature to form an opinion that those witnesses cited in the chargesheet are interested witnesses.

165. Learned senior advocate for the petitioners contended that the additional documents that are produced by the petitioners before this Court were produced before the Investigating Officer at the time of investigation. But none of those documents were taken into consideration while filing the final report. It is the partisan attitude of the Investigating Officer which makes it clear that he was biased and filed the final report as a spokesperson for the informant. If the additional documents now produced before this Court are taken



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into consideration, the charge sheet could not have been filed by the Investigating Officer. Thus, the first information and the final report filed by the informant was in abuse of process of law and without any basis. *Prima facie*, the petitioners have discharged their duties as the responsible officers of the Nationalized Bank. Therefore, no malafides could be attributed to them to any extent.

166. I have carefully considered these contentions in the light of materials that are placed before the Court. Nothing has been placed before the Court in support of their contentions that they have produced the documents before the Investigating Officer for his consideration to contend that he deliberately ignored consideration of the same. Simply because the Investigating Officer filed the charge sheet against the accused, he cannot be dubbed as the mouthpiece of the informant when such final report is supported by the statements of the witnesses as well as the documents that are collected by the Investigating Officer. It is only after full-fledged trial, the Trial Court will be in a position to give a



finding as to whether the prosecution is successful in proving the guilt of the accused or otherwise.

167. The other contention taken by the learned senior advocate that none of the charge sheet witnesses have spoken about custom scrips or round tripping and the same are not having any relevance to the facts of the case could be considered by the Trial Court after full-fledged trial. The capacity of the Investigating Officer to understand such practices in the business and to investigate into the same for the purpose of filing the final report against the accused cannot be questioned at this stage. The Investigating Officer is required to enter the witness box to depose about the contentions taken by the prosecution. It is at that stage, the capacity of the Investigating Officer could be gauged by the Trial Court.

168. It is the contention taken by the learned senior advocate for accused Nos.10, 11 and 26 that there is absolutely no basis for making such serious allegations against them, when none of the charge sheet witnesses speak about the same. The prosecution is placing reliance not only on the



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statements of the witnesses cited in the charge sheet, but also on voluminous documents that are produced by the Investigating Officer. The prosecution is entitled to prove its contentions against each of the accused by examining the witnesses who can depose about the documents on which it is relying on. Therefore, this Court cannot jump to the conclusion at this stage that none of the witnesses speak about the actual acts committed by accused Nos.10, 11 and 26 and therefore, the criminal proceedings against them is to be quashed.

169. Learned senior advocate for accused No.8 contended that Sections 381, 403, 408, 409 and 420 of IPC could not have been invoked against accused No.8 since he is the concurrent Auditor who was not in physical possession of the property nor he was having access to the goods. This contention raised by the learned senior advocate could have been accepted under an ideal situation, when an Auditor is appointed to audit the accounts of the Company. But the materials placed before the Court disclose that accused No.8 who was appointed as concurrent Auditor was having control over the entire administration of the Company. Without his



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approval, the informant being the Managing Director was not in a position to make routine payments i.e., Electricity charges, Insurance premiums, salary to the employees etc., Specific instances are highlighted by the prosecution to contend that accused No.8 being the concurrent Auditor has exceeded his limits. The allegations against accused No.8 assumes importance in the light of the materials that are placed before the Court.

170. The contention taken by the learned senior advocate for accused No.3 that when the borrower fails to pay the installments as scheduled on three consecutive months, such account will be treated as NPA, if accepted, it is the duty of Banks or accused No.3 to substantiate their contentions that the informant has committed such default in payment of installments. The discussions held above disclose that even when the Company was held to be highly viable and had repaid morethan 100 crores during the financial year 2013-14 and when the SBI offered enhanced working capital of Rs.10 crores and the same was rejected by the informant, the account was



treated as NPA within 18 days. The accused are required to explain these circumstances during trial.

171. While exercising the authority either under Articles 226 and 227 of Constitution of India, or under Section 482 of Cr.P.C., this Court cannot give a finding as to whether the Banks have taken the physical possession of the Company or it was only a symbolic possession as tried to be contended. Such an opinion could be formed by the Trial Court after full-fledged trial on the basis of oral and documentary evidence relied on by the prosecution.

172. It is the contention of the learned senior advocate for the accused that Section 32 of SARFAESI Act, gives protection to the officials of the Bank, while they discharge their duties under the provisions of the Act. Ofcourse Section 32 of SARFAESI Act extends such protection to the officials of the Bank for anything done or omitted to be done in good faith under the Act. The allegations made by the informant and the materials collected by the Investigating Officer *prima facie* question such good faith on the part of the accused, who are the petitioners herein. Such *prima facie* materials are sufficient



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to go for a full fledged trial by the Trial Court. There cannot be any justification for this Court to quash the criminal proceedings ignoring such voluminous materials and serious allegations, without affording even an opportunity to the prosecution to put forth its contentions. When specific allegations are made against the bank officials who are the petitioners herein that they have accepted the forged or photocopied signatures of the informant to transfer huge sums of money from the account of the Company and that they have accepted the signatures of accused Nos.1 and 2 while issuing the cheques for transacting in crores of rupees, even though they were not authorized in that regard, assumes importance and the same is a matter for trial. At this stage, it cannot be forgotten that it is the specific contention of the informant that he is the only authorized person to sign the cheques to be presented to the Banks for payment. It is also his contention that accused Nos.1 and 2 in Crime No.486 of 2015 being the Chief Financial Officer and Deputy Chief Financial Officer of the Company managed to pass a Resolution authorizing them to issue the cheque behind the back of the informant. Such Resolution was said to have been accepted by the accused as



officers of the Bank to enable accused Nos.1 and 2 to issue the cheques for the purpose of making various payments. It is also the contention of the informant that even though he was only the authorized person to draw the cheques, the photocopies of his signatures were made use by the employees of his Company to issue the cheques, which was strangely accepted by the Banks to clear the cheques. The signatures of the informant which were disputed by him were referred to the State Forensic Science Laboratory for comparison with admitted signatures. The report of the hand writing expert is also part of the charge sheet, according to which, the expert has given his opinion stating that 'the person who wrote the standard signatures did not write the questioned signatures. In view of all these facts and circumstances, clean chit cannot be given to the petitioners at this stage ignoring the nature of allegations and the documents that are placed before the Court.

173. Learned senior advocate for the informant placed reliance on the decision in ***M/s Transcore (supra)***, wherein, the Hon'ble Apex Court held that the word possession is a relative concept, but not an absolute concept. The dichotomy



between symbolic and physical possession does not find place in SARFAESI Act. Under such circumstances, the rival contentions taken by the parties as to whether the possession of the properties taken by the Bank was either physical or symbolic cannot be answered at this stage. A clear opinion could be formed in that regard on facts and circumstances of the case after full-fledged trial.

174. Learned senior advocate for the informant placed reliance on the decision in **Umesh Kumar** (*supra*), wherein, the Hon'ble Apex Court held that since there were ample materials to show case *prima facie* case against the accused, the High Court has committed grave error in quashing the entire criminal proceedings, that too, at the preliminary stage of framing charges. Thus, it was held that the High Court should not have appreciated the materials on record to go into the merits of the accusations and ascertain the guilt or innocence of the accused. But the Court is required to evaluate the materials on record to ascertain as to whether it discloses *prima facie* existence of the ingredients to constitute the offence as alleged.



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175. Similarly, learned senior advocate for the informant placed reliance in **Saranya** (*supra*), wherein, the Hon'ble Apex Court deprecated the practice of holding mini trial to appreciate the evidence on record and to the consider the allegations on merits for the purpose of forming an opinion as to whether the accused is likely to be convicted or not. The settled position of law is highlighted by the Hon'ble Apex Court that acting under Section 482 of Cr.P.C., this Court cannot exercise the jurisdiction of an Appellate Court for the purpose of quashing the criminal proceedings.

176. Learned senior advocate for the informant also placed reliance on the decision in **Kaptan Singh** (*supra*), wherein, the Hon'ble Apex Court re-iterated the settled position of law that while exercising the power either under Articles 226 and 227 of Constitution of India or under Section 482 of Cr.P.C. it is not required to hold a mini trial to form an opinion about the guilt or otherwise of the accused. The Court has also made it clear that when such a petition is filed seeking quashing of the proceedings after filing the charge sheet, the Court is required to consider the materials that are collected by the



Investigating Officer during investigation. But at the same time, it cannot exercise the power of an Appellate Court in scrutinizing the materials. The Court has also made it clear that if such materials produced by the Investigating Officer *prima facie* disclose the commission of offences, the Magistrate will be justified in taking cognizance and such criminal proceedings is not liable to be quashed.

177. Learned senior advocate for the petitioners referred to the decision of the Apex Court in ***Lalitha Kumari*** (*supra*) to contend that the Investigating Officer has not carried out any preliminary enquiry before registering the FIR. In ***Lalitha Kumari*** (*supra*), the Hon'ble Apex Court has mandated registration of FIR under Section 154 of the Code, if the information discloses commission of cognizable offence. No preliminary enquiry is advised when the first information discloses the commission of such cognizable offence. It is also held that depending upon the facts and circumstances of each case, the Investigating Officer has to take a decision as to whether the preliminary enquiry is to be conducted or not. The informant has filed the first information making specific



allegations regarding commission of cognizable offence by the accused. Initially Crime No.486 of 2015 of Ashoknagar Police Station was registered against the employees of the Company as well as the Banks. The investigation in the said case was also taken up by the Investigating Officer after finding that the commission of cognizable offence is made out. The same cannot be questioned at this stage when such voluminous documents are placed by the Investigating Officer after having full-fledged investigation.

178. Learned senior advocate for the petitioners place reliance on the decision in ***Bhajan Lal*** (*supra*) in support of their contentions, which is the off-quoted decision on the subject relating to the exercise of extraordinary power under Article 226 of Constitution of India and the inherent powers under Section 482 of Cr.P.C. The Hon'ble Apex Court has given few categories of cases by way of illustrations, where such powers could be exercised either to prevent abuse of process of any Court or otherwise to secure the ends of justice. It has also held that it is not possible to lay down any precise or clearly defined or sufficiently challenised and flexible guidelines



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or rigid formula and to give an exhaustive list of myriad kind of cases, wherein such power could be exercised. It has held that when the allegations made in the first information report even if taken at its face value and accepted in its entirety, do not *prima facie* constitute any offence against the accused, in such cases, the criminal case is to be quashed. It is also held that the un-controverted allegations made in the FIR 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, it will be a fit case for quashing the proceedings. If the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion, it is held that it will be a fit case for quashing. The Court has also held that, if it is manifestly disclosed that with malafide or malicious intention or with ulterior motive to wreck vengeance on the accused or to spite personal grudge, a criminal proceedings is initiated, the same can be a ground for quashing the proceedings.

179. Learned senior advocate appearing for the petitioners placed heavy reliance on **Priyanka Srivastava**



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(*supra*) to contend that the Hon'ble Apex Court has come down heavily for entertaining such criminal complaints against the Bank and its officers for having invoked the provisions of SARFAESI Act against the defaulters, which would amount to arm twisting tactics, that is being adopted by unscrupulous borrowers. In the said case, the Hon'ble Apex Court noticed that the complainant had borrowed the amount from PNB Housing Finance Limited. The loan was classified as non performing asset, the Bank has initiated proceedings under SARFAESI Act. Thereafter, the borrower filed the private complaint alleging commission of the offences under Sections 163(1) and 506 of IPC. The learned Magistrate dismissed the private complaint. When the said order was challenged before the First Appellate Court, the matter was remanded back to the learned Magistrate for reconsideration. Pursuant to the same, summons was issued to the accused and in the meantime, the criminal proceedings was quashed by the High Court, acting under Section 482 of Cr.P.C. When the same was challenged before the Hon'ble Apex Court, it has formed an opinion that unscrupulous complainants are filing complaints without any accountability, since no affidavits were being sworn supporting



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the allegations made in the private complaint. To curb such practices, filing of the affidavit by the complainant was mandated which will check casual filing of the complaints or swearing false affidavits as the same would result in initiation of criminal prosecution. The Hon'ble Apex Court has also observed that the respondent therein had mastered how to create the sense of fear in the mind of the officials compelling them to face criminal cases. In the said case, even after the High Court quashing the earlier proceedings, again another application came to be filed under Section 163 of Cr.P.C. alleging criminal conspiracy, forgery etc., which resulted in registration of the FIR for the offences under Sections 465, 467, 468, 471, 386, 506, 120B read with Section 34 of IPC. Not being satisfied with the same, yet another complaint came to be filed under Section 156(3) of Cr.P.C. alleging that there was undervaluation of the property and the third FIR came to be registered in that regard. By registering such multiple complaints, the complainant therein compelled the officials to enter into a one time settlement. Under these circumstances, the Hon'ble Apex Court observed that if the borrower is allowed to take recourse to criminal law in the manner it has been



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taken in the said case, it would effect the marrows of economic health of the nation. It was noticed that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for such one time settlement, which the financial institution would not have acceded otherwise. It was also noticed that despite agreeing for withdrawal of the complaints, no steps were taken in that regard. On the other hand, complaints were being prosecuted with sadistic attitude. Under these circumstances, the Hon'ble Apex Court held that whenever such a complaint is filed, only with an intention to intimidate the bank officials from initiating action under SARFAESI Act, such attitude is to be nipped in the bud. The facts and circumstances of the present case are entirely different as discussed above. *Prima facie*, I do not find any reason to form an opinion that the informant has filed the complaint with such malafide intention. On the other hand, the discussions held above disclose that there are *prima facie* materials to constitute the offence, which is sufficient to go for trial.



180. Learned counsel for the petitioners placed reliance on the decision in ***K Virupaksha*** (*supra*) to contend that registration of criminal complaint and continuation of criminal proceedings against the petitioners would amount to reviewing the jurisdiction of DRT and competent Courts under SARFAESI Act. I have considered the decision of the Hon'ble Apex Court in light of the facts and circumstances of the present case. In the case before the Hon'ble Apex Court, the borrower against whom SARFAESI proceedings were initiated filed the criminal complaint alleging cheating, fraud, conspiracy, criminal breach of trust etc., against the officials of the Bank. It was found that the Bank auctioned the secured assets under SARFAESI Act. The same was challenged by the borrower both before DRT as well as by preferring writ petitions. After he was unsuccessful in both the forums, he filed the criminal complaint alleging undervaluation of his properties in collusion with one another. Under such circumstances, the Hon'ble Apex court held that SARFAESI Act is a complete code in itself. The remedies are made available under it and no criminality could be attributable to the officials of the Bank in initiating the proceedings under SARFAESI Act, in accordance with law. The facts in the present



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case are entirely different. The informant has not raised any objection regarding initiation of proceedings under SARFAESI Act in the criminal proceedings, but his grievance is with regard to commission of criminal acts of fraud, forgery, concoction of documents, acceptance of his Photostat signatures on the cheques to enable accused Nos.1 and 2 to transfer crores of rupees, taking control over the affairs of the Company under the guise of appointing concurrent Auditor and separate security agency to enable the bank officials and the employees of the Company in committing theft of servers, computers etc., Neither the DRT nor this Court under SARFAESI Act can consider such allegations which are basically criminal in nature. When *prima facie* materials are placed to accept the contention taken by the complainant, the decision in ***K Virupaksha*** (*supra*) cannot be made applicable to the present case.

181. Learned counsel for the petitioners placed reliance on the decision in ***HDFC Bank Ltd.,*** (*supra*) to contend that the SBI is a juristic person and no *mensrea* could be attributed against it. The Hon'ble Apex Court found that reading of FIR and the complaint at its face value did not make out any *prima*



facie case to constitute an offence to show that the Bank or its officials had any dishonest intention to induce or deceive the complainant or any other person to deliver the property or to show that there was *mensrea* existing at the time of such delivery of property. When no *prima facie* materials were placed to attract the ingredients of Section 420 of IPC, the Court held that the criminal proceedings is an abuse of process of Court. When on the basis of the first information, a detailed investigation was undertaken, final report was filed making specific allegation against each of the petitioners which are supported by *prima facie* materials, it cannot be said that initiation of criminal proceedings is an abuse of process of Court.

182. Learned counsel for the petitioners placed reliance of **Manoj Kumar Sharma** (*supra*) to contend that there is delay in lodging the FIR which result in embellishment which is a feature of an after thought. It lacks spontaneity and there is danger of introduction of colored or exaggerated version. The Hon'ble Apex Court on considering the materials on record found that an FIR came to be registered in the year 2005 for



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the offence punishable under Sections 304B, 498A read with 34 of IPC after long lapse of five years, when the deceased wife had committed suicide in the year 1999. On facts and circumstances of the case, the Court held that the complainant tried to rope in the accused in the criminal proceedings by making wreckless and baseless allegations. The facts and circumstances of the present case is entirely different. The informant has explained the delay in filing the complaints against his employees and the Banks. Initially he filed the complaint registered in Crime No.486 of 2015 against his employees and the Banks. In the said complaint, he expressed his doubt that the officials of the Bank might have hand in glove with the employees of the Company. Subsequently, he filed the complaint against the high level officials of the Bank who are the petitioners herein which was registered in Crime No.580 of 2016 of Surbamanyapura Police Station. The allegations are not vague or bald. But it is clear and specific. Moreover, the investigation is completed and the voluminous materials are available to crosscheck such allegations, which constitute *prima facie* case, which are sufficient to go for trial.



183. Learned counsel for the petitioners has relied on the decision in **Mukesh** (supra) to contend that the petitioners can rely on the documents which are not part of the charge sheet, unlike the accused is barred on relying on such documents while seeking discharge. The Hon'ble Apex Court has re-iterated the position of law that the proceedings either under Section 482 of Cr.P.C or under Article 226 of Constitution of India are wider in its scope as the challenge will be on the ground of abuse of process of law, unlike, the proceedings before the Sessions Courts seeking discharge. There cannot be any quarrel with regard to this settled position of law. But the question here is whether the petitioners who place reliance on various documents in support of their contentions could convince the Court to arrive at a conclusion that no *prima facie* case is made out to go for a trial or to form an opinion that all such exercises made by the informant and the Investigating Officer is only a arm twisting efforts to make the bank officials to agree for the terms. On consideration of the voluminous documents that are produced by each of the petitioners at different stages, till conclusion of the arguments, it cannot be held that the allegations made by the informant are either



baseless or without merits and therefore, initiation of the criminal proceedings is an abuse of process of Court.

184. Learned counsel for the petitioners placed reliance of **Dinesh Kumar Mathur** (*supra*) to contend that bald allegations of criminal conspiracy without placing any materials to probabalise the same even after investigation and filing of the charge sheet cannot be a basis to proceed with the criminal proceedings. This position of law is also very well settled. But on the facts of the present case, it is to be re-iterated that when the facts and circumstances of the case and the conduct of the petitioners are sufficient to draw a *prima facie* inference of commission of criminal offence including the conspiracy amongst themselves, the decision cited is not applicable to the case in hand.

185. Learned counsel for the petitioners placed reliance on **Salib Alias Shalu Alias Salim** (*supra*) and **Mary Angel** (*supra*) to contend that when frivolous and vexatious proceedings are initiated, the Court is duty bound to consider the materials that are placed before it carefully even by reading in between lines and to quash the criminal proceedings to



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prevent abuse of process of law and that on being satisfied that the criminal proceedings were initiated in abuse of process of law, to impose a reasonable cost on the informant to make him accountable for the baseless allegations made. The position of law on the point is well settled and the same cannot be disputed. But the discussions held above do not attract any of these decisions to make it applicable in the present case.

186. The informant has filed the complaints making specific allegations against each of the accused on the basis of FIRs registered, the Investigating Officer has investigated both the criminal cases in detail and filed the final report citing several witnesses and producing voluminous documents. I do not find any justification to hold a mini trial at this stage to consider each and every contentions raised by the learned senior advocates representing the petitioners and to form an opinion to reject the contentions taken by the prosecution. It is a matter for trial where both the parties will have opportunity to put forth their rival contentions. The petitioners will have an opportunity to cross examine the informant and other charge sheet witnesses. They will also have an opportunity to produce



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the materials and to lead their evidence in support of their defence. But it is premature to form an opinion to reject the contentions of the prosecution out rightly. Suffice at this stage for the Court to conclude that since there are *prima facie* materials supporting the allegations made against each of the petitioners, it is not a fit case for quashing the criminal proceedings. Hence, I answer the above point in the negative and proceed to pass the following:

ORDER

Writ Petition Nos.40308 and 35925 of 2018, Writ Petition Nos.7492, 7493 and 7494 of 2019 and Criminal Petition Nos.5157, 5159 and 6885 of 2018 are *dismissed*.

**Sd/-
(M G UMA)
JUDGE**

BGN/SPV/BH/MKM
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