

[2026 LiveLaw \(SC\) 542](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

PANKAJ MITHAL; J., PRASANNA B. VARALE; J.

SPECIAL LEAVE PETITION (CIVIL) NO(s). 25107 - 25109 OF 2025; MAY 25, 2026
BAI AVABAI HORMUSJI TATA TRUST *versus* SHERNAZ FAROUKH LAWYER & ORS.

Inherent and Plenary Powers of Constitutional Court — Testamentary Jurisdiction — Protection of Estate in medio — held that a High Court, while sitting in its testamentary jurisdiction, does not cease to be a Constitutional Court of Record or a Court of Equity - When an estate is brought under the protective umbrella of the Court through the appointment of an Administrator pendente lite under Section 247 of the Indian Succession Act, 1925, it is in custodia legis – If the Supreme Court discovers glaring irregularities, deceit, suppression of bank accounts, or siphoning of funds by a self-styled executor using shell or dormant trusts, it cannot remain a silent spectator - It is entirely within the inherent and plenary jurisdiction of the High Court under Article 215 of the Constitution of India to direct a police investigation to unearth the fraud, safeguard the property, and protect the process of the Court from abuse - **Key Takeaways & Statutory Interpretations – i. Indian Succession Act, 1925 — Sections 211, 247 & 307 — Authority of Executor vs. Administrator pendente lite - While an executor derives authority from the Will, such authority is not a license to plunder cash assets when rival Wills are propounded and the matter is fiercely contested - The appointment of an Administrator pendente lite under Section 247 suspends the powers of the executor, making the Administrator the "hand of the court" to preserve and maintain the estate; ii. The Succession Act is Not a Bar to Criminal Investigation - The Indian Succession Act governs the administration of estates but does not grant immunity to individuals committing criminal breach of trust, forgery, or conspiracy; iii. Code of Criminal Procedure, 1973 — Section 340 - Directing a criminal investigation into a larger conspiracy of siphoning funds through fraudulent banking transactions does not strictly fall under Section 340 of the CrPC (which deals with offences affecting the administration of justice) - broader inherent powers can be exercised without being strictly shackled by the procedural bars or appellate restrictions under Section 341 of the CrPC – iv. No Prejudice Caused by Investigation - Mere initiation of an investigation to uncover the truth and assist the Testamentary Court in tracing siphoned assets does not infringe upon personal liberty or cause actual or substantive prejudice.** [Relied on *Paras M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd.*, 1993 Supp (2) SCC 433; *Anthony C. Leo v. Nandlal Bal Krishnan*, (1996) 11 SCC 376; *Pandurang Shamrao Laud v. Dwarkadas Kallindas*, 1932 SCC OnLine Bom 154; *Paras 28-43*]

For Petitioner(s): Mr. Jayant Bhushan, Sr. Adv. Mr. Prakash Naik, Sr. Adv. Mr. Premlal Krishnan,, Adv. Mr. Krishan Kumar, AOR Mr. Nitin Pal, Adv. Mr. Ravindra Singh, Sr. Adv. Mr. Somiran Sharma, AOR Ms. Snigdha Shresth, Adv.

For Respondent(s) Mr. Darius Khambata, Sr. Adv. Mr. C.U. Singh, Sr. Adv. Mr. Rahul Narichania, Sr. Adv. Mr. Debmalya Banerjee, Adv. Mr. Kartik Bhatnagar, Adv. Ms. Ambika, Adv. Ms. Apurva, Adv. Ms. Liza Vohra, Adv. M/S. Karanjawala & Co., AOR.

J U D G M E N T

PRASANNA B. VARALE, J.

1. Leave granted.
2. The present appeals arise out of the common final judgment and order dated July 16, 2024, passed by the Division Bench of the High Court of judicature at Bombay in Appeal No. 10 of 2023. By the said judgment, the Hon'ble High Court dismissed a group of four appeals, including the one filed by the appellants herein, challenging an order of a learned Single Judge which directed a court-monitored criminal investigation into the conduct of the parties with the estate of the deceased testator.

FACTUAL MATRIX

3. The genesis of this multi-layered litigation lies in the competing claims over the estate of Purvez Burjor Dalal, a Parsi Zoroastrian inhabitant of Mumbai, who passed away on 07.12.2011. The deceased was a bachelor and left behind substantial movable and immovable properties, the valuation of which is estimated to be over Rs. 100 Crores.
4. Following the death of the testator, two rival Wills surfaced. The first Will, dated 22.11.2010, was propounded by Shernaz Faroukh Lawyer (respondent No. 1) and her mother, the late Villy Pirojsha Avasia (respondent No. 2). Under this Will, the respondents claimed to be the executrices and beneficiaries of the estate.
5. Conversely, a second Will, dated 08.09.2011, was propounded by Manek Dara Sukhadwalla. This later Will purportedly bequeathed the entire estate to charitable purposes and appointed Mr. Sukhadwalla as the sole executor. Both parties filed testamentary petitions for probate of their respective Wills, which were subsequently converted into Testamentary Suit No. 29 of 2012 (filed by respondents) and Testamentary Suit No. 25 of 2012 (filed by Mr. Sukhadwalla).
6. In the initial stages of the litigation, the respondents (plaintiffs in Suit No. 29 of 2012) filed notice of motion No. 138 of 2012, seeking the appointment of an Administrator and an injunction to restrain Mr. Sukhadwalla from disposing of or intermeddling with the assets of the deceased. On 21.06.2012, the Hon'ble High Court granted ad-interim relief, restraining Mr. Sukhadwalla and directing him to disclose all movable and immovable assets of the estate.
7. On 24.12.2013, the learned Single Judge of the Hon'ble Bombay High Court appointed Mr. Jonathan Solomon as the Administrator *pendente lite* of the estate under Section 247 of the Indian Succession Act, 1925 (herein after referred to as 'ISA, 1925'). The Administrator was specifically directed to take steps to discover all properties forming part of the estate and, if necessary, initiate recovery proceedings. This appointment was challenged by Mr.

Sukhadwalla up to this Court but attained finality upon the dismissal of his Special Leave Petition on 05.09.2014.

8. Pursuant to his appointment, Mr. Jonathan Solomon (the Administrator) conducted inquiries into the financial dealings of the estate. During this process, he discovered that Mr. Sukhadwalla had opened a bank account in the name of the "Estate of Purvez Burjor Dalal" with Kotak Mahindra Bank. Crucially, the Administrator found that two substantial sums had been transferred from this account shortly after the testator's death and, before the appointment of the Administrator.

9. The first transfer, amounting to Rs. 17,08,147/-, was made on 24.03.2012, from the estate to one M/s. Amoha Traders Private Limited (hereinafter referred to as 'Amoha'). The second transfer, amounting to Rs. 15,00,000/-, was made on 11.04.2012, from the estate to one Bai Avabai Hormusji Tata Trust for Charitable objects (hereinafter referred to as 'Trust') (the appellants herein).

10. The Administrator filed report No. 1 of 2016 and a supplementary report, highlighting these transactions. He alleged that these transfers constituted a diversion of estate funds and sought directions for the return of the monies with interest. Prayer clauses (e) and (g) of the Administrator's report specifically sought the recovery of these sums from Amoha Traders and the appellant Trust, respectively.

11. In response to these reports, the respondents herein alleged a deep-rooted conspiracy between Mr. Sukhadwalla and one Jamsheed Minocher Panday (also known as Jimmy Panday) to siphon off the estate's funds. They contended that Mr. Sukhadwalla had fabricated documents and utilized various entities, including the appellant Trust and Amoha Traders, as conduits for this siphoning.

12. A scrutiny of the appellant Trust's background revealed further suspicious circumstances. While Mr. Sukhadwalla claimed the Trust was a well-known charity established by the industrialist Naval Tata in 1954, the respondents produced documents suggesting the Trust was actually a Parsi family trust created in 1943 that had long been inactive. It was alleged that the Trust was revived in 2011—coinciding with the execution of the rival Will—purely to facilitate fraudulent activities.

13. Further investigations revealed that the appellant Trust, Amoha Traders, and several other involved entities (such as Kratos Energy and Canos Trading) shared common addresses, telephone numbers, and email contacts, all leading back to Jamsheed Panday. It was also discovered that Canos Trading, a company in which Mr. Sukhadwalla held shares, had purportedly advanced a loan of over Rs. 69 Lakhs to the deceased testator in 2015—nearly four years after his death.

14. The Administrator reported significant non-cooperation from Mr. Sukhadwalla and the associated entities. Despite multiple court orders, full disclosures were allegedly not forthcoming, and the parties were accused of

suppressing bank accounts and intermeddling with tenanted properties of the estate.

15. On 21.12.2018, the learned Single Judge after hearing the parties on the Administrator's report, passed the impugned order. The Court observed that the conduct of Mr. Sukhadwalla and the notice was "obstructive" and "deceitful". Invoking the High Court's inherent and plenary jurisdiction as a Court of record under Article 215 of the Constitution, the learned Judge concluded that the standard civil remedies were insufficient to protect the estate.

16. Consequently, the single Judge directed the Administrator to draw up a criminal complaint and provide it to the Prothonotary and Senior Master of the High Court. Upon scrutiny, the complaint was to be forwarded to the Commissioner of Police, Mumbai, who was directed to nominate a suitable team of officers to initiate an investigation into the complaint and the affairs of the deceased. The police were further directed to report the progress of this investigation to the High Court on a fortnightly basis.

17. Aggrieved by this direction, the appellant Trust, along with Mr. Sukhadwalla and Amoha Traders, filed intra-court appeals before the Division Bench of Hon'ble Bombay High Court. They primarily argued that a Testamentary Court has limited jurisdiction confined to the genuineness of a Will and cannot order a "phishing and roving" criminal investigation. They further contended that the ISA, 1925 is a self-contained code and that the High Court could not have bypassed the procedure prescribed under Section 340 of the Code of Criminal Procedure.

18. The respondents countered that the High Court, even while exercising testamentary jurisdiction, does not lose its character as a Constitutional Court with plenary powers to prevent the abuse of its process and to protect the property *in medio*. They argued that the investigation was necessary to trace the trail of siphoned funds that the Administrator, as an arm of the Court, was unable to recover due to the parties' stonewalling.

19. By its judgment dated 16.07.2024, the Division Bench of Hon'ble Bombay High Court dismissed the appeals. On the issue of maintainability, the bench held that the perceived prejudice caused by the observations in the single Judge's order made the appeals maintainable under the Letters Patent.

20. On the merits, the Division Bench upheld the Single Judge's directions, holding that they were not "stand-alone" orders but part of a series of attempts to safeguard the estate from depletion. The bench noted that the Administrator was acting in furtherance of his mandate and that the Single Judge had exercised caution by ordering an inquiry rather than a straight recovery.

21. The Division Bench further observed that no 'actual prejudice' would be caused to the appellants, as they would have a full opportunity to defend themselves in any criminal prosecution that might be launched. It clarified that the criminal investigation would operate in a different field and that the

information gathered would merely assist the Testamentary Court in taking the matter forward.

22. The appellants herein challenge the Hon'ble High Court's judgment on the grounds that it creates a dangerous precedent where police machinery is used to gather evidence in a purely civil testamentary dispute. They contend that the High Court failed to identify the exact crime committed and that the direction for a court monitored investigation violates the personal liberty of the parties.

23. It is also the appellant's case that they have already admitted to the transaction of Rs. 15 Lakhs and provided details of its utilization for charitable medical aid, thereby leaving nothing left to investigate.

24. The parties are now before this Court for a determination on whether the Hon'ble High Court was within its jurisdiction to invoke plenary powers to direct a criminal investigation into a pending testamentary suit.

CONTENTIONS

25. Having perused the voluminous record and heard the learned Senior Counsel appearing for the respective parties at length, the competing claims and submissions can be crystallized into the following primary contentions.

26. Contentions advanced on behalf of the appellants (Also appellants before the Hon'ble High Court in Division Bench):

26.1 It was vehemently contended that a Testamentary Court's jurisdiction is strictly confined to examining the genuineness and due execution of a Will. The Testamentary Court materially erred in transgressing these boundaries to direct a court-monitored, phishing, and roving criminal investigation in a purely civil *lis* between private parties.

26.2 The appellants submitted that the ISA, 1925 is a complete and self-contained code. If the Respondents or the Administrator sought to secure the estate or allege intermeddling, they were required to invoke specific statutory provisions such as Sections 192, 208, or 269 of ISA, 1925. The High Court erred in bypassing these statutory remedies to invoke its plenary and inherent jurisdiction.

26.3 It was argued that under Sections 211, 227, and 307 of the ISA, 1925, the executor of a Will is perfectly competent to deal with the estate of the deceased, and such authority vests in the executor even prior to the grant of probate. Consequently, the transfers made from the estate to Amoha Traders and the appellant Trust cannot be deemed illegal or void *ab initio*.

26.4 The appellants contended that the Hon'ble High Court failed to appreciate the fundamental difference between an "inquiry" and an "investigation" under the Code of Criminal Procedure. By directing the lodging of a complaint directly with the Commissioner of Police, the High Court bypassed the mandatory preliminary inquiry required under Section 340 of the Code of Criminal Procedure and ordered a criminal investigation without explicitly recording a finding of the commission of a cognizable offence.

26.5 It was vehemently submitted that police machinery cannot be utilized as a tool to collect evidence or act as recovery agents for private litigants in a civil testamentary suit. The High Court effectively allowed the respondents to hijack the Administrator's report which only sought the return of funds to launch a criminal investigation that the Administrator himself never prayed for.

26.6 The appellants have approached this Court raising several contentions to assail the impugned judgment, Firstly, relying on **Kanwarjit Singh Dhillon v. Hardy Singh Dhillon**¹, the appellants contends that a Testamentary Court's jurisdiction is strictly confined to determining the genuineness and due execution of a Will, and it cannot direct a roving criminal investigation. Secondly, it is argued that the Indian Succession Act, 1925 is a self-contained code, as held in **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.**², and the High Court erred in invoking inherent powers outside the statutory framework.

27. Contentions advanced on behalf of the respondents (Original Plaintiffs and the Administrator):

27.1 **Per contra**, the respondents submitted that the Hon'ble High Court, even while sitting in its testamentary jurisdiction, does not cease to be a Constitutional Court of record. It retains its undiminished inherent and plenary powers under Article 215 of the Constitution to pass extraordinary orders to prevent the abuse of its process and to safeguard the estate from depletion.

27.2 It was argued that when competing Wills are propounded and the estate is *in medio* (in the custody of the Court via an Administrator), no party including a self-styled executor, has the right to unilaterally deal with or dispose of the property. The executor's actions of transferring large sums were entirely unauthorized, as he could not have dealt with the estate until he obtained a probate.

27.3 The respondents highlighted a trail of deceit, arguing that the executor colluded with Mr. Jamsheed Panday to siphon away the estate's funds. They pointed out that entities like Amoha Traders, Kratos Energy, and the Bai Avabai Hormusji Tata Trust shared common addresses, telephone numbers, and email addresses linked to Mr. Panday. Furthermore, they contended that the appellant Trust was a dormant entity that was fraudulently revived solely to receive kickbacks.

27.4 It was submitted that the appellants engaged in consistently obstructive and deceitful conduct. They failed to make truthful disclosures, suppressed bank accounts, and completely stonewalled the Administrator's attempts to discover the assets of the deceased. This blatant noncooperation left the Single Judge with no alternative but to order an investigation to uncover the truth.

27.5 The respondents strongly contended that the impugned order directing an investigation does not cause any actual or substantive prejudice to the appellants. If a criminal prosecution is eventually launched, the appellants will

¹ (2007) 11 SCC 357

² (2011) 8 SCC 333

be afforded a full and fair opportunity to defend themselves under the applicable criminal law.

27.6 It was submitted that the High Court's directions were not merely an exercise of power under Section 340 of the Code of Criminal Procedure, but rather an invocation of the Court's inherent power to stop non-cooperation with its appointed officer (the Administrator). Therefore, the strict procedural bars of Section 341 of the Code of Criminal Procedure do not apply to the impugned order.

27.7 Lastly, the respondents maintained that the criminal investigation was directed to operate in a different field entirely. The core objective was that the information gathered by the police machinery, when shared with the Court, would assist the Testamentary Court in tracing the siphoned assets and bringing the civil matter to its logical and just conclusion.

ANALYSIS

28. Heard learned counsel for the appellants as well as leaned counsel for the respondents. We have also perused relevant documents on record and the judgments passed by the Courts below.

29. Though at the first blush the submissions of Learned Senior Counsel for the appellant Mr. Jayant Bhushan, looks attractive but we are unable to accept his submissions for the peculiar facts emerged giving rise to the present litigation. The learned Single Judge as well as the learned Division Bench were well aware of the nature of the proceedings, namely the testamentary suit filed on the backdrop of competing claims between the parties based on two rival Wills. At the cost of repetition, we may state that by an order passed during the proceedings, an administrator was appointed on the backdrop of the facts that one Mr. Sukhadwalla who was named as a sole executor under the competing claim made by Will dated 08.09.2011 was disposing of the asset of the deceased. On a notice of motion, the learned Single Judge on 21.06.2012 granted an ad interim relief by restraining Mr. Sukhadwalla and he was further directed to disclose all movable and immovable assets of the estate. Subsequently vide Order dated 24.12.2012 the learned Single Judge appointed Mr. Jonothan Solomon, Administrator *pedente lite* of the estate under Section 247 of the Indian Succession Act. It may not be out of place to state that when the administrator pursuant to his appointment conducted enquiry found that Mr. Sukhadwalla had open a bank account and two substantial sums had been transferred from this account soon after the testator's death, one of the such transfer was a handsome amount of Rs. 17,08,147/to a private entity namely, M/s. Amoha Traders Pvt. Ltd. The Administrator filed a report and so as to protect the interest of the trust sought directions for the return of the money with interest. It was stated in the report that the enquiry of the Administrator revealed some startling facts, namely a conspiracy between the executive Mr. Sukhadwalla and another private person Mr. Jimmy Panday. It was also stated in the report that Mr. Sukhadwalla who was expected to protect the interest of the testator indulged in an act of fabrication of the documents and siphoning of

the amount. There was also another shocking fact revealed that though it was claimed that the trust was actually a Parsi family Trust created in 1943, Mr. Sukhadwalla made an attempt to show that trust was created in 1954 by an individual Shri Naval Tata. The Administrator also reported about the non-cooperation from Mr. Sukhadwalla and it was pointed out that in spite of the series of the orders of the Court for disclosing the details of bank accounts and the transactions of the properties and certain transactions, Mr. Sukhadwalla avoided to provide the details and further avoided the disclosure of the material facts. On the backdrop of these facts, the learned Single Judge found the conduct of Mr. Sukhadwalla and other notices were obstructive and deceitful and the civil remedies would not be sufficient enough to protect the trust property and to check the misdeeds as such the learned Single Judge by invoking the inherent and plenary jurisdiction of the High Court being Court of record under Article 215 issued directions to the Administrator. The challenge raised to the orders of the learned Single Judge failed by the impugned order of the High Court. In our opinion, the Division Bench assigned concrete and justifiable reasons for upholding the order passed by the learned Single Judge and it will be useful to refer to these observations of the Division Bench while dismissing the appeals as under:

31. *“Therefore, the Administrator was directed to endeavour to protect the estate. These observations of the learned Single Judge and the Division Bench were noticed by the learned single Judge. The Administrator was acting in furtherance of this mandate of his appointment and therefore, the impugned order had directed the Administrator to take necessary steps in consonance with the order of the learned Single Judge dated 24 December 2013 and of the Appeal Bench dated 8 August 2014 and Section 247 of the Indian Succession Act. Learned Single Judge could have straightaway issued directions to recover the money. However, the learned Single Judge has exercised caution and by the impugned order directed that the inquiry be conducted so that further course of action can be determined.*

32. *In light of the observations in the orders of the learned Single Judge and the Appeal bench during appointment of the administrator interpreting section 247 of the Indian Succession Act, it was permissible for the learned Single Judge to issue directions to bring back the estate and if such power existed, there was no reason why the inquiry could not have been ordered. All the observations made by learned Single Judge are qua the estate and not qua any person. Therefore, though elaborate arguments were advanced before us, all that we see before us is an exercise of plenary jurisdiction to find innovative method in light of complete non-cooperation by the Executor, to ensure that the matter is proceeded further and the will of the testator is given full effect.*

33. *Since learned Single Judge was issuing an order which was not the order that is regularly passed in the testamentary proceedings, the learned Single Judge has given certain reasons as to why it was necessary, otherwise the order would have become without reasons. Learned Single Judge has not concluded about the role of the Appellants. The impugned order is passed since there was no cooperation from the Executor to disclose the true state of affairs. The information gathered in the investigation would be shared with the Court so that the information relevant for the subject matter can be utilized for the ultimate purpose of giving effect to the will of the*

Testator. Though the Appellants perceive that these observations may affect the investigation, upon detailed scrutiny, we find that the learned Single Judge has nowhere intended in the impugned order that the rights of the Appellants would be prejudiced, in case criminal proceedings are launched against them.

34. The role of the Executor of a will is to execute it as per the disposition of the testator. Therefore, if the property is brought to the Administrator so appointed, it will benefit the work of the Executor itself and there is no prejudice to the Executor. Learned Single Judge faced with non-cooperation by the Executor and having the observations made while appointing the Administrator and by the Appeal Bench on record. has directed the Administrator to take certain steps which according to learned Single Judge would aid and assist in arriving at the correct position.”

35. In any case, in view of what is observed in paragraph nos. 76 to 94 of the impugned Order, about allegations of the Plaintiffs and the events about the flow of money from the estate of the Deceased to Appellants Amoha Traders and Bai Avabai Trust and the dealings of flat in Al Karim building belonging to the estate of the Deceased coupled with common address, telephone number and email of various entities involved, leading to Mr. Panday coupled with prior observations of this Court in earlier orders of this Court (dated 24 December 2013 appointing Administrator and dated 9 January 2017 in contempt proceedings against the Appellant-Sukhadwalla), it is clear that a need for investigation is felt by the learned Single Judge to direct the Administrator to file complaint.

36. It is a settled position of law that the criminal investigation is based on a procedure with different parameters and therefore, the Appellants would have full opportunity in case prosecution is launched against them to defend it on its own merits. Therefore, though we have permitted the Appellants to cross the threshold of the maintainability of the Appeal on the ground of perceived prejudice, we do not find that there is any actual prejudice to the Appellants in the impugned order. It is not contemplated in the impugned order that the investigation should be affected by the observations made therein. The criminal investigation will therefore operate in the different field and the information gathered in the investigation when shared, would assist the Learned Single Judge in taking the matter forward.

37. This Court is a court of Original Jurisdiction having abundant plenary and inherent powers. It is a Court of record. If the facts of the case are such that an investigation is found necessary into the dealings of parties involved, including the Appellants, then an investigation can be initiated by directing the Administrator to file a complaint. This Court while exercising even testamentary jurisdiction retains its inherent and plenary powers and can initiate such action by directing filing of criminal complaint. There is no merit in the Appellants' contention that the learned Single Judge of this Court was not justified in directing the Administrator to file criminal complaint in the facts and circumstances of this case. We agree to that extent with the case of the Respondent/Plaintiffs and with the caselaw relied upon by them in that behalf.

38. In this respect useful reference can be made to the judgment of H.P.S. Chawla (Supra) were Division Bench of Delhi High Court, while considering an intra-Court appeal, arising out of Testamentary Jurisdiction, just as the case at hand, has held that while exercising Testamentary Jurisdiction, the High Court does not cease to be a Court exercising inherent powers. In that case the action of the learned Single Judge

in deleting / expunging scandalous and defamatory material, was held as exercise within jurisdiction.

39. *In Sahara India Real Estate Case (supra), the Hon'ble Supreme Court while dealing with press and media laws, has held that orders prohibiting publication for temporary period are permissible under inherent powers of High Court when the Court is satisfied that the interest of justice so requires.*

40. *Applying these settled principles, we do not find it necessary to interfere with the impugned order. The impugned order is not a stand-alone order but it is part of a series of orders passed in the Appeal in which foundation to such directions were already made. The order passed by learned Single Judge in exercise of the plenary and inherent jurisdiction cannot be said to be without jurisdiction. Merely because a different view is possible, is not a ground for us to set aside exercise of discretion by learned Single Judge. The learned Single Judge felt that it was the only way to correctly adjudicate the matter pending before it. Therefore, neither the order is without jurisdiction nor it has caused any real or substantive prejudice to the Appellants.*

41. *All that will take place is an investigation in which, if the Appellants are accused, they will have full opportunity of defending it as provided under the applicable criminal law. It is also not Respondents' case that the investigation should not proceed in accordance with applicable criminal law. The information gathered in the investigation when shared, would assist the Learned Single Judge in taking the matter forward. Though we are not inclined to interfere with the impugned order, the observations/clarifications made in this judgement will adequately protect the interest of Appellants in the criminal prosecution if launched against them.*

42. *The Appeals are accordingly dismissed. No order as to costs."*

30. The order passed by the High Court is also sustainable on the aspect of the Administrators's duties provided under Section 247 of the ISA, 1925:

247. Administration, pendente lite.—

Pending any suit touching the validity of the Will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

An Administrator under Section 247 of the Indian Succession Act, 1925 is appointed by the Court and is thus an officer of the Court, subject to the immediate control of the Court. His position is similar to that of a receiver (except the fact that the administrator does not distribute the estate) and he is nothing but the "hand of the court". In this regard reliance is placed on **Pandurang Shamrao Laud v. Dwarkadas Kalliandas**³-

"3. *In other words the position of an administrator pendente lite is similar to that of a receiver, with this distinction, that the administrator pendente lite represents the estate of the deceased for all purposes except distribution. Before granting administration*

³ 1932 SCC OnLine Bom 154, para 3

pendente lite the Court has to be satisfied in the first place that there is a bona fide suit pending touching the validity of the will of the deceased.....”

31. It is also not in dispute that the status of the estate of the deceased was an estate in “custodia legis” as the proceedings were pending before the Court in rival claims of the estate. Admittedly, an administrator was appointed. The administrator was duty bound to take all reasonable steps for preservation and maintenance of the estate of the deceased over which an administrator is appointed under Section 247, is “in custodia legis” and the possession of the Administrator over such estate cannot be disturbed without the leave of the court. In this regard, reliance is placed on this Hon’ble Court’s judgment in **Anthony C. Leo v. Nandlal Bal Krishnan**⁴, which holds so in the context of a Court Receiver. Further, para 29 of Anthony C Leo finds that the court officer “*is under an obligation to take all reasonable steps for preservation and maintenance of such properties...*” and that “*If for such preservation, action in civil or criminal court is necessary, the receiver is to draw the attention of the court of relevant facts necessitating such legal action and take leave of the court to institute appropriate legal proceedings for the preservation of the property*”.

32. Though it was vehemently submitted by learned senior counsel for the appellant Mr. Jayant Bhushan that the learned Single Judge as well as Division Bench of the High Court exceeded in its jurisdiction, we are unable to accept the submissions of Mr. Bhushan as it is a primary function of the Probate Court is to adjudicate the execution and genuineness of the Will but while doing so if the High Court notices glaring irregularities or there is an element of mischief played by an executor noticed by the High Court then in that situation the High Court cannot be a silent spectator and will have to exercise its plenary and constitutional power to check the mischief so as to protect the property. The appellant’s heavy reliance on **Kanwarjit Singh Dhillon (Supra)** is fundamentally misplaced. It is true that the primary function of a Probate Court is to adjudicate upon the due execution and genuineness of a Will. However, this does not mean that a High Court, while sitting in its testamentary jurisdiction, is denuded of its constitutional powers.

33. As held by this Court in **M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd.**⁵, High Courts in India are superior Courts of Record. They possess inherent and plenary powers, and unless expressly or by necessary implication barred, their jurisdiction is unlimited to determine their own powers and prevent the abuse of process. Furthermore, as rightly observed by the Delhi High Court in **H.P.S. Chawla v. N.P.S. Chawla**⁶, a High Court exercising testamentary jurisdiction does not cease to be a Court of equity. When an estate is brought under the protective umbrella of the Court through the appointment of an Administrator *pendente lite* under Section 247, the Court is dutybound to ensure the estate is not plundered. If the Court discovers that parties are employing deceit, suppressing bank accounts, and using shell trusts to siphon funds, it is

⁴ (1996) 11 SCC 376, para 28

⁵ 1993 Supp (2) SCC 433

⁶ 2005 SCC OnLine Del 1006

entirely within its plenary jurisdiction to direct a police investigation to unearth the fraud.

34. We may also refer to Section 269 of the Indian Succession Act, 1925 and it reads thus:

269 - When and how District Judge to interfere for protection of property.

1) Until probate is granted of the will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property,

2) This section shall not apply when the deceased' is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate.

35. Considering the scheme of ISA, 1925 and considering the fact that the testator was a Parsi, therefore, the bar contained in Section 269(2) would not be applicable in the present case. “District Judge” is defined under Section 2(bb) of the Indian Succession Act to mean “*the judge of a Principal Civil Court of original jurisdiction*”. Section 300 of the Indian Succession Act viz. “Concurrent jurisdiction of High Court” states that “The High Court shall have concurrent jurisdiction with the District Judge in exercise of all the powers hereby conferred upon the District Judge”. The December 2018 Order, confirmed by the Impugned Judgment, were passed in exercise of upholding the inherent powers of the High Court, a court of record, to ensure that the Administrator (an officer of the court) is not impeded from performing its functions and to ensure that the estate of the deceased, which is in custodia legis, is not misappropriated. As held by this Hon'ble Court in ***M.V. Elisabeth (supra)***, paras 64 and 66, the High Court in India are superior courts of record, which possess inherent and plenary powers. This Hon'ble Court held that it is the duty of the superior courts of record, possessed with inherent and plenary powers to devise its procedural rules suiting to the peculiar facts and circumstances of the case.

36. The appellant's contention that the Indian Succession Act is a self-contained code precluding a criminal investigation is fallacious. The ratio of ***Fuerst Day Lawson Ltd. (Supra)*** pertains to the exclusion of general appellate remedies where a special statute provides a specific appellate mechanism. It does not lay down a proposition that a Constitutional Court cannot order a criminal investigation if a crime is committed in relation to the subject matter of a civil suit.

37. The Indian Succession Act governs the administration of estates, but it does not grant immunity to individuals who commit criminal breach of trust, forgery, or conspiracy to siphon off an estate *in medio*. As held by the Delhi High

Court in ***Sanjeev Kumar Mittal v. The State***⁷, when a case of massive fraud on the court or the estate comes to light, a private party cannot be expected to investigate the conspiracy themselves. The Court is well-empowered to direct the police or a state agency with statutory powers to investigate the matter, gather evidence, and place a report before the Court.

38. As observed by the Supreme Court in the case of ***A R Antulay v. R.S. Nayak***⁸, the jurisdiction of Court is capable of being created or enlarged by legislation. The Supreme Court observed that jurisdiction comes solely from the law of land and cannot be exercised otherwise, that jurisdiction may be exercised by the Court as provided for the constitution or in laws made by the legislature and a power of the Court to deal with the matter or make an order carrying binding force in the facts of a particular case that a code cannot confer jurisdiction on itself if it is not provided in law. In his opinion, Venkatachaliah, J. as he then was, of the view that the expression 'jurisdiction' is a verbal coat of many colours that in case of the tribunal an error of law might not only be 'error in jurisdiction' but in error of jurisdiction "but otherwise jurisdiction is a legal shelter and the existence of jurisdiction does not depend on the correctness of its exercise". It is settled law that a decree passed by a Court without jurisdiction goes to the root because the court lacks inherent jurisdiction and is coram non-judis. In this behalf it is appropriate to refer to the observations of the Supreme Court in ***M.V. Elisabeth (supra)*** in para 64 wherein the Supreme Court observed that "*where statutes are silent and remedy has to be sought by the courts to basic principles, it is the duty of the Court to devise procedural rules by analogy and expediency.*"

39. The appellant boldly asserts that under Sections 211 and 307 of the Indian Succession Act, Mr. Sukhadwalla had the absolute authority to transfer Rs. 15,00,000/- to the appellant Trust. We emphatically reject this submission. While an executor derives his authority from the Will, such authority is not a license to plunder. Where two rival Wills are propounded and the matter is fiercely contested, the estate is *in custodia legis* or *in medio*, an executor of a disputed Will cannot unilaterally start disposing of the estate's cash assets to dormant trusts connected to his associates. Section 247 of the Act specifically empowers the Court to appoint an Administrator *pendente lite*, whose appointment suspends the powers of the executor. It is a matter of record that the appellant Trust was inactive since 1943 and was suspiciously revived in 2011 precisely around the time the rival Will was allegedly executed. Transferring large sums of money to such an entity under the garb of "charity" while a probate dispute is looming is a classic hallmark of intermeddling and siphoning.

40. The appellant's argument that the High Court bypassed the mandate of Section 340 of the CrPC is equally untenable. A holistic reading of the Single Judge's order makes it abundantly clear that the direction for a criminal

⁷ 2010 SCC OnLine Del 4006

⁸ 1988 (2) SCC 602

investigation was not passed strictly under Section 340 of the CrPC for an offence affecting the administration of justice (like perjury in court documents alone). Rather, the Court exercised its broader inherent powers to investigate a larger conspiracy of siphoning the estate's funds through fraudulent banking transactions and shell entities. Therefore, the procedural bars or appellate restrictions under Section 341 of the CrPC are inapplicable here.

41. At this stage, we may also refer to one of the important provisions on the backdrop of the submission of the appellant namely Section 340 of Cr.P.C.

340. Procedure in cases mentioned in Section 195.

(1) *When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -*

- a) record a finding to that effect;*
- b) make a complaint thereof in writing;*
- c) send it to a Magistrate of the first class having jurisdiction;*
- d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and*
- e) bind over any person to appear and give evidence before such Magistrate.*

(2) *The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.*

(3) *A complaint made under this section shall be signed,*

- a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;*
- b) in any other case, by the presiding officer of the Court [or by such officer of the Court as the Court may authorise in writing in this behalf.]*

(4) *In this section, "Court" has the same meaning as in Section 195.*

Thus, under Section 340(3)(a) where the Court making the complaint is a High Court, an officer of that court may be appointed to make that complaint. Since the High Court is exercising its testamentary jurisdiction, it is therefore permissible for an officer of High Court registry to make that complaint. The object and scope of Section 340 is to institute an enquiry and ascertain whether any offence affecting administration of justice has been committed in relation to any document produced and given as evidence in Court. Section 340 of the Code has been held to be applicable to all proceedings in all Courts in criminal

cases or civil cases irrespective of the fact that whether the matter in court is one involving an offence mentioned in Section 195.

42. Though the learned senior counsel Mr. Bhushan vehemently submitted before this Court that as the learned Single Judge and Division Bench of the High Court issued directions by exceeding the jurisdiction of the High Court, it causes prejudice to the appeal, we are unable to accept even this submission of learned senior counsel, on the contrary, we are in agreement with the observations of the High Court that the High Court and particularly, Division Bench in its order that the appellant suffers no actual or substantive prejudice by the mere initiation of an investigation. A criminal investigation operates in an entirely different paradigm. If the appellant Trust genuinely utilized the funds for bona fide charitable purposes, it will have every opportunity to place its accounts and records before the investigating agency. It is a settled position of law that an investigation by the police to uncover the truth does not, by itself, infringe upon the personal liberty of a corporate or trust entity. The High Court has merely set the investigative machinery in motion to assist the Testamentary Court in tracing the siphoned assets.

CONCLUSION

43. The conduct of the appellants and the associated entities reveal a concerted, deceitful effort to frustrate the Administrator's mandate and dissipate the estate of Late Purvez Burjor Dalal. The High Court was perfectly justified in refusing to be a mute spectator to this blatant abuse of process. The invocation of Article 215 of the Constitution to direct a court-monitored investigation was not only legally sound but absolutely necessary to protect the estate *in medio* and uphold the majesty of the law.

44. Therefore, we find no infirmity or illegality in the impugned common final judgment and order dated July 16, 2024, passed by the Division Bench of the Hon'ble High Court, nor in the underlying order of the learned Single Judge dated December 21, 2018.

45. With the result, the appeals being devoid of merit deserves to be dismissed and the same are accordingly dismissed. As we are upholding the judgment of the High Court, we may state here that in case pursuant to the directions of the High Court, a report is drawn by Prothonotary and submitted for investigation, the competent investigation authority to proceed with the investigation expeditiously and submit the progress report as per the directions of the High Court.

46. Appeals are accordingly dismissed. Pending applications, if any, also stand dismissed.