R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRL.P.NO.795/2024

BETWEEN:

1 . SURYA AND CO
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
DILIP EKAMBARAM
S/O A. KEKAMBARAM
AGED ABOUT 34 YEARS
NO-896, 7TH MAIN ROAD
PRAKASH NAGAR,NEAR
AYYAPPA TEMPLE
BANGALORE, SRIRAMPURAM
BENGALURU - 560 021.

2 . M/S TEJASHWINI ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
S.B. CHIKKANNA
S/O BASAVARAJU S.C
AGED ABOUT 37 YEARS
SANTHEMOGENAHALLI, AKKUR
RAMANAGARA - 562 138.

3 . M/S SRI HARI ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
VASANTH KUMAR B.S
S/O B.Y SRINIVAS
AGED ABOUT 36 YEARS
NO.294, BETTAHALSURU
JALA HOBLI, BENGALURU NORTH
TLAUK, BENGALURU - 562 157.

4 . M/S BANASHANKARI ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
H.S. SACHIN
S/O SUBBANNA
AGED ABOUT 52 YEARS
HANTHURU, MUDIGERE
CHIKKAMAGALURU
KARNATAKA - 577 132.

5 . M/S PARAS AND CO
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
J BHARAT KUMAR
S/O JAVANMULL
AGED ABOUT 58 YEARS
26, SHANTHI OPEL
IST FLOOR, 7TH B MAIN ROAD
NEAR MALYAS RESTAURANT, 4TH BLOCK
JAYANAGAR, BANGALORE SOUTH
BENGALURU - 560 041.

6 . ADITYA ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
M.S. SHIVA KUMAR
C/O SHIVALINGAIAH
AGED ABOUT 48 YEARS
NO.104, 1ST FLOR, OPPOSITE BSNL OFFICE, MRC
LAYOUT, VIJAYANAGAR,
BANGALORE NORTH
BENGALURU - 560 040.

7 . M/S MARUTHI ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
NANDEESH C J
S/O JAGADISH C.B
AGED ABOUT 27 YEARS
164, SREE VEERABHADRA SWAMY NILAYA
4TH CROSS, 8TH MAIN
NAGARABHAVI 2ND STAGE
BANGALORE NORTH
BANGALORE - 560 072.

8 . M/S SRI MANJU ASSOCIATES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
DEEKSHITH V SHETTY
S/O VIJAY S SHETTY
AGED ABOUT 28 YEARS
NO.29, 4TH MAIN, 13TH CROSS
AGRAHARA DASARAHALLI
BASAVESHWARANAGAR
BANGALORE NORTH
BENGALURU - 560 079.

9 . M/S MEGHANA ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
RAMACHANDRAN
C/O LATE MUNIRATHNAM
AGED ABOUT 46 YEARS
NO.22/2, 3RD FLOOR
MANASU NILAYA
2ND CROSS, MAGADI ROAD
BENGALURU NORTH - 560 023.

10 . M/S SATTY ASSOCIATES
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
B SHASHIDHAR
S/O K BASAVARAJU
AGED ABOUT 48 YEARS
31/2/3, 3RD A CROSS
NEAR SRINIVAS THEATRE
GOWDANAPALYA
BANGALORE SOUTH
BANGALORE - 560 061.

11 . M/S METRO ASSOCIATE
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
MANJUNATHA M
S/O MUNIYAPPA
AGED ABOUT 47 YEARS
10TH CROSS, ULLAL MAIN ROAD

NEAR MUNESHARA TEMPLE
SN HAN LAYOUT
JNANAJYOTHI NAGAR
BANGALORE VISWAVIDYALAYA
BANGALORE SOUTH
BANGALORE - 560 056.

12 . M/S NEELAKANTA
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
GURUSWAMY S
C/O SHIVARAMAIAH
AGED ABOUT 70 YEARS
NO.1250, A BLOCK
20TH CROSS, 17TH MAIN
BANGALORE NORTH
BENGALURU - 560 002.

13 . M/S SAMRAT AND CO
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
SURENDRA B P
S/O PUTTASWAMY GOWDA L
AGED ABOUT 46 YEARS
R/A 3, OM SHAKTHI TEMPLE ROAD
OPP. JANATHA VIDYANIKETHANA SCHOOL
LAKSHMAN NAGAR, BANGALORE NORTH
BANGALORE-560091.

14 . M/S A.A. ASSOCIATE
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
Y R SATHISH KUMAR
S/O Y N RAMAIAH
AGED ABOUT 48 YEARS
18, GNR ENCLAVE
3RD CROSS, OPP.BESCOM
MARUTHI EXTENSION
GAYATHRINAGAR
SRIRAMPURAM, BANGALORE NORTH
BANGALORE - 560 021.

15 . M/S AMRUTHAYA AND CO
SITUATED AT BANGALORE TURF
CLUB LIMITED
REP BY ITS PROPRIETOR
GANAPATHI S R
S/O RAMANAYAK
AGED ABOUT 50 YEARS
827, 6TH B CROSS
KEMPEGOWDA NAGAR
T DASARAHALLI
BANGALORE NORTH
BANGALORE - 560 057.

16 . KARTHIK AND CO
SITUATED AT BANGALORE TURF
CLUB LIMITED REP BY ITS PROPRIETOR
VENKATESH BINGADANAVILE SRINIVASAN
S/O LATE SRINIVASAN
AGED ABOUT 66 YEARS
B, # 301 ANAND RESIDENCY -1A
BALAJI LAYOUT, M.S. PALYA MAIN ROAD
VIDYARANYAPURA, BANGORE NORTH
BANGALORE - 560 097.

17 . M/S SRIVARI AND COMPANY
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
RAVICHANDRA C
C/O S CHIKKAIAH
AGED ABOUT 58 YEARS
NO.3587/B, 41/1, 1ST MAIN ROAD
2N CROSS, B BLOCK
SUBRAMANYANAGAR
BANGALORE NORTH
BENGALURU - 560 021.

18 . R.K. ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED REP BY ITS PROPRIETOR
RADHA KRISHNA P
C/O RAMANA REDDY
AGED ABOUT 48 YEARS
#2033 26TH CROSS
K.R. RAOD, BANASHANKARI II STAGE
BANGALORE SOUTH, BENGALURU - 560 070.

19 . M/S ROYALE ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
M ZULFIQAR AHMED
S/O M ABDUL RASHEED
AGED ABOUT 58 YEARS
61, MUNISWAMAPPA ROAD
J C NAGAR, BANGALORE NORTH
J C NAGAR, BANGALORE - 560 006.

20 . R.R. ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
PAVAN KUMAR N
S/O NARAYANAPPA S
AGED ABOUT 33 YEARS
NO.464, 5TH CROSS
KAMAKSHIPALAY, RAM MANDIR ROAD
BANGALORE NORTH, NAGARBHAVI
BENGALURU - 560 072.

21 . CHAMUNDESHWARI ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED REP BY ITS PROPRIETOR
CHANDAN G S/O GOVINDARAJU
AGED ABOUT 26 YEARS
NO.19, 5TH CROSS, MARUTHI NAGAR
KAMAKSHIPALYA, BANGALORE NORTH
BENGALURU - 560 079.

22 . M/S SRI RAMA ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
JAYARAM C, S/O CHIKKANNA
AGED ABOUT 63 YEARS
3975, 7TH CROSS, 2ND STAGE
RAJAJINAGAR, SRIRAMPURAM
BANGALORE - 560 021.

23 . NIRMAL AND CO
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
T.R. NARENDRA BABU
S/O T.R. RAME GOWDA
AGED ABOUT 63 YEARS

NO.310, H.B. C.S, NEXT TO VICTORIA
HAVEN APARTMENTS
BANGALORE NORTH
BENGALURU - 560 071.

24 . M/S VIKRANTH ENTERPRISES
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
G C JAYAKUMAR, S/O CHOKKANNA
AGED ABOUT 48 YEARS
205/5, LOTUS GATE BALEPPA GARDEN
RAMA TEMPLE ROAD
FRONT OF GOVERNMENT SCHOOL
DOOPANAHALLI, HAL II STAGE
BENGALURU - 560 008.

25 . M/S SAI RATAN
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
SHASHANK R
S/O RAVI SHANKAR
AGED ABOUT 34 YEARS
NO.201/1, 4TH MAIN ROAD
OPP. BSVP SCHOOL CHAMARAJPET
BANGALORE SOUTH
BANGALORE - 560 018.

26 . HNS AND CO
SITUATED AT BANGALORE TURF
CLUB LIMITED, REP BY ITS PROPRIETOR
SANJAY H.N
S/O H.S NARASIMHAN
AGED ABOUT 52 YEARS
136/139, SPARSHA ANANDA APARTMENT
11, 2N FLOOR, 80 FEET IST MAIN ROAD
NEXT SEETHA CIRCLE, SBM COLONY
BSK IST STAGE, BANGALORE SOUTH
BANASHANKARI, BANGALORE - 560 050.

...PETITIONERS

(BY SRI HASMATH PASHA, SR. COUNSEL FOR
SRI KARIAPPA N.A, ADV.)

AND:

1 . STATE OF KARNATAKA
BY HIGH GROUNDS POLICE STATION
BENGALURU CITY
REP BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01.

2 . STATE OF KARNATAKA
BY CENTRAL CRIME BRANCH
BENGALURU CITY
REP BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 01.

3 . POLICE OFFICER
CCB UNIT, SPECIAL INVESTIGATION
SQUAD, BENGALURU CITY - 01.

…RESPONDENTS

(BY SRI SHASHIKIRAN SHETTY, ADVOCATE GENERAL, A/W
SRI B.N. JAGADEEESH, ADDL. S.P.P A/W
SRI RANGASWAMY R, HCGP)

THIS CRL.P FILED U/S.482 CR.P.C PRAYING TO QUASH THE FIR IN CR.NO.9/2024 FOR THE OFFENCE P/U/S.78(1)(A)(i) OF KARNATAKA POLICE ACT 1963, SEC.12 OF KARNATAKA RACE BETTING ACT AND SEC.420 OF IPC REGISTERED BY HIGH GROUNDS POLICE AND PENDING ON THE FILE OF THE Ist ADDITIONAL CMM COURT, BENGALURU.

THIS PETITION HAVING BEEN HEARD AND RESEVED ON 24.04.2024, COMING ON FOR PRONOUNCEMENT ORDER ON 30.04.2024 THIS DAY,THE COURT MADE THE FOLLOWING:

ORDER

1. Accused Nos.1 to 26 are before this Court under Section 482 of Cr.P.C. with a prayer to quash the FIR in Crime No.9/2024 registered by High

Grounds Police Station for the offences punishable under Section 78(1)(a)(i) of the Karnataka Police Act, 1963 (hereinafter referred to as 'the Act' for short) Section 12 of Karnataka Race Betting Act and Section 420 of IPC, which is now pending before the Court of I Additional Chief Metropolitan Magistrate, Bengaluru.

2. Heard the learned Senior counsel appearing on behalf of the petitioners and the learned Advocate General appearing on behalf of respondents.

3. Factual matrix of the case are as follows:-

On 12.01.2024 credible information was allegedly received by the first informant, who is a Police Inspector attached to CCB Unit, Special Investigation Squad, Bengaluru City, to the effect that in Bangalore Turf Club, certain bookies, who have been issued license from the State Government were accepting betting on the horse races, without maintaining proper registers, documents etc. with

regard to the amount collected by them from the punters and thereby they were evading tax payable to the State and certain others, who had no license from the State Government for collecting betting money from the punters were also indulged in collecting betting money from the punters within the premises of the Bangalore Turf Club and the said accused persons were unauthorizedly carrying on the business of betting within the premises of the Bangalore Turf Club, which was being supported by the staff of the Bangalore Turf Club. On receipt of such an information, the first informant along with the staff had visited the Bangalore Turf Club and after a preliminary verification, being satisfied that the information received by him was true, had approached the High Grounds Police Station, Bengaluru and had lodged the first information, based on which, FIR in Crime No.9/2024 was registered by High Grounds Police Station for the aforesaid offences against the petitioners herein.

Thereafter, the High Grounds Police along with CCB Police had conducted a raid on the premises of the Bangalore Turf Club where the bookies had installed their stalls and were indulged in collecting the betting amount from the punters illegally without maintaining proper registers and documents and had seized the amount of Rs.3,45,74,040/-.

4. During verification, the accused failed to produce the tax invoices, receipts, documents etc., to substantiate the amount seized and it was found that they were using yellow betting cards which was not issued by the Turf Club. Investigation Officer thereafter subjected the seized articles to panchanama. The police arrested as many as 66 persons and it is stated that nine persons were absconding. Subsequently, on 13.01.2024, the case was transferred to the CCB Unit for the purpose of further investigation as per the orders of the Commissioner of Police, Bengaluru. It is at this

stage, petitioners have approached this Court with a prayer to quash the FIR registered against them in Crime No.9/2024.

5. Learned Senior counsel for the petitioners submits that petitioners herein are Licensed Bookies and they are licensed to collect the betting amount from punters. He submits that horse racing is kept out of the definition of the word 'Gaming' under the Act. The allegations against the accused is that they have been operating as bookies unauthorizedly. He has referred to the license copy of each of the petitioners and submits that the petitioners have valid license issued by the competent authority. He submits that Section 420 of IPC is not applicable and the same does not get attracted considering the allegations found in the first information. The other offences are non-cognizable in nature and therefore, to avoid compliance of Section 155(2) of Cr.P.C., the police have wrongly invoked Section 420 of IPC. He

submits that even if the allegations made are presumed to true, it is only competent GST Officers, who can take action and not the police. He submits that the CCB is not a Police Station and therefore, the first informant could not have received credible information and visited the Bangalore Turf Club, even before registering the FIR. He submits that the entire exercise is done by the CCB and only thereafter, an FIR was registered by the jurisdictional police.

6. He submits that the Hon'ble Supreme Court in the case of ***Dr. K. R. Lakshmanan vs. State of T. N. And Another*** reported in ***(1996) 2 SCC 226***, has held that Horse Race is a game of skill and it cannot be considered as a 'Gaming' for the purpose of Police Act. He has referred to the judgment of the Co-ordinate Bench of this Court in ***Rakesh Shetty vs. State of Karnataka*** reported in ***2020 SCC OnLine Kar 4638*** and submits that CCB is not a

Police Station and they cannot register or investigate any case. He submits that there is no complaint received from any public that they were cheated by the bookies and therefore, the police could not have registered FIR and in support of this argument of his, he has placed reliance on the judgment passed by this Court in Crl.P.No.3849/2021 *(Punith Kumar T. P. vs. State of Karnataka)* disposed of on 16.06.2021 and also the judgment of the Co-ordinate Bench of this Court passed in Crl.P.No.4090/2023 *(Mr. Raghavendra Shetty vs. State of Karnataka and Another)* disposed of 16.08.2023. He submits that FIR has been registered for the offence punishable under Section 420 of IPC, which is a cognizable offence and even before registration of the FIR, CCB Police had entered the premises of the Bangalore Turf Club and held investigation, which is contrary to the judgment of the Hon'ble Supreme Court in the case of ***Lalita Kumari vs. Government of Uttar Pradesh and Others*** reported in ***(2014) 2 SCC 1***.

7. Per contra, learned Advocate General submits that the offence under Section 78(1)(a)(i) of the Act, may not be applicable to the petitioners herein, who are licensed bookies provided they have strictly complied the terms of license, but the same would be strictly applicable to other accused, who do not have license to collect betting amount from the punters. He submits that police during the course of investigation have recorded the statement of 21 punters and therefore, it cannot be said that there is no complaint from the public. The punters have stated that the bookies have collected GST at the rate of 25% and while collecting the betting amount, no formal receipts were issued for having received the said amount from them. He submits that the bookies have not maintained any record of the winning bettors nor was any record maintained for having collected 30% of TDS amount from the winning bettors. He also submits that the raid was

conducted after completion of four horse races and when the fifth horse race was about to start. The amount of Rs.3,45,74,040/- was seized after the completion of just four races. For the period from 01.06.2023 to 18.01.2024, totally 1507 races have been conducted in the Bangalore Turf Club and the total collection is shown as only Rs.24,96,30,667/- for the aforesaid period. If the average from four races that were held on the date of raid is taken into consideration, the total betting amount for the aforesaid period amounts to Rs.1302,57,69,570/- and as against the same, collection shown for the aforesaid period is Rs.24,96,30,667/-. He submits that during the course of investigation, the statement of the President of Bangalore Turf Club has been recorded and the said statement reflects that the bookies are not authorized to enter transactions in Pencil Sheets, which were recovered from the bookies during the course of raid. He submits that the sample of betting card has been

produced as Anenxure-R3 before this Court, whereas petitioners have been issuing betting cards which are not in the requisite format and the same does not even contain tax invoice or GST number. He submits that since a huge fraud has been unearthed, wherein crores of money has been collected by accused under the guise of payment towards GST and TDS and the so collected amount has not been deposited to the account of the concerned Department, investigation in the case is necessary.

8. He submits that since the material collected by the Investigation Officer are sufficient to make out a *prima facie* case against the accused persons for the offences punishable under Sections 406, 420 and other offences of IPC, if the police are not permitted to continue the investigation, there are all chances of the investigation losing its track. In support of his arguments, he has placed reliance on the judgment

of the Hon'ble Supreme Court in the following cases:-

> *(i)* ***Neeharika Infrastructure Private Limited vs. State of Maharashtra and Others*** *reported in* ***(2021) 19 SCC 401****.*
>
> *(ii)* ***State of Jammu and Kashmir and Others vs. Dr. Saleem Ur Rehman*** *reported in* ***(2022) 13 SCC 675*** *and*
>
> *(iii)* ***Anjan Dasgupta vs. State of West Bengal and Others*** *reported in* ***(2017) 11 SCC 222****.*

9. He has referred to Section 2(16) and Section 65 of the Act and submits that the first informant is a Police Officer, who is bound to perform his duties as provided under Section 65 of the Act. He also submits that the raid has been conducted to the premises of Bangalore Turf Club only after registration of FIR by jurisdictional Police Station and

not before that. Accordingly, he prays to dismiss the petition.

10. The material on record would go to show that the first informant had received a credible information about illegal betting activities that was carried on within the premises of Bangalore Turf Club by licensed bookies and also unlicensed bookies, who were collecting betting amount from the punters without maintaining proper registers and were also not issuing receipts for the payments collected, in the prescribed formats. The persons who were collecting betting amounts unauthorizedly also had put-up stalls inside the premises of the Bangalore Turf Club, without displaying the license issued to them from the State Government and without maintaining any register or documents. After receipt of such credible information, the first informant who is a Police Officer as defined under Section 2(16) of the Act, had visited the Bangalore Turf Club

premises along with the staff for the purpose of verification of the correctness of the information received by him. After preliminary verification, having found that there was truth in the information received by him, he had approached the jurisdictional Police, namely, High Grounds Police Station, Bengaluru and submitted first information based on which FIR in Crime No.9/2024 was registered for the offences punishable under Section 78(1)(a)(i) of the Act, Section 12 of Karnataka Race Betting Act and Section 420 of IPC, against the petitioners herein and others.

11. Section 78(1)(a)(i) of the Act, reads as follows:-

> *"78. Opening, etc., of certain forms of gaming.-(1) Whoever.-*
>
> *(a) being the owner or occupier or having the use of any building, tent room, enclosure, vehicle, vessel or place or at cyber cage or online gaming involving wagering or betting including computer resource or mobile application or internet or any communication devise as defined in the Information*

Technology Act, 2000 (Central Act 21 of 2000) opens, keeps or uses the same for the purpose of gaming.-

(i) on a horse race; or

(ii) to (vii) xxx

(b) to (d) xxx

shall, on conviction, be punished with imprisonment which may extend to three years, or with fine which may extend to one lakh rupees, or with both:

Provided that in the absence of special reasons to be recorded in writing, the punishment to be imposed on an offender on conviction for an offence under this sub-section shall be imprisonment for not less than six month or fine of not less than ten thousand rupees or both."

Section 2(7) of the said Act defines the word 'Gaming' and it reads as follows:-

*"(7) **"Gaming"** means and includes online games, involving all forms of wagering or betting, including in the form of tokens valued in terms of money paid before or after issue of it, or electronic means and virtual currency, electronic means and electronic transfer of funds in connection with any game of chance, but does not include a lottery or wagering or betting on horse-race run on any race course within or outside the State, when such wagering or betting takes place.-*

(i) on the day on which such race is run; and

(ii) in an enclosure set apart for the purpose in a race course by the licensee of such race course under the terms of the licence issued under Section 4 of the Karnataka Race Courses Licensing Act, 1952 (Karnataka Act VIII of 1952); and

(iii) between any person being present in such enclosure, on the one hand and such licensee or other person licensed by such licensee in terms of the aforesaid licence on the other in such manner and by such contrivance as may be permitted by such licence.

Explanation.- In this clause.-

(i) "Wagering and Betting", includes the collection or soliciting of bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any act which is intended to aid or facilitate wagering or such collection, soliciting, receipt or distribution (any act or risking money, or otherwise on the unknown result of any event including on a game of skill and any action specified about carried out directly or indirectly by the players playing any game or by any third parties.)

(ii) "Game of Chance" includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include any athletic game or sport."

From a conjoint reading of the aforesaid provisions of law, it is clear that offence under Section 78(1)(a)(i) would not get attracted for betting accepted or collected by licensed bookies on the day on which horse race is run in an enclosure set apart for the purpose in a race course by the licensee of such race course, provided the licensed bookies have strictly complied the terms of the license. However, in so far as the unlicensed bookies are concerned, the offence under Section 78(1)(a)(i) of the Act gets attracted as they are not covered under the exception found in Section 2(7) of the Act. The question whether the licensed bookies have strictly complied the terms of license issued to them by competent authority is a subject which needs verification during the course of investigation and merely for the reason that petitioners are licensed bookies, it cannot be said that Section 78(1)(a)(i) of the Act would not be applicable to them.

12. Section 2(16) of the Act, reads as follows:-

"(16) "police officer" means any member of the police force appointed or deemed to be appointed under this Act and includes a special or an additional police officer appointed under section 19 or 20;"

Section 65 of the Act, reads as follows:-

"65. Duties of a Police Officer.—It shall be the duty of every Police Officer,—

(a) promptly to serve every summons and obey and execute every warrant or other order lawfully issued to him by competent authority, and to endeavour by all lawful means to give effect to the lawful commands of his superior;

(b) to the best of his ability to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences;

(c) to lay such information and to take such other steps, consistent with law and with the orders of his superiors, as shall be best calculated to bring offenders to justice;

(d) to prevent the commission of offences;

[(da) to prevent the breach of the public peace

(e) to prevent to the best of his ability the commission of public nuisances;

(f) to apprehend without unreasonable delay all persons whom he is legally authorised to apprehend and for whose apprehension there is sufficient reason;

(g) to aid another Police Officer when called on by him or in case of need in the discharge of his duty, in such ways as would be lawful and reasonable on the part of the officer aided;

(h) to discharge such duties as are imposed upon him by any law for the time being in force.

[(i) to communicate without delay to the appropriate officer of a local authority any information which he receives, of the design to commit or of the commission of any offence under the relevant law constituting

such local authority or under any rule, bye-law or regulation made under such law;

(j) to assist any officer or servant of a local authority or any person to whom the powers of such officer or servant has been lawfully delegated, reasonably demanding his aid for the lawful exercise of any power vesting in such officer or servant of the local authority, or such person, under the relevant law constituting such local authority or under any rule, bye-law or regulation made under such law.]"

13. Section 65(b) of the Act authorizes all police officers to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences and Section 65(c) of the Act authorizes the police officer to take such other steps consistent with law and with the orders of his superiors to bring the offenders to justice. Section 65(g) of the Act provides that police officer shall aid another police officer when called on by him or in the case of need in the discharge of his duty, in such

ways as would be lawful and reasonable on the part of the officer aided. Therefore, it cannot be said that the first informant, who is a police officer attached to CCB could not have received the credible information and he could not have taken steps to lay such information.

14. Learned Senior counsel for the petitioners has strenuously contended that even before registration of the FIR, first informant and other staff of the CCB had entered into the premises of Bangalore Turf Club and have held a preliminarily investigation which is illegal. The Hon'ble Supreme Court in the case of *Dr. Saleem Ur Rehman (supra)*, in paragraph No.30 has observed as follows:-

> *"30. So far as the submission on behalf of the respondent that in the present case by conducting a preliminary enquiry, detailed investigation has been made and only thereafter the FIR is registered and that at the time of preliminary enquiry, investigation is not permissible since the FIR is lodged is*

concerned, the aforesaid submission seems to be attractive but has no substance. While holding a preliminary enquiry under Rule 3.16, whatever is conducted will be in the form of enquiry into the allegations to consider whether any prima facie case is made out or not which requires further investigation after registering the FIR or not. While considering the prima facie case for the purpose of registering the FIR, some enquiry/investigation is bound to be there, however, the same shall be only for the purpose of finding out a prima facie case for the purpose of registration of the FIR only. Whatever enquiry is conducted at the stage of preliminary enquiry, by no stretch of imagination, will be considered as investigation under the Code of Criminal Procedure which can only be after registration of the FIR."

15. Therefore, it cannot be said that the first informant, who is a police officer could not have held a preliminary enquiry for the purpose of verification of the correctness of the credible information received by him prior to registration of FIR. The

allegation against the accused in the present case is that the amount collected from the punters towards payment of GST and the amount of TDS collected from winning bettors was not properly accounted for and the same was not being paid to the exchequer of the State. There is a significant difference in the amount collected by the bookies for the period from 01.06.2023 to 18.01.2024 compared to the approximate amount for the said period arrived on the basis of the average of the amount collected by the bookies after four races on the date of raid conducted by the police.

16. On 12.01.2023, after four races, the police had seized an amount of Rs.3,45,74,040/- from the bookies. For the period from 01.06.2023 to 18.01.2024, totally 1507 races were conducted and the total amount collected by the bookies was only Rs.24,96,30,667/-. According to the respondents, if the average of a day's collection of the race is taken

into consideration, for 1507 races that were conducted during the aforesaid period, approximate amount collected comes up to Rs.1302,57,69,570/-. Therefore, there is a huge difference in the total collection reported by the bookies for the period from 01.06.2023 to 18.01.2024.

17. In the case of ***Ajay Home Product Limited and Another vs. The State and Another*** reported in ***(2007) SCC Online Delhi 711***, the High Court of Delhi, in paragraph Nos.17 to 20, has observed as follows:-

> ***"17.*** *The argument of the learned counsel for the petitioners that no offence under Section 409 was revealed from the facts is baseless argument. The petitioner No. 2 had collected Central Sales Tax from the customers @ 4% on the sales proceeds. The amount of this tax collected was public money which the petitioner was supposed to deposit with the Sales Tax Department as per law. The petitioners were thus holding the amount collected from buyers in trust and they were bound by law to deposit the same with the*

government. The petitioner misappropriated this money and did not deposit the money with the government. The offence is squarely covered under Section 405 of IPC which defines criminal breach of trust. The Illustration (e) of Section 405 IPC which reads as under:

> *(e) A, a revenue officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust."*

18. *I consider that all companies and employers and those persons who collect taxes under an obligation of tax : laws are legally bound to deposit the same with income tax/sales tax departments. They hold money in trust and if they do not deposit the money with the concerned department as per law and misappropriate the money for their own use, offence of breach of trust is committed. Similarly, those employers who receive money from their employees against provident funds, ESI etc. hold this money in trust. This money*

belongs to the employees and it has to be deposited with the concerned department i.e., provident fund trust or ESI and if money is not deposited and is misappropriated, an offence under Section 406 IPC is made out.

19. *Cheating is defined under Section 415 of IPC as under:*

> *"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*
>
> *Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.*
>
> *(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let*

him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats".

20. *It is quite apparent from the reading of above section that offence of cheating is constituted not only when a person is dishonestly induced to deliver any property, cheating is also constituted if a person is intentionally induced or deceived to do or omit to do something which he would not have done or omitted to do if he was not so deceived. By submitting forged exemption certificates, the petitioners ostensibly induced sales tax department not to charge local sales tax worth crores of rupees, which the department would have otherwise charged. The ingredients of cheating are thus clearly made out in this case. The ingredients of forgery are present because forged documents were prepared and submitted. The ingredients of section 471 of IPC also exit."*

18. Even in the present case, the allegation against accused is that they have collected the amount from the punters towards payment of GST and from the winning bettors towards payment of TDS and have not deposited the same to the concerned Department and on the other hand, they have misappropriated the same. Therefore, as rightly contended by learned Advocate General, it cannot be said that there is absolutely no material to invoke the offences punishable under the provisions of Indian Penal code as against the accused.

19. Learned Senior counsel for the petitioners has submitted that even if the allegations made against accused are presumed to be true, it is only the competent authority of the GST Department, who can take action and the police have no jurisdiction to register a criminal case on the ground that the accused have not deposited the GST or TDS amount before the concerned Department. In the case of

State (NCT of Delhi) vs. Sanjay reported in ***(2014) 9 SCC 772***, the question that arose for consideration before the Hon'ble Supreme Court was whether the provisions contained under the Mines and Minerals (Development and Regulation) Act, 1957 operates as a bar against the prosecution of a person for the offences punishable under the Indian Penal Code. In other words, the question for consideration was whether the provisions of Mines and Minerals (Development and Regulation) Act, 1957 explicitly or impliedly excludes the provisions of Indian Penal Code when the act of an accused is an offence both under the Indian Penal Code and also under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. In paragraph Nos.61, 62, 69, 70, 71, 72 and 73 of the aforesaid judgment, the Hon'ble Supreme Court has observed as follows:-

> ***"61.*** *Reading the provisions of the Act minutely and carefully, prima facie we are of the*

view that there is no complete and absolute bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offence.

62. *Sub-section (1-A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. In other words no person will do mining activity without a valid lease or licence. Section 21 is a penal provision according to which if a person contravenes the provisions of sub-section (1-A) of Section 4, he shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973. Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any Rule made thereunder except upon a complaint made by a person authorised in this behalf. It is very important to note that Section 21 does not begin with a non obstante clause. Instead of the words "notwithstanding anything contained in any law for the time being in force no court shall take cognizance….", the section*

begins with the words "no court shall take cognizance of any offence."

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69. *Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.*

70. *There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and*

other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. *However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such*

offence under Sections 378 and 379 of the Penal Code.

72. *From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC*

before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

73. *After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. Consequently, the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the Magistrates concerned to proceed accordingly."*

20. In the present case, allegation against the accused is that the licensed bookies who have collected GST amount from the punters and TDS amount from the winning bettors have failed to deposit the same before the competent authority. They have also failed to maintain proper registers and documents in their stalls and also had failed to give proper receipts to the punters for having collected the betting amount. So far as the unauthorized bookies, who had no license or authorization from the competent authority to collect the betting amount from the punters, the allegation is that they have collected betting money from the public representing themselves to be licensed bookies and the money so collected by them from the punters was not being properly accounted nor was proper receipts being given to the same. In addition to the same, GST amount collected or TDS amount collected were also not being deposited before the concerned Department. Under the

circumstances, it cannot be said that there is absolutely no material to register FIR against the accused for the offences punishable under the Indian Penal Code or under the Act.

21. In almost identical circumstances, the Hon'ble Supreme Court in the case of ***State of West Bengal vs. Narayan K. Patodia*** reported in ***(2000) 4 SCC 447***, wherein the High Court of Calcutta had quashed the first information report on the ground that the person who forwarded the same to the police had no authority to do so, has set-aside the order passed by the High Court of Calcutta. In the said case, FIR was registered under the Indian Penal Code and the provisions of West Bengal Sales Tax Act and FIR contained allegations that on the basis of fabricated documents, the accused had obtained the registration under the Sales Tax Act, which entitled him to make purchase at concessional rate of sales tax and also receive permits for importing spices

from outside the state. The High Court had quashed the first information report by expressing its opinion that under the Sales Tax Act, only Bureau of Investigation constituted by the State Government can conduct the investigation or hold inquiry and police officer cannot register first information report for the offence punishable under the Indian Penal Code or any other Act. The Hon'ble Supreme Court taking into consideration Section 4 of the Criminal Procedure Code, which provides that offence under the Penal Code are to be investigated, inquired into, tried and otherwise dealt according to the provisions contained in the Code, set-aside the order passed by the High Court on the ground that the provisions of the Sales Tax Act did not provide the police officer to register a case and investigate in respect of the offence under the Penal Code.

22. The Hon'ble Supreme Court in the case of *Neeharika Infrastructure Private Limited (supra)*, in paragraph No.13, has observed as follows:-

> ***"13.*** *From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad, the following principles of law emerge:*
>
> ***13.1.*** *Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.*
>
> ***13.2.*** *Courts would not thwart any investigation into the cognizable offences.*
>
> ***13.3.*** *However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.*
>
> ***13.4.*** *The power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused*

with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. *While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.*

13.6. *Criminal proceedings ought not to be scuttled at the initial stage.*

13.7. *Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.*

13.8. *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482CrPC.*

13.9. *The functions of the judiciary and the police are complementary, not overlapping.*

13.10. *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.*

13.11. *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.*

13.12. *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the*

learned Magistrate in accordance with the known procedure.

13.13. *The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.*

13.14. *However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur and Bhajan Lal, has the jurisdiction to quash the FIR/complaint.*

13.15. *When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."*

23. In the case of *Anjan Dasgupta (surpa)*, the Hon'ble Supreme Court has observed that the receipt and recording of first information report is not a condition precedent for setting in motion of a criminal investigation and when information is received with regard to cognizable offence, the police was duty bound to start the investigation.

24. In the case of ***Skoda Auto Volkswagen (India) Private Limited vs. State of Uttar Pradesh and Others*** reported in ***(2021) 5 SCC 795***, the Hon'ble Supreme Court in paragraph Nos.41 and 42, has observed as follows:-

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

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

25. In the case of *Dr. K. R. Lakshmanan (supra)* on which reliance has been placed by learned Senior counsel for the petitioners, the Hon'ble Supreme Court has considered the question with regard to bringing 'Horse Race' within the definition of 'Gaming' found in the Police Act and in the said case, it was held that 'Horse Race' is a game of mere skill within the meaning of Section 49 of the Police Act and Section 11 of the Gaming Act. It was also held that 'Horse Race' is neither game nor gambling as defined and envisaged under the aforesaid two Acts

and the Penal provisions of the said Act are not applicable to the horse racing, which is a game of skill.

26. The Hon'ble Supreme Court in the said case also has considered the manner in which betting amount is collected and the price amount is paid to the winning bettors. In paragraph No.17 and 18 of the said judgment, it has been observed as follows:-

> ***"7.*** *We may at this stage notice the manner in which the Club operates and conducts the horse-races. Race meetings are held in the Club — racecourses at Madras and Ooty for which the bets are made inside the racecourse premises. Admission to the racecourse is by tickets (entrance fee) prescribed by the Club. Separate entrance fee is prescribed for the first enclosure and the second enclosure. About 1 ½ of the entrance fee represents the entertainment tax payable to the Commercial Tax Department of the State Government. The balance goes to the Club's account. Betting on the horses, participating in the races, may be made either at the Club's totalizators (the*

totes) by purchasing tickets of Rs 5 denomination or with the bookmakers (bookies) who are licensed by the Club and operate within the first enclosure. The totalizator is an electronically operated device which pools all the bets and after deducting betting tax and the Club charges, works out a dividend to be paid out as winnings to those who have backed the successful horses in the race. Bookmakers, on the other hand, operate on their own account by directly entering into contracts with the individual punters who come to them and place bets on horses on the odds specified by the bookmakers. The bookmakers issue to the punters printed betting cards on which are entered the bookmaker's name, the name of the horse backed, the amount of bet and the amount of prize money payable if the horse wins. The winning punters collect their money directly from the bookmaker concerned. The net result is that 75% of the tote collections of each race are distributed as prize money for winning tickets, 20% is paid as betting tax to the State Government and the remaining 5% is retained by the Club as commission. Similarly, the bookmakers collect from their punters, besides the bet

amount specified in the betting card, 20% bet tax payable to the State and 5% payable to the Club as its commission. It is thus obvious that the Club is entitled to only 5% as commission from the tote collections and also from the total receipts of the bookmakers. According to the appellant the punters who bet at the totalizator or with the bookmakers have no direct contract with the Club.

18. *The Club pays from its own funds the prize money (stake money) to the winning horses. The horses which win the first, second, third and up to 5th or 6th places are given prizes by the Club. The Club income consists of entrance fee, 5% commission paid by the bookmakers and the totalizators, horse entry fee paid by the owners of the horses participating in the race and the licence fee charged by the Club from the bookmakers."*

27. But in the present case, the allegation is about illegal collection of betting amount by unauthorized bookies and about collection of GST from the punters and collection of TDS amount from the winning

bettors without maintaining proper records for the same and also about not depositing of the said amount before the concerned Department by the bookies who have collected the same from the punters. It is also further alleged that the licensed bookies as well as unlicensed bookies have failed to maintain registers and documents regarding collections made and they have also failed to issue necessary receipts in proper format to the punters for having received the betting amount from them. Therefore, the judgment in the case of *Dr. K. R. Lakshmanan (supra)* would not be of any aid to the petitioners in the present case.

28. The other judgments of this Court on which reliance has been placed by learned Senior counsel for the petitioners are related to criminal cases registered against the accused for having collected betting amount for cricket matches, more so, IPL Cricket Matches. It is in this background, it has been

held in those cases that in the absence of a complaint from the public, who allegedly had placed betting with the accused and were cheated, the police could not have registered a criminal case against the accused.

29. In the present case, the allegation against the accused is totally different and therefore, the aforesaid judgments in the cases of *Dr. K. R. Lakshmanan (supra), Crl.P.No.3849/2021 disposed of on 16.06.2021 and Crl.P.No.4090/2023 disposed of 16.08.2023,* on which reliance has been placed by learned Senior counsel for the petitioners cannot be made applicable to the facts and circumstances of the present case.

30. In the case of *Lalita Kumari (surpa)*, the Hon'ble Supreme Court in paragraph No.86, has observed as follows:-

> ***"86.*** *Therefore, conducting an investigation into an offence after registration*

of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law."

31. In the present case only for the purpose of verification of the correctness of the credible information received, the first informant, who is a police officer had visited the premises of the Bangalore Turf Club and after holding a preliminary enquiry, being satisfied with regard to the correctness of the first information received by him, had proceeded to lodge a first information before the jurisdictional Police Station, which had culminated in registration of FIR in Crime No.9/2024 and investigation in the case was conducted only thereafter and therefore, the contention raised by the learned Senior counsel for the petitioners that procedure followed by the police in the present case

is contrary to the principles laid down by the Hon'ble Supreme Court in the case of *Lalita Kumari* is devoid of any merit.

32. The High Court while exercising its power under Section 482 of Cr.P.C. wherein a prayer is made to quash the FIR registered against accused is not required to hold mini trial. The only point that arises for consideration before the High Court at that stage is whether the nature of accusations and allegations made in the first information report *prima facie* discloses the commission of a cognizable offence or not. In the event, it is found that allegations made in the first information makes out a *prima facie* case for cognizable offence, the investigating agency is required to be permitted to carry on with the investigation. Section 482 of Cr.P.C cannot be a tool to be used by accused to short-circuit a prosecution and close the same without full fledged enquiry,

more so, when serious allegations are found against the accused.

33. Section 482 of Cr.P.C. should not be exercised to stifle a legitimate prosecution. When a prosecution is sought to quashed at the initial stage, the test to be applied by the Court is as to whether the uncontroverted allegations made, *prima facie* makes out the offence/offences. The correctness of the allegations as well as the reliability and credibility of the witnesses cannot be considered by this Court while exercising its powers under Section 482 of Cr.P.C. The scope of exercise of power under Section 482 of Cr.P.C. and the categories of cases where the High Court may exercise its power under it relating to cognizable offences are set-out by Hon'ble Supreme Court in the case of ***State of Haryana and Others vs. Bhajan Lal*** and ***Others*** reported in ***(1992) SCC (Crl) 486*** and the case on hand does not fit into any of the illustrative categories indicated

by the Hon'ble Supreme Court in the said case. In the said case, it is also observed that power under Section 482 of Cr.P.C. should be exercised sparingly and that too, in the rarest of rare cases.

34. In the case of ***State vs. M. Maridoss and Another*** reported in ***(2023) 4 SCC 338***, the Hon'ble Supreme Court has observed that it is the right conferred upon the investigating agency to conduct the investigation and reasonable time should be given to the investigating agency to conduct the investigation unless it is found that the allegations in the FIR do not disclose any cognizable offence at all or the complaint is barred by any law.

35. An investigation in a case is carried on for the purpose of collecting necessary materials for proving the offence disclosed in the first information. If the investigating agency is not given a free hand to collect necessary materials for establishing the offence and if a proper enquiry is not done, there are

all chances of the offender succeeding in escaping from the clutches of law, which could be detriment to the cause of the justice. If the Court is satisfied that allegations made and materials collected *prima facie* make out an offence, the Court should normally not interfere with the investigation into the offence. In such situations, the fact that investigating officer has not invoked the proper penal provisions or that he has registered FIR invoking a wrong penal provision becomes immaterial and it is for the Court to apply its mind and arrive at a conclusion. After investigation, based on the material collected, it is always open for the investigating agency to file final report invoking the applicable penal provisions.

36. In the present case, as stated earlier, the allegations found in the first information and the material collected by the Investigation Officer during the course of investigation *prima facie* make out a cognizable offence as against the accused and in

view of the interim order granted by this Court, the investigation which was under progress has been stalled. The allegations against the accused is of very serious nature and the accused amongst other allegations, allegedly have misappropriated crores of money collected by them towards payment of GST and TDS. Under the circumstances, I am of the opinion that the prayer made by the petitioners for quashing the FIR registered against them cannot be granted. Accordingly, the following order:-

37. The Criminal Petition is dismissed.

38. In view of the dismissal of the main petition, pending interlocutory application, if any, does not survive for consideration and accordingly, they stand disposed of.

Sd/-
JUDGE

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