Reserved on : 20.11.2024
Pronounced on : 03.12.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.10321 OF 2024

BETWEEN:

SRI NALEEN KUMAR KATEEL
S/O. NIRANJAN,
AGED ABOUT 56 YEARS,
FORMER MEMBER OF PARLIAMENT AND
KARNATAKA STATE PRESIDENT, BJP,
RESIDENCE NO.201, ASHOKA APARTMENT,
(NEAR DAIWAJNA KALYANA MANTAPA),
HOIGEBAIL ROAD, ASHOK NAGAR,
MANGALURU – 575 006.

... PETITIONER

(BY SRI K. G. RAGHAVAN, SR.ADVOCATE A/W
SRI SUYOG HERELE E., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
THROUGH TILAKNAGAR POLICE STATION,
BENGALURU,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA BUILDING,
BENGALURU – 560 001.

2 . SRI. ADARSH R. IYER
S/O. N.RAMANATHA IYER,
AGED ABOUT 50 YEARS,
CO-PRESIDENT,
JANAADHIKAARA SANGHARSHA PARISHATH (JSP),
NO.508/A/20, 7TH MAIN, 5TH CROSS,
MAHALAKSHMI LAYOUT,
BENGALURU – 560 086.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;
SRI PRASHANTH BHUSHAN, SR.ADVOCATE FOR
SRI SHIVAMURTHY A.R., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO CALL FOR RECORDS; ALLOW THIS PETITION AND QUASH THE ENTIRE PROCEEDINGS IN CR.NO.224/2024 REGISTERED BY THE RESPONDENT NO.1 ON THE FILE OF THE LEARNED XLII ACJM, BENGALURU CITY, FOR THE ALLEGED OFFENCE P/U/S 384, 120(B) R/W 34 OF IPC ARISING OUT OF PCR.NO.4880/2024 FILED BY THE RESPONDENT NO.2 AND ORDER DTD 27.09.2024 IN PCR.NO.4880/2024 PASSED BY THE LEARNED MAGISTRATE (PRODUCED AT DOCUMENT NO. 1, 2 AND 3).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.11.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner, a former Member of Parliament and State President of the Bharatiya Janata Party ('BJP' for short) is knocking at the doors of this Court calling in question registration of a crime in Crime No.224 of 2024 arising out of PCR No.4880 of 2024 registered for offences punishable under Sections 384, 120B and 34 of the IPC.

2. Shorn of unnecessary details, facts germane are as follows:-

It is the case of the complainant that the petitioner and other accused are either holding constitutional posts or office bearers of National Party i.e., BJP at this juncture. The accused in the impugned crime are Smt. Nirmala Sitharaman, Finance Minister, accused No.1; officials of Enforcement Directorate, accused No.2; office bearers of national level BJP, accused No.3; the petitioner, the then President of the Karnataka State BJP, accused No.4; Sri Vijayendra B Y, then Vice President and current President of Karnataka State BJP, accused No.5; and other office bearers of the

State BJP. The complainant describes himself to be the Co-President of Janaadhikaaara Sangharsha Parishath. It is the averment that the Government of India on 02-01-2018 had notified Electoral Bond Scheme 2018 ('the Scheme' for short) in exercise of its power under Section 31(3) of the Reserve Bank of India Act, 1934 ('RBI Act' for short) and had brought in certain statutory amendments. The complainant narrates that modus operandi of the accused is that accused No.1, the Finance Minister would take the assistance of accused No.2, officers of Enforcement Directorate to conduct raids, searches, arrest of various corporate bodies, their Chief Executive Officers and Managing Directors *inter alia.* Fearing raids of accused No.2 unleashed at the direction of accused No.1, the persons against whom searches, seizures and arrests were to be made, were put in fear and coercion to buy electoral bonds worth several crores, which are encashed by accused Nos. 3 and 4.

3. What is aforesaid is described in the complaint to be extortion racket under the garb of electoral bonds. Three illustrations of M/s Sterlite, M/s Vedanta Company and M/s Aurobindo Pharma are quoted in the complaint. The issue of

electoral bonds became subject matter of proceedings before the Apex Court as constitutional validity of the Scheme was questioned in Writ Petition 880 of 2017 and connected cases. The amendments brought into the RBI Act were held to be unconstitutional and several directions were issued by the Apex Court in its judgment rendered on 15-02-2024. The complaint broadly bases its foundation upon observations of the Apex Court. The complaint is registered on 15-04-2024.

4. The private complaint invoking Section 200 of the Cr.P.C., comes to be registered on 15-04-2024. Close to five months thereafter, the concerned Court refers the matter for investigation under Section 156(3) of the Cr.P.C., which has resulted in registration of the impugned crime in Crime No.224 of 2024 for the afore-quoted offences. Registration of crime is what has driven the petitioner to this Court in the subject petition. This Court, in terms of its order dated 30-09-2024 had granted an interim order of stay of further investigation. The same is in operation even today.

5. Heard Sri K.G.Raghavan, learned senior counsel appearing for the petitioner, Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri Prashanth Bhushan, learned senior counsel appearing for respondent No.2.

SUBMISSIONS:

Petitioner:

6. The learned senior counsel for the petitioner Sri K.G. Raghavan would submit that no case is made out in the complaint for the offences alleged. The ingredients of none of the offences are even met in the remotest sense in the case at hand. He would take this Court through Section 383 of the IPC, which is necessary for an offence under Section 384 of the IPC, Sections 120B and 34 of the IPC to contend that the facts or the averments in the complaint do not have a semblance of ingredients of necessities in the statutory provisions.

6.1. He would also contend that the complainant is a Co-President of Janaadhikaara Sangharsha Parishath. The complainant

is not an aggrieved person. He is not put into fear for delivery of any property. No property is lost by the complainant due to the alleged extortion by the petitioner or other accused. He would contend that Section 39 of the Cr.P.C., makes an exception for criminal law being set into motion by any person. He would contend that offence of extortion cannot be made by general public, but only by an aggrieved person.

Respondent No.2/Complainant:

7. Per contra, the learned senior counsel Sri Prashanth Bhushan appearing for the 2nd respondent/complainant would vehemently refute the submissions of the petitioner to contend that the victim will not come out in such cases. The Apex Court has clearly held that it is open to the petitioner therein or to any one to take recourse to common, criminal law remedy. He would take this Court through some of the paragraphs of the aforesaid judgment rendered by the Apex Court to buttress his submission that, Companies who have purchased electoral bonds, have been forced

to purchase such bonds, after putting them in fear of raid by the agencies controlled by the ruling party.

7.1. He would contend that in a case of this nature since the beneficiary is the very alleged victim, he would not come forward to register the complaint. Therefore, the general public for the purpose of purity in administration has come forward to register the complaint and such cases must be investigated into. Extortion, is writ large in the case at hand, as those Companies who have parted several thousands of crores for the purpose of purchase of electoral bonds were put in such fear, to purchase those bonds. Therefore, there is fear generated by the accused upon the victim i.e., the Companies who have purchased electoral bonds and have delivered property i.e., the transaction for purchase of electoral bonds.

7.2. He would submit that the victim in the case at hand, is not a complainant, but every member of general public is a victim, as policies of Government are tweaked after the receipt or after the purchase of such electoral bonds and thus public confidence is

eroded. It is for this reason extortion is made out and investigation is a must in the case at hand.

7.3. Insofar as reference under Section 156(3) of the Cr.P.C., is concerned, the learned senior counsel would seek to place reliance upon judgment of the Apex Court in the case of ***LALITA KUMARI v. GOVERNMENT OF U.P.*** reported in ***(2014) 2 SCC 1*** to buttress his submission that once cognizable offence is either complained of or brought before the Court in a private complaint, it must be investigated into. The Police Officer has no choice either, when the complaint is presented before him of a cognizable offence and when reference is made by the learned Magistrate, except to register the complaint. He would contend that no fault can be found in the order of reference.

8. The learned senior counsel for the petitioner would join issue to contend that the issue of *locus* has borne consideration in the judgment of the Apex Court in the case of ***A.R. ANTULAY v. R.S. NAYAK –*** reported in ***(1988) 2 SCC 602*** to contend that extortion cannot be alleged by any person of general public but must be a direct victim.

8.1. The learned senior counsel Sri Prashanth Bhushan would clarify that when there is no specific exclusion or specific bar under the statute that holds the hands of general public in registering the crime, it cannot be said that the present complainant has no locus to register the complaint. He would also seek to place reliance upon judgment of the Apex Court in the case of ***A.R. ANTULAY v. R.S. NAYAK (1984) 2 SCC 500*** and Constitution Bench judgment in the case of ***SHEONANDAN PASWAN v. STATE OF BIHAR*** reported in ***(1987) 1 SCC 288*** and a subsequent judgment of the Apex Court in the case of ***JAGJEET SINGH v. ASHISH MISHRA*** reported in ***(2022) 9 SCC 321***; all to buttress the submission that locus is alien to criminal jurisprudence which is inclusive of offence under Section 384 of the IPC.

Additional SPP/State:

9. The learned Additional State Public Prosecutor would seek to toe the lines of the learned senior counsel Sri Prashanth Bhushan appearing for the 2nd respondent/complainant. He would contend that the matter is referred for investigation and investigation must be permitted in the case at hand. He would also seek to place

reliance upon the judgment of the Apex Court in the case of ***LALITA KUMARI*** *supra* to buttress his submission that once cognizable offence is brought to the notice of the Court, a duty cast upon the Officer in-charge of the Police Station to register the crime under Section 154 of the Cr.P.C. It is his submission that the Apex Court holds that Section 154 should be construed strictly to give its natural meaning. Therefore, there is no option for the jurisdictional Police, in the registration of crime, once cognizable offence is brought to the notice of the said police. He would submit that same goes with the concerned Court to make a reference under Section 156(3) of the Cr.P.C. He would submit that the petition be dismissed and investigation be permitted.

10. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

11. The position of the office of the accused in the case at hand or the petitioner, accused No.4, is a matter of record. It needs no reiteration. The complainant claims to be a Co-President

of a public forum. The backdrop of registration of the complaint and the foundation is sought to be drawn from the observations of the Apex Court. The Government of India in the year 2018 brings a scheme by name Electoral Bond Scheme 2018 in exercise of its power under Section 31(3) of the RBI Act. For having brought in the said Scheme, further statutory amendment would follow to Finance Act, RBI Act, Representation of People's Act, Income Tax Act, Companies Act and Foreign Contribution Regulation Act, 2010. A notification comes to be issued of the Scheme on 02-01-2018. It was brought in for the purpose of regulating donations to political parties in India and the aim of the Scheme was to bring in reasonableness, transparency and accountability of such funding.

12. The Scheme need not be described or dealt with, in minute detail, as the very Scheme was called in question before the Apex Court in Writ Petition No.880 of 2017. The Apex Court in terms of its judgment dated 15-02-2024 holds the Scheme to be unconstitutional in the case of ***ASSOCIATION FOR DEMOCRATIC***

REFORMS v. UNION OF INDIA[1]. Several paragraphs of the said judgment are relied on by the learned senior counsel for the 2nd respondent, which are quoted in the counter affidavit so filed. The paragraphs quoted read as follows:

"…. …. ….

> **103.** Economic inequality leads to differing levels of political engagement because of the deep association between money and politics. At a primary level, political contributions give a "seat at the table" to the contributor. That is, it enhances access to legislators. [*See* Joshua L. Kalla and David E. Broockman, "Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment" [2016 60(3)] American Journal of Political Science. A political organisation conducted an experiment to determine if there is a link between political contributions and access to the policy-makers. The organisation scheduled meetings between 191 Congressional offices and the organisation's members who were campaign donors. When the Congressional offices were informed that prospective attendees were political donor, policy-makers made themselves available for the meeting three to four times more often.] This access also translates into influence over policy-making. An economically affluent person has a higher ability to make financial contributions to political parties, and there is a legitimate possibility that financial contribution to a political party would lead to quid pro quo arrangements because of the close nexus between money and politics. Quid pro quo arrangements could be in the form of introducing a policy change, or granting a licence to the contributor. The money that is contributed could not only influence electoral outcomes but also policies particularly because contributions are not merely limited to the campaign or pre-campaign period. Financial contributions could be made even after a political party or coalition of parties form Government. The possibility of a quid pro quo arrangement in such situations is

[1] ***(2024) 5 SCC 1***

even higher. Information about political funding would enable a voter to assess if there is a correlation between policy-making and financial contributions.

… … …

107. In view of the above discussion, we are of the opinion that the information about funding to a political party is essential for a voter to exercise their freedom to vote in an effective manner. The Electoral Bond Scheme and the impugned provisions to the extent that they infringe upon the right to information of the voter by anonymising contributions through electoral bonds are violative of Article 19(1)(*a*).

… … …

147. Financial contributions to political parties are usually made for two reasons. First, they may constitute an expression of support to the political party and second, the contribution may be based on a quid pro quo. The law as it currently stands permits contributions to political parties by both corporations and individuals. The huge political contributions made by corporations and companies should not be allowed to conceal the reason for financial contributions made by another section of the population: a student, a daily-wage worker, an artist, or a teacher. When the law permits political contributions and such contributions could be made as an expression of political support which would indicate the political affiliation of a person, it is the duty of the Constitution to protect them. Not all political contributions are made with the intent of attempting to alter public policy. Contributions are also made to political parties which are not substantially represented in the legislatures. Contributions to such political parties are made purely with the intent of expressing support. At this juncture, the close association of money and politics which has been explained above needs to be recounted. Money is not only essential for electoral outcomes and for influencing policies. It is also necessary for true democratic participation. It is necessary for enhancing the number of political parties and candidates contesting the elections which would in turn impact the demographics of representatives in the Assembly. It is true that contributions made as quid pro quo transactions are not an expression of political support. However, to not grant the umbrella of informational privacy to political contributions

only because a portion of the contributions is made for other reasons would be impermissible. The Constitution does not turn a blind eye merely because of the possibilities of misuse.

… … …

173. It must be recalled that we have held above that the right to information of the voter includes the right to information of financial contributions to a political party because of the influence of money in electoral politics (through electoral outcomes) and governmental decisions (through a seat at the table and quid pro quo arrangements between the contributor and the political party). The underlying rationale of Section 29-C(1) is that contributions below the threshold do not have the ability to influence decisions, and the right to information of financial contributions does not extend to contributions which do not have the ability to influence decisions. Similarly, the right to privacy of political affiliations does not extend to contributions which may be made to influence policies. It only extends to contributions made as a genuine form of political support that the disclosure of such information would indicate their political affiliation and curb various forms of political expression and association.

… … …

207. The Preamble to the Constitution describes India as a "democratic republic": a democracy in which citizens are guaranteed political equality irrespective of caste and class and where the value of every vote is equal. Democracy does not begin and end with elections. Democracy sustains because the elected are responsive to the electors who hold them accountable for their actions and inactions. Would we remain a democracy if the elected do not heed to the hue and cry of the needy? We have established the close relationship between money and politics above where we explained the importance of money for entry to politics, for winning elections, and for remaining in power. That being the case, the question that we ask ourselves is whether the elected would truly be responsive to the electorate if companies which bring with them huge finances and engage in quid pro quo arrangements with parties are permitted to contribute *unlimited* amounts. The reason for political contributions by companies is as open as daylight. Even the

learned Solicitor General did not deny during the course of the hearings that corporate donations are made to receive favours through quid pro quo arrangements.

… … …

276. The economic policies of the Government have an impact on business and commerce. Political pressure groups promote different agendas, including perspectives on economic policies. As long as these pressure groups put forward their perspective with evidence and data, there should not be any objection even if they interact with elected representatives. The position would be different if monetary contributions to political parties were made as a quid pro quo to secure a favourable economic policy. This would be an offence under the Prevention of Corruption Act, 1988 and also under the PMLA. Such offences when committed by political parties in power can never see the light of the day if secrecy and anonymity of the donor is maintained.

… … …

289. The great underlying principle of the Constitution is that rights of individuals in a democratic set-up is sufficiently secured by ensuring each a share in political power. [Harrison Moore, *The Constitution of the Commonwealth of Australia*, p. 329 (1902).] This right gets affected when a few make large political donations to secure selective access to those in power. We have already commented on pressure groups that exert such persuasion, within the boundaries of law. However, when money is exchanged as quid pro quo then the line between persuasion and corruption gets blurred.

290. It is in this context that the High Court of Australia in *Jeffery Raymond McCloy* v. *State of New South Wales* [*Jeffery Raymond McCloy* v. *State of New South Wales*, 2015 HCA 34 (Aust)] , observes that corruption can be of different kinds. When a wealthy donor makes contribution to a political party in return of a benefit, it is described as quid pro quo corruption. More subtle corruption arises when those in power decide issues not on merits or the desires of their constituencies, but according to the wishes and desires of those who make large contributions. This kind of corruption is described as "clientelism". This can

arise from the dependence [James Madison in the Federalist Paper No. 52 notes that a Government must "depend on the people alone". This condition, according to Professor Lawrence Lessig, has two elements — first, it identifies a proper dependency ("on the people") and second, it describes that dependence as exclusive ("alone").] on the financial support of a wealthy patron to a degree that it compromises the expectation, fundamental to representative democracy, that public power will be exercised in public interest. This affects the vitality as well as integrity of the political branches of the Government. While quid pro quo and clientelistic corruption erodes quality and integrity of government decision-making, the power of money may also pose threat to the electoral process itself. This phenomenon is referred to as "war-chest" corruption. [See *Federal Election Commission* v. *National Right to Work Committee*, 1982 SCC OnLine US SC 220 : 74 L Ed 2d 364 : 459 US 197 (1982), where the petitioners submitted:"*30*. … substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political "war chests" which could be used to incur political debts from legislators who are aided by the contributions…." (SCC OnLine US SC para 30)]

… … …

292. The Supreme Court of the United States in *Buckley* v. *R. Valeo* [*Buckley* v. *R. Valeo*, 1976 SCC OnLine US SC 16: 46 L Ed 2d 659: 424 US 1 (1976)] has commented on the concern of quid pro quo arrangements and its dangers to a fair and effective Government. Improper influence erodes and harms the confidence in the system of representative Government. Contrastingly, disclosure provides the electorate with information as to where the political campaign money comes from and how it is spent. This helps and aides the voter in evaluating those contesting elections. It allows the voter to identify interests which candidates are most likely to be responsive to, thereby facilitating prediction of future performance in office. Secondly, it checks actual corruption and helps avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. Relying upon *Grosjean* v. *American Press Co.* [*Grosjean*v. *American Press Co.*, 1936 SCC OnLine US SC 33 : 80 L Ed 660 : 297

> US 233 (1936)] , it holds that informed public opinion is the most potent of all restraints upon misgovernment. Thirdly, record-keeping, reporting and disclosure are essential means of gathering data necessary to detect violations of contribution limitations."

The conclusions are not indicated in the aforesaid paragraphs. The conclusions are found at paragraphs 222 to 226 and they read as follows:

> "…. …. ….
>
> **H. *Conclusion and directions***
>
> **222.** In view of the discussion above, the following are our conclusions:
>
> **222.1.** The Electoral Bond Scheme, the proviso to Section 29-C(1) of the Representation of the People Act, 1951 (as amended by Section 137 of the Finance Act, 2017), Section 182(3) of the Companies Act (as amended by Section 154 of the Finance Act, 2017), and Section 13-A(*b*) (as amended by Section 11 of Finance Act, 2017) are violative of Article 19(1)(*a*) and unconstitutional; and
>
> **222.2.** The deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties is arbitrary and violative of Article 14.
>
> **223.** We direct the disclosure of information on contributions received by political parties under the Electoral Bond Scheme to give logical and complete effect to our ruling. On 12-4-2019 [*Assn. for Democratic Reforms* v. *Union of India*, (2022) 15 SCC 711] , this Court issued an interim order directing that the information of donations received and donations which will be received must be submitted by political parties to ECI in a sealed cover. This Court directed that political parties submit detailed particulars of the donors as against each bond, the amount of each bond and the full particulars of the credit received against each bond, namely,

the particulars of the bank account to which the amount has been credited and the date on which each such credit was made. During the course of the hearing, Mr Amit Sharma, Counsel for ECI, stated that ECI had only collected information on contributions made in 2019 because a reading of para 17 of the interim order indicates that the direction was only limited to contributions made in that year. Paras 16 and 17 of the interim order are extracted below: (SCC p. 719)

> "*16*. In the above perspective, according to us, the just and proper interim direction would be to require all the political parties who have received donations through electoral bonds to submit to the Election Commission of India in sealed cover, detailed particulars of the donors as against each bond; the amount of each such bond and the full particulars of the credit received against each bond, namely, the particulars of the bank account to which the amount has been credited and the date of each such credit.
>
> *17*. The above details will be furnished forthwith in respect of electoral bonds received by a political party till date. The details of such other bonds that may be received by such a political party up to the date fixed for issuing such bonds as per the Note of the Ministry of Finance dated 28-2-2019 i.e. 15-5-2019 will be submitted on or before 30-5-2019. The sealed covers will remain in the custody of the Election Commission of India and will abide by such orders as may be passed by the Court."

224. Para 17 of the interim order does not limit the operation of para 16. Para 16 contains a direction in unequivocal terms to political parties to submit particulars of contributions received through electoral bonds to ECI. Para 17 only prescribes a timeline for the submission of particulars on contributions when the window for electoral bond contributions was open in 2019. In view of the interim direction of this Court, ECI must have collected particulars of contributions made to political parties through electoral bonds.

225. In view of our discussion above, the following directions are issued:

225.1. The issuing bank shall herewith stop the issuance of electoral bonds;

225.2. SBI shall submit details of the electoral bonds purchased since the interim order of this Court dated 12-4-2019 [*Assn. for Democratic Reforms* v. *Union of India*, (2022) 15 SCC 711] till date to ECI. The details shall include the date of purchase of each electoral bond, the name of the purchaser of the bond and the denomination of the electoral bond purchased;

225.3. SBI shall submit the details of political parties which have received contributions through electoral bonds since the interim order of this Court dated 12-4-2019 [*Assn. for Democratic Reforms* v. *Union of India*, (2022) 15 SCC 711] till date to ECI. SBI must disclose details of *each* electoral bond encashed by political parties which shall include the date of encashment and the denomination of the electoral bond;

225.4. SBI shall submit the above information to ECI within three weeks from the date of this judgment, that is, by 6-3-2024;

225.5. ECI shall publish the information shared by SBI on its official website within one week of the receipt of the information, that is, by 13-3-2024; and

225.6. Electoral bonds which are within the validity period of fifteen days but that which have not been encashed by the political party yet shall be returned by the political party or the purchaser depending on who is in possession of the bond to the issuing bank. The issuing bank, upon the return of the valid bond, shall refund the amount to the purchaser's account.

226. Writ petitions are disposed of in terms of the above judgment."

The amendments to the statutes were held to be unconstitutional and certain directions were issued.

13. Another petition was preferred in ***Writ Petition (Civil) No.266 of 2024 and connected cases*** after the judgment afore-quoted was delivered by the Apex Court, seeking constitution of a Special Investigation Team to probe into what was found by the Apex Court in its order. The Apex Court, in terms of a separate order dated ***02-08-2024*** rejected those petitions by observing as follows:

> "…. …. ….
>
> 16. At the present stage, absent a recourse to the remedies which are available under the law to pursue such grievances, it would both be premature and inappropriate for this Court; premature because the intervention of this Court under Article 32 of the Constitution must be preceded by the invocation of normal remedies under the law and contingent upon the failure of those remedies; and inappropriate because the intervention of this Court, at the present stage, would postulate that the normal remedies which are available under the law would not be efficacious.
>
> **17. This Court entertained a batch of petitions challenging the constitutional validity of statutory provisions embodying the Electoral Bond Scheme and the consequential amendments which were made to diverse statutes. The only remedy for challenging such legislative changes lies in the invocation of the power of judicial review. Allegations involving criminal wrong doing, on the other hand, are of a distinct**

nature where recourse to the jurisdiction of this Court under Article 32 of the Constitution should not be taken as a matter of course particularly, in view of the remedies available in law.

18. The other reliefs which have been sought in the batch of petitions, including a direction to the authorities to make recoveries from political parties on the basis that they are proceeds of crime or for the reopening of income tax assessments impinge upon the statutory functions of authorities constituted under the law to make enquiries in that regard. For instance, before an assessment is reopened, the Assessing Officer under the Income Tax Act, 1961 has to form a subjective opinion on the basis of tangible material that income subject to tax has escaped assessment. There are statutory functions to be exercised on a case to case basis by the Assessing Officer.

19. For the above reasons, we are of the considered view that the constitution of an SIT headed by a former Judge of this Court or otherwise should not be ordered in the face of remedies which are available under the law governing the criminal procedure. Likewise, matters, such as the reopening of assessments pertain to the specific statutory jurisdiction conferred upon assessing authorities under the Income Tax Act, 1961 and other statutes.

20. For all these reasons, we decline to exercise the jurisdiction under Article 32 of the Constitution.

21. The Writ Petitions are accordingly dismissed."

(Emphasis supplied)

The constitution of Special Investigation Team headed by a former Judge of the Apex Court or otherwise is declined to be ordered. The

declining comes about in the face of remedies which are available under the law governing criminal procedure or the plea of reopening of assessments to be dependent upon the Income Tax Act, 1961.

14. As observed hereinabove, the said order was passed on 02-08-2024. By then, the complainant in the case at hand had already registered the complaint on 15-04-2024. Since the issue now gets triggered from the complaint and its reference for investigation, I deem it appropriate to notice the complaint. The complaint reads as follows:

> **"<u>The complainant above named submits and states as follows:-</u>**
>
> 1. The address of the complainant for the purpose of issuance of Court Notice, Summons etc. from this Hon'ble Court is as shown in the cause title and summons may also be served at S.Balan and Associates, Advocates, Prestige Center Point No.105, 1st Floor, Cunningham Road, Kaverappa Lay-out, Vasanthanagar, Bangalore-560 052.
>
> 2. That the addresses of the accused are mentioned in the cause title for the purpose of service of summons, notices etc., and summons may also be served to their respective official offices.
>
> **3. The complainant is Co-President of Janaadhikaara Sangharsha Parishath (JSP), registered under Indian Trust Act, which works for Just Society free from corruption, extortion, casteism etc., The**

organization has initiated several legal proceedings before various judicial and non-judicial forums.

4. The accused No.1 and 2 are holding constitutional posts, which are more fully described in the cause title.

5. The accused No.3 and 4 are holding top position in the ruling political dispensation.

6. It is submitted that the accused No.1 and 2 in connivance with accused No.3 and 4 and many others who are holding constitutional posts, CEO's and MD's of national MNC and TNC corporate companies committed extortion under the guise and garb of electoral bonds and benefited to the tune of 8000 and more crores of INR.

7. It is submitted that, accused No.1 through the clandestine aid and support of accused No.2 facilitated to extort thousands of crores of INR for the benefit of accused No.3 at the national level and accused No.4 in the State of Karnataka.

8. It is submitted that, the modus operandi of the extortion are vividly narrated herein below:

a) It appears accused No.1 press the service of accused No.2 to conduct raids seizures and arrests of various corporate, their CEO's, MD's etc.

b) Fearing the raids of accused No.2 unleashed by accused No.1 through accused No.2, many corporate and moneybags were coerced and coaxed to buy electoral bonds worth several crores, which are encashed by accused No.3 and 4.

c) The entire extortion racket under the garb of electoral bonds has been orchestrated hand in glove with officials of BJP at various levels.

9. It is submitted that, the corporate Aluminum and Copper giant M/s Sterlite and M/s Vedanta Company lead by Mr. Anil Agarwal was subjected to raids by accused No.2 on multiple occasions, on

account of which, he was made to buy electoral bonds and in deed he purchased electoral bonds worth 230.15 crores between April 2019, August 2022 and November 2023. The detailed analysis of electoral bond extortion by BJP political party are herewith produced as Annexure-A. Details of ED raids are herewith produced as Annexure-B.

10. The complainant further submits that a company by name M/s Aurobindo Pharma was subjected to raids, seizures and arrests by the officials of accused No.2 on account of which, Aurobindo Pharma group of companies purchased electoral bonds on 5th January 2023, 2nd July 2022, 15th November 2022 and 8th November 2023 to the tune of ₹49.5 crores. Details of extortion by BJP political party in guise of electoral bond are herewith produced as Annexure-C. Aurobindo Pharma fearing ED raids turned as approver. Details of raids by second accused are separately produced as Annexure-D.

11. The complainant submits that, conspiracy secretly meted out by accused No.1 to accused No.4 at various levels culminated in to not only extorting multiple thousands of crores in the name of electoral bond but also led to arrest of sitting Chief Minister of State of Delhi on the ground that one of the Directors of M/s Aurobindo Pharma companies turned approver and raised fingers against him.

12. It is relevant to submit that, Hon'ble Supreme Court made several observation against electoral bonds in its judgment. The entire events, facts and circumstances of electoral bonds are within the official domain of various law enforcement agencies.

13. The complainant lodged a detailed report in writing before SHO, Tilaknagar Police Station on 30.03.2024. Despite receiving complaint, no action has been taken. The copy of complaint herewith produced at Annexure-E.

14. The complainant has approached DCP, Bangalore South East, on 02-04-2024 for needful action, but no action has been taken. The copy of complaint to DCP is herewith produced at Annexure-F.

15. The complainant submits that, in compliance of Priyanka Srivastava case, he is filing an affidavit narrating as to how he ran pillar to post approaching law enforcing agencies to register a FIR for the purpose of investigation and report.

16. The complainant submits that, the judgment of High Court in **Crl.P.No.2006/2014 connected with 2005/2014, 999/2015 between N.C. Shivakumar and another v. State of Lokayukta Police and another** has set ratio that the Magistrate and Sessions Judge is bestowed with the power to refer the complaint U/s 156(3) CrPC without any sanction U/s 197 of CrPC. There are catena of decisions of Karnataka High Court and Supreme Court that sanction is not required to refer the complaint filed U/s 156(3) CrPC for the purpose of filing FIR and investigation by a police station.

PRAYER

Wherefore, the complainant humbly prays that this Hon'ble Court may be pleased to refer complaint to SHO, Tilaknagar Police Station with a direction to register a FIR to investigate and report U/s 156(3) CrPC for the offences punishable U/s 384, 120B r/w 34 IPC in the ends of law and justice."

(Emphasis added)

Complaint is registered before the jurisdictional Court invoking Section 200 of the Cr.P.C., on the aforesaid date. The complainant, on several occasions, seeks adjournments even for a reference. Finally, on 27-09-2024, 5 months after registration of the complaint

and long after the order passed by the Apex Court quoted *supra*, the complaint is referred for investigation. The order of reference is necessary to be noticed. It reads as follows:

"…. …. ….

> It is the allegation of the complainant that there had been a conspiracy among the accused No.1 to 4 at various levels for extortion of thousands of crores in the name of electoral bonds. **In prosecution of said conspiracy the accused No.1 through the clandestine aid and support of accused No.2 facilitated to extort such thousands of crores of money for the benefit of accused No.3 at the national level and accused No.4 at the State level. As such they have committed the offence P/U/Sec.384 & 120B R/w 34 IPC.**
>
> Upon perusal of the complaint allegations and considering the nature of the offences alleged to have been committed by the accused, it appears proper to refer to the recent decisions of Hon'ble Apex Court on the issue of Electoral Bonds before taking any decision on the prayer of complainant.
>
> In the case of **Association for Democratic Reforms & Another v. Union of India** reported in 2024 INSC 113, in W.P.(C) No.880/2017, dated 15th February 2024 the Hon'ble Apex Court has declared The Scheme of Electoral Bonds notified by the Central Government on 02.01.2018 as unconstitutional.
>
> Further in a decision in the case of Common cause & another v. Union of India, in W.P.(Civil) No.266 of 2024 c/w W.P.(Civil) No.421 of 2024, 293 of 2024 and W.P.(Civil) No.454 of 2024 dated 02-08-2024 seeking the Hon'ble Apex Court for a Court monitored investigation into the electoral bonds Scheme on the ground that there was quid pro quo between corporates who purchased the bonds and the political parties who got the donations, the Hon'ble Apex Court has rejected the plea observing that constitution of

such an SIT should not be ordered under Article 32 of the Constitution of India on the face of remedies which are available under the law governing both criminal procedures i.e., ordinary law governing Criminal procedure.

Thus, it appears that though the Scheme of Electoral Bonds is declared as unconstitutional by the Hon'ble Apex Court under Article 32, for any criminal action in respect of any criminal wrong doing under the said scheme the remedies are available under Criminal law. Therefore, the complainant appears to be right in approaching this Court seeking for an investigation into the alleged criminal wrong doing of the accused under the said Scheme. Hence, in the light of the Nature of allegations made in the complaint, this Court is of the opinion that an investigation through a competent investigation agency is proper.

The complainant has duly complied the guidelines of Hon'ble Apex Court in Priyanka Srivathsava's case as to exhaustion of Section 154 of Cr.P.C., and filed affidavit.

Hence, I hereby refer this complaint U/Sec.156(3) of Cr.PC to the SHO, Thilaknagar Police Station, Bengaluru, for investigation.

Office to send the complaint and connected papers to the said police station.

Await FIR.

Call on 10-01-2024."

(Emphasis added)

The reference then becomes a crime in Crime No.224 of 2024 for offences punishable under Sections 384, 120B and 34 of the IPC. Registering the crime lands the petitioner to the doors of this Court in the subject petition.

15. In furtherance of what is narrated hereinabove, two pivotal issues would emerge for consideration:

(1) Whether the ingredients of extortion are met in the case at hand?

(2) Whether the complainant to be considered to be an aggrieved person to seek registration of an offence under Section 384 of the IPC for extortion?

Issue No.1:

Whether the ingredients of extortion are met in the case at hand?

16. To consider whether a case of extortion is made out, even *prima facie*, it becomes necessary to notice the statutory provisions. The offence alleged is the one punishable under Section 384 of the IPC, *inter alia*. Section 384 of the IPC reads as follows:

> "**384. Punishment for extortion**.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 384 deals with punishment for extortion. What is extortion is dealt with under Section 383. It reads as follows:

> "**383. Extortion**.—**Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion"**.
>
> *Illustrations*
>
> *(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.*
>
> *(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z sings and delivers the note. A has committed extortion.*
>
> *(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.*
>
> *(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z sings and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion."*

(Emphasis supplied)

Section 383 mandates that whoever intentionally puts any person in fear of any injury to that person or to any other and thereby

dishonestly induces the person so put in fear to deliver any property or valuable security, the said accused is said to have committed the offence of extortion. Therefore, extortion has certain elements present in Section 383 of the IPC. They are, the accused must dishonestly put a person in fear of any injury, and the intention must be illegal to deliver any property and the property must be delivered, to the accused, by the victim. The words found in Section 383 have certain statutory meanings. Section 24 of the IPC defines the word 'dishonestly'. It reads as follows:

> "**24. "Dishonestly".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"."**
>
> (Emphasis supplied)

Section 43 defines the word 'illegal'. It reads as follows:

> "**43. "Illegal", "Legally bound to do".—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit."**
>
> (Emphasis supplied)

Section 44 of the IPC defines the word 'injury'. It reads as follows:

> "**44. "Injury".—The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property."**

(Emphasis supplied)

Therefore, what 'dishonestly' would mean is, illegal intention of causing injury must be present in a case of extortion apart from the fact that delivery of property is imperative in such a case. All the aforesaid facts of dishonestly putting someone in fear for cause of an injury for illegal actions must be done or caused by the accused upon the victim. The Apex Court has clearly delineated as to what are the necessary ingredients of extortion, wherein the Apex Court holds that all the ingredients as aforesaid must be present in an allegation of extortion, failing which the offence under Section 383 of the IPC would not be met even *prima facie*. The Apex Court in the case of ***DHANANJAY v. STATE OF BIHAR***[2]***,*** has held as follows:

> "…. …. ….
>
> **10. No allegation was made that the money was paid by the informant having been put in fear of injury or putting him in such fear by the appellant was intentional.**

[2] **(2007) 14 SCC 768**

> **11. The first informant, admittedly, has also not delivered any property or valuable security to the appellant.**
>
> **12. A distinction between theft and extortion is well known. Whereas offence of extortion is carried out by overpowering the will of the owner; in commission of an offence of theft the offender's intention is always to take without that person's consent.**
>
> **13.** We, therefore, are of the opinion that having regard to the facts and circumstances of the case, no case under Section 384 of the Penal Code was made out in the first information report."
>
> (Emphasis supplied)

In a subsequent judgment, the Apex Court interpreting Sections 383 and 384 of the IPC, in the case of ***ISAAC ISANGA MUSUMBA v. STATE OF MAHARASHTRA***[3] holds as follows:

> "…. …. ….
>
> **3.** We have read the FIR which has been annexed to the writ petition as Annexure P-7 and we find therefrom that the complainants have alleged that the accused persons have shown copies of international warrants issued against the complainants by the Ugandan Court and letters written by Uganda Ministry of Justice and Constitutional Affairs and the accused have threatened to extort 20 million dollars (equivalent to Rs 110 crores). **In the complaint, there is no mention whatsoever that pursuant to the demands made by the accused, any amount was delivered to the accused by the complainants. If that be so, we fail to see as to how an offence of extortion as defined in Section 383 IPC is made out.** Section 383 IPC states that:

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[3] **(2014) 15 SCC 357**

> "**383. *Extortion***.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'."

Hence, unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out and an FIR for the offence under Section 384 could not have been registered by the police.

4. We also find on the reading of the FIR, there is also an allegation that on 18-4-2013 between 1 p.m. and 5.30 p.m. the accused persons illegally entered into the Head Office of the Company at Fort and demanded 20 million dollars (equivalent to Rs 110 crores) saying that they have international arrest warrants against the complainants and upon failure to pay the said sum the complainants will have to face dire consequences. It is because of this allegation in the FIR, the offence under Section 441 IPC is alleged to have been committed by the accused persons. On reading Section 441 IPC we find that intent to commit an offence or to intimidate, insult or annoy any person in possession of property is a necessary ingredient of the offence of criminal trespass. It is not disputed that there was a business transaction between the accused persons and the complainants. Hence, if the accused persons have visited the premises of the complainants to make a demand towards their dues, we do not think a case of "criminal trespass" as defined in Section 441 IPC is made out against the accused persons.

5. Section 120-B IPC will be attracted only if two or more persons agree to do an illegal act or a legal act by illegal means. As the offences under Sections 384 and 441 IPC are not made out, and no other illegal act is alleged in the FIR, no case of criminal conspiracy against the accused persons is also made out."

(Emphasis supplied)

In a later judgment the Apex Court in the case of ***SALIB v. STATE OF U.P.***[4], differentiates extortion from theft and holds extortion is bringing something to the knowledge of the victim and theft is robing away something without his knowledge. Therefore, for offence of extortion, element of consent by putting the victim in fear of injury is imperative. The Apex Court holds in the said judgment as follows:

"…. …. ….

> **20. We take notice of the fact that Section 386 of the IPC has also been invoked. Section 386 of the IPC relates to extortion by putting a person in fear of death or grievous hurt. Section 386 of the IPC runs as follows:—**
>
> > ***"Section 386. Extortion by putting a person in fear of death or grievous hurt. —Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."***
>
> **21. "Extortion" has been defined in Section 383 of the IPC as follows:—**
>
> > ***"Section 383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion.***

[4] **2023 SCC OnLine SC 947**

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z sings and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z sings and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion."

22. So from the aforesaid, it is clear that one of the necessary ingredients of the offence of extortion is that the victim must be induced to deliver to any person any property or valuable security, etc. That is to say, the delivery of the property must be with consent which has been obtained by putting the person in fear of any injury. In contrast to theft, in extortion there is an element of consent, of course, obtained by putting the victim in fear of injury. **In extortion, the will of the victim has to be overpowered by putting him or her in fear of injury. Forcibly taking any property will not come under this definition. It has to be shown that the person was induced to part with the property by putting him in fear of injury.** The illustrations to the Section given in the IPC make this perfectly clear.

23. In the aforesaid context, we may refer to the following observations made by a Division Bench of the High Court of Patna in *Ramyad Singh* v. *Emperor* Criminal Revision No. 125 of 1931 (Pat):—

> *"If the facts had been that the complainant's thumb had been forcibly seized by one of the petitioners and had been applied to the piece of paper notwithstanding his struggles and protests, then I would agree that there is good ground for saying that the offence committed whatever it may be, was not the offence of extortion because the complainant would not have been induced by the fear of injury but would have simply been the subject of actual physical compulsion."*

24. It was held:—

> *"It is clear that this definition makes it necessary for the prosecution to prove that the victims Narain and Sheonandan were put in fear of injury to themselves or to others, and further, were thereby dishonestly induced to deliver papers containing their thumb impressions. The prosecution story in the present case goes no further than that thumb impressions were 'forcibly taken' from them. The details of the forcible taking were apparently not put in evidence. The trial Court speaks of the wrists of the victims being caught and of their thumb impressions being then 'taken' ……. The lower Courts only speak of the forcible taking of the victim's thumb impression; and as this does not necessarily involve inducing the victim to deliver papers with his thumb impressions (papers which could no doubt be converted into valuable securities), I must hold that the offence of extortion is not established."*

25. Thus, it is relevant to note that nowhere the first informant has stated that out of fear, she paid Rs. 10 Lakh to the accused persons. To put it in other words, there is nothing to indicate that there was actual delivery of possession of property (money) by the person put in fear. In the absence of anything to even remotely suggest that the first informant parted with a particular amount after being put to fear of any injury, no offence under Section 386 of the IPC can be said to have been made out."

(Emphasis supplied)

Long before the aforesaid judgments, the Apex Court in the case of ***R.S. NAYAK v. A.R. ANTULAY***[5] while considering what would amount to extortion has held as follows:

"…. …. ….

60. "Extortion" is thus defined in Section 383, IPC:

> **"Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits *extortion.*"**

The main ingredients of the offence are:

(***i***) **the accused must put any person in fear of injury to that person or any other person;**

(***ii***) **the putting of a person in such fear must be intentional;**

(***iii***) **the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and**

(***iv***) **such inducement must be done dishonestly.**

Before a person can be said to put any person in fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to

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[5] **(1986) 2 SCC 716**

> do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in *HabibulRazak* v. *King-Emperor* [AIR 1924 All 197: 25 Cri LJ 961: 21 ALJ 850]. **There is no evidence at all in this case that the managements of the sugar cooperatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar cooperatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion. We see, therefore, no justification in the claim of Mr Jethmalani that a charge for the offence of extortion should have been framed**."
>
> (Emphasis supplied)

On a coalesce of judgments rendered by the Apex Court quoted *supra*, what would unmistakably emerge is that, the petitioner or other accused should have put the complainant in fear for delivery of property. It is not the case of the complainant, even in the complaint, that he has been put to fear of injury and he has delivered any property to the accused. Therefore, meeting of ingredients, in the case at hand of Section 383 of the IPC, as

elucidated by the Apex Court, is a **figment of imagination,** of the complainant. He is a Co-President of a public forum and projects the complaint to be a public interest litigation. The Apex Court in the afore-quoted paragraphs of the order of 02-08-2024 in W.P.(Civil) No.266 of 2024 may have permitted, action to be taken in accordance with law, and not ***de hors*** law. Therefore, if a victim had complained that he had purchased electoral bonds it would have been an altogether different circumstance. The other offence alleged is the offence punishable under Section 120-B of the IPC, allegation of criminal conspiracy. If the offence under Section 383 as made penal under Section 384 itself is not made out, it can hardly be said that further investigation must be permitted only for offence under Section120-B of the IPC. Therefore, the offence of 120-B of the IPC gets subsumed on the reasons rendered to hold that the offence under Section 384 is not met in the case at hand. **Therefore, issue No.1 is answered against the complainant.**

Issue No.2:

Whether the complainant to be considered to be an aggrieved person to seek registration of an offence under Section 384 of the IPC for extortion?

17. Here comes the issue of locus, the **kernel of the conundrum**, the pivotal issue No.2. The complainant, as observed hereinabove, is Co-President of Janaadhikaara Sangharsha Parishath. Admittedly he is not the victim. It is not his case that he has been put into fear for delivery of any property and the property has been delivered by him to the accused. Therefore, he is alien to the alleged transaction or the observations made by the Apex Court. It is also trite law that criminal law can be set into motion by any person, *a caveat*, not for all offences under the IPC. Therefore, the interplay between the concept that criminal law can be set into motion by any person, and its exceptions is required to be noticed.

18. The concept that criminal law can be set into motion by any person is not a concept that is dropped from air. It bears

statutory recognition, as obtaining under Section 39 of the Cr.P.C.

Section 39 of the Cr.P.C., reads as follows:

> "**39. Public to give information of certain offences**.—(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:—
>
> (*i*) Sections 121 to 126, both inclusive, and Section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);
> (*ii*) Sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);
> (*iii*) Sections 161 to 165-A, both inclusive (that is to say, offences relating to illegal gratification);
> (*iv*) Sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);
> (*v*) Sections 302, 303 and 304 (that is to say, offences affecting life);
> *(v-a*) Section 364-A (that is to say, offence relating to kidnapping for ransom, etc.);
> (*vi*) Section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);
> (*vii*) Sections 392 to 399, both inclusive, and Section 402 (that is to say, offences of robbery and dacoity);
> (*viii*) Section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.)
> (*ix*) Sections 431 to 439, both inclusive (that is to say, offences of mischief against property);
> (*x*) Sections 449 and 450 (that is to say, offence of house-trespass);
> (*xi*) Sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and
> (*xii*) Sections 489-A to 489-E, both inclusive (that is to say, offences relating to currency notes and bank notes),

> shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.
>
> (2) For the purposes of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India."

Section 39 clearly demarcates what are the offences that can be complained of by the public and person aggrieved. The section clearly indicates that every person aware of the commission of offence or of the intention of any person to commit any offence under Sections 121 to 126 which come under Chapter-VI of the IPC deal with offences against the State; Section 130 also figures in Chapter-VI which is aiding escape or harbouring a prisoner; Sections 143 to 148 which come under Chapter-VIII deal with offences against public tranquillity; Sections 161 to 165A which come under Chapter-IX deal with offences by or relating to public servants; Sections 272 to 278 both inclusive which come under Chapter-XIV deal with offences affecting public health, safety, convenience, decency and morals; Sections 302 to 304 which come under Chapter XVI deal with offences affecting the human body; Section 364A which deals with kidnapping for ransom; Section 382

which comes under Chapter-XVII deals with theft or offences against property; Sections 392 to 399 deal with punishment for robbery and extends up to dacoity and preparation for dacoity, even assembling for the purpose of committing dacoity; Section 409 deals with criminal breach of trust by a public service; Section 431 to 439 deal with mischief by injury to public road and all other offences which involve public; Sections 449 and 450 deal with grievous hurt while committing house trespass or house breaking; Sections 489A to 489E deal with counterfeiting currency notes and bank notes, making use of documents resembling currency notes and bank notes. Section 39 stops at that.

19. A Constitution Bench of the Apex Court in the case of ***LALITA KUMARI*** *supra* interprets Section 39 and its interplay with Section 154. The Apex Court holds as follows:

"…. …. ….

> **55.** In view of the above, the use of the word "shall" coupled with the scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in charge of the police station. Reading "shall" as "may", as contended by some counsel, would be against the scheme of the Code. Section 154 of the Code should be strictly construed and the

> word "shall" should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.
>
> **56.** In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. **It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 64-A, 382, 392, etc. of the Penal Code. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the officer in charge of a police station to register the report. The word "shall" occurring in Section 39 of the Code has to be given the same meaning as the word "shall" occurring in Section 154(1) of the Code."**
>
> (Emphasis supplied)

The Apex Court holds that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences, as found in Section 39 covered by several sections quoted therein and further holds that it would be incongruous to suggest that though it the duty of every citizen to inform about commission of an offence, it is not obligatory on the officer in-charge of the Police Station to register the report. The finding of the Apex Court is unequivocal and the purport is clear that any person can set the criminal law in motion only insofar as offences enumerated in

Section 39 and notwithstanding the enumeration under Section 39, if the officer in-charge of the Police Station would not register the crime, it would not lead to incongruity. Therefore, the unmistakable inference of Section 39 and its purport as held by the Apex Court is that, Sections 383 and 384 are persons specific, which would mean that they can be alleged only by the aggrieved person. It is not public specific. For an illustration, if a person is assaulted and has suffered injury that cannot be complained of by a stranger/neighbour. The person who has suffered assault should necessarily be the complainant. If he chooses not to register the complaint for reasons best known to him, a stranger cannot complain that a stranger has been assaulted and he is the victim. Likewise, as held by the Apex Court in the case of ***SALIB*** *supra* theft would not require consent. Extortion would require putting a person in fear of consent.

20. Insofar as the judgments relied on by the learned senior counsel for the 2nd respondent/complainant in the cases of ***SHEONANDAN PASWAN*** and ***JAGJEET SINGH*** *supra*, both the judgments of the Apex Court follow the law laid down in ***A.R.***

ANTULAY *supra***.** The Apex Court holds therein that the concept of *locus standi* of a complainant is a concept foreign to criminal jurisprudence. The Apex Court holds in ***SHEONANDAN PASWAN*** *supra* that it does not find why the prosecution for an offence against the Society that was alleged in that case was being wrongly withdrawn. The Apex Court was clearly holding that offences against the Society should not merely an individual wrong. Therefore, the Apex Court holds that any member of the Society must have locus to initiate a prosecution and desist withdrawal of such prosecution if had been initiated, as the offences therein were offences of corruption and therefore, the Apex Court holds that any public interested in cleanliness of public administration and public morality would be entitled to file a complaint. There can be no qualm about the principles elucidated by the Apex Court. The Apex Court was clear that where offences are against the Society, it did not consider the purport of Section 39 of the Cr.P.C., therein. Again, the Apex Court in ***JAGJEET SINGH*** was considering the concept of victim. The Apex Court holds victim can be a stranger even and a stranger can become an informant and the victim need not be the complainant or the informant for an offence of felony.

There can be no qualm again for the principle so laid down therein. The judgments so rendered by the Apex Court in ***SHEONANDAN PASWAN*** and ***JAGJEET SINGH*** cannot be read in isolation to the facts obtaining before the Apex Court in those cases and if it is considered on the facts obtaining therein, it would become inapplicable to the facts obtaining in the case at hand. Therefore, all the three judgments in the cases of ***A.R. ANTULAY, SHEONANDAN PASWAN*** and ***JAGJEET SINGH*** are inapplicable to the facts obtaining in the case at hand.

21. Reference is also made to corresponding provisions with regard to Section 384 of the IPC in the new regime, the Bharatiya Nyaya Sanhita, 2023 ('BNS' for short). Section 308 of BNS deals with extortion. It reads as follows:

> "**308. Extortion**.—(1) Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion.
>
> *Illustrations*
>
> (*a*) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

(*e*) A threatens Z by sending a message through an electronic device that "Your child is in my possession, and will be put to death unless you send me one lakh rupees." A thus induces Z to give him money. A has committed extortion."

Section 308 has 7 sub-sections. It covers the entire spectrum from Sections 383 to 388 of the IPC. There is no other change in the language. It is only a change of grouping of the offence. Even the illustrations are the same. Therefore, the judgments of the Apex Court quoted *supra, qua* interpretation of Sections 383 and 384 of the IPC would also become applicable to Section 308 of the BNS. Likewise, Section 33 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is the corresponding provision of Section 39 of the Cr.P.C. There is again no change, addition or deletion of offences enumerated in Section 39 of the Cr.P.C., in Section 33 of the BNSS.

Therefore, the interpretation rendered by this Court *supra, qua* Section 39 of the Cr.P.C., would become applicable to Section 33 of the BNSS as well.

22. Therefore, I have no hesitation to hold that the complaint suffers from want of locus to register the complaint even for offence punishable under Section 384 of the IPC for extortion. The learned Magistrate who has referred the matter for investigation in terms of his order *supra* does not advert to this issue. Merely because the complainant has registered a complaint which projects alleged extortion, the learned Magistrate cannot become a **rubber stamp** Presiding Officer to the complaint, to refer the matter for investigation, without application of mind to the relevant statutory provisions. Therefore, **issue No.2 is also answered against the complainant**, holding that he is an alien to the transaction and an alien cannot complain of extortion.

23. It now becomes germane in the journey, to consider whether this Court, could entertain the petition under Section 482 of the Cr.P.C., and interdict or obliterate the crime, as it is still at

the stage of investigation. The Apex Court permits such an exercise. The Apex Court in the case of ***MAHMOOD ALI v. STATE OF U.P.***[6]**,** has held as follows:

"…. …. ….

> **13.** At this stage, we would like to observe something important. **Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of theConstitution need not restrict itself only to the**

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[6] **2023 SCC OnLine SC 950**

> **stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.** Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."
>
> (Emphasis supplied)

The Apex Court yet again, in the case of ***SALIB*** *supra* observes as follows:

> "…. …. ….
>
> **28.** At this stage, we would like to observe something important. **Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the**

> **alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.** Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.
>
> (Emphasis supplied)

On the observations made by the Apex Court in the cases of ***MAHMOOD ALI*** and ***SALIB***, rendered on the same day by the same Bench, what would unmistakably emerge is that, this Court exercising jurisdiction under Section 482 of the Cr.P.C., is empowered to go beyond what is pleaded in a well drafted complaint, and take note of overall circumstances leading to registration of complaint, by reading between the lines of the complaint and considering the issue/s thereon and if considered, in the light of the prismatic analysis *supra*, the inescapable conclusion

would be, entertainment of the petition and obliteration of the crime.

24. Reference being made to the judgment of the Apex Court in the case of ***STATE OF HARYANA v. BHAJANLAL[7],*** is apposite. The Apex Court therein has held as follows:

> "…. …. ….
>
> **102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> **(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an

[7] 1992 Supp (1) SC 335

investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

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

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

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

(Emphasis supplied)

The Apex Court holds where the allegations made in the FIR even if they are taken to their face value do not constitute a *prima facie* offence, such crime should be nipped in the bud. In the case on hand, there is not even a ***modicum*** of ingredients of the offence made out even to its *prima facie* sense, ***what the complainant projects is a huge hocus-pocus, but alas, he has no locus***. Therefore, I deem it appropriate to exercise my jurisdiction under Section 482 of the Cr.P.C., and annihilate the crime so registered against the petitioner/accused.

25. For the aforesaid reasons, the following:

O R D E R

(i) Criminal Petition is allowed.

(ii) Proceedings in Crime No.224 of 2024 arising out of PCR No.4880 of 2024 pending before the XLII Additional Chief Judicial Magistrate, Bengaluru City stand quashed *qua* the petitioner.

Pending applications, if any, stand disposed as a consequence.

Sd/-
(M. NAGAPRASANNA)
JUDGE

Bkp
CT:MJ