IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE $01^{\text {ST }}$ DAY OF SEPTEMBER, 2023 BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No. 22072 OF 2022 (GM-RES)

## BETWEEN:

1. SRI K.Y.NANJEGOWDA
2. SRI D.M.NAGARAJA
3. SRI S. NAGAPPA
4. SMT. N. LAKSHMAMMA
... PETITIONERS
(BY SRI SANDESH J.CHOUTA, SENIOR ADVOCATE A/W., SRI R.SHASHI KUMAR, ADVOCATE)

## AND:

1. THE STATION HOUSE OFFICER MALUR POLICE STATION MALUR TALUK
KOLAR DISTRICT - 563130. REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KARNATAKA BENGALURU - 560001.
2. SRI K.C.RAJANNA
(BY SRI MAHESH SHETTY, HCGP FOR R-1;
SRI S.UMAPATHI, ADVOCATE FOR R-2)
THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF

THE CR.P.C., PRAYING TO QUASH THE COMPLAINT FILED BY THE R2 IN PCR NO.15366/2022 PENDING BEFORE THE HONBLE XLII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGLAURU (SPL. COURT FOR TRIAL OF CASES FILED AGAINST SITTING AS WELL AS FORMER MPs/MLAs, TRIABLE BY MAGISTRATE IN THE STATE OF KARNATAKA ANNEXURE-A IN SO FAR AS PETITIONERS CONCERNED AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

## ORDER

The petitioners are before this Court calling in question registration of a private complaint by the $2^{\text {nd }}$ respondent in P.C.R.No. 15366 of 2022 before the XLII Additional Chief Metropolitan Magistrate, Bengaluru. Since the $1^{\text {st }}$ petitioner is a member of the Legislative Assembly, it is posted before this special Bench.
2. Facts, adumbrated are as follows:-

The $1^{\text {st }}$ petitioner at the relevant point in time was Chairman of the Land Grant Committee, Malur Taluk ('the Committee' for short) being a Member of the Legislative Assembly from Malur

Constituency in Kolar District. The other petitioners are other Members of the Committee which was constituted under the provisions of the Karnataka Land Revenue Act, 1964 ('the Act' for short). The $2^{\text {nd }}$ respondent is the complainant who sought to set the criminal law in motion claiming to be an activist and a public spirited person. On the allegation that when the $1^{\text {st }}$ petitioner was the Chairman and other petitioners were Members of the Committee, have on the basis of fabricated documents and on creating bogus records, granted lands to several persons who were not eligible to be granted lands and thereby eaten away public property by granting lands to benami people, the $2^{\text {nd }}$ respondent seeks to register a complaint before the jurisdictional Police on 30-08-2022.
3. Initially, on 02-12-2019 a complaint was registered against the former Tahsildar by one B. Nagaveni, Tahsildar at the relevant point in time alleging that he has illegally transferred the said lands which becomes a crime in Crime No. 276 of 2019 for offences punishable under Sections 192-A and 192-B of the Act. When the investigation was in progress, the $2^{\text {nd }}$ respondent seeks to register
another complaint before the jurisdictional police against all these petitioners for different offences albeit, the cause being grant of lands. This is declined to be registered by the jurisdictional Police on the ground that there is already a crime registered and the investigation is pending in the crime so registered against the Tahsildar. When such an endorsement was given to the $2^{\text {nd }}$ respondent/complainant, he then approaches the Special Court for trial of cases filed against sitting as well as former MPs/MLAs, triable by Magistrate invoking Section 200 of the CrPC by filing a private complaint. The concerned Court, by a detailed order dated 15-10-2022 seeks to refer the matter for investigation under Section 156(3) of the Cr.P.C. Immediately thereafter, the petitioners have approached this Court in the subject petition. This Court in terms of its order dated 18-11-2022 interdicted the proceedings and, therefore, no investigation has taken place pursuant to the reference made by the learned Magistrate.
4. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioners; Sri Mahesh Shetty, learned High

Court Government Pleader appearing for respondent No. 1 and Sri S. Umapathi, learned counsel appearing for respondent No. 2 .
5. The learned senior counsel would contend that the first complaint related to the very same subject matter of grant of lands. The said complaint results in becoming a crime in Crime No. 276 of 2019 registered on 02-12-2019 against the Tahsildar for offences punishable under Sections 192-A and 192-B of the Act. The investigation in the case is still on. During the pendency of investigation in the said case, the complainant seeks to register another complaint. This is declined to be registered as a FIR on the score that there is already a case pending investigation before the jurisdictional Police. The private complaint filed thereafter which is now referred to investigation under Section 156(3) of the Cr.P.C., if permitted to continue would result in multiple FIRs being registered against the petitioners, which is hit by the judgment of the Apex Court in the case of T.T. ANTONY v. STATE OF KERALA AND OTHERS ${ }^{1}$. The learned senior counsel would contend that it is on that basis the interim order is granted in the subject petition.

[^0]6. On the other hand, the learned counsel appearing for the complainant would take this Court through the statement of objections seeking to contend indiscriminate grant of lands by the Committee. He would quote instances where ineligible people have all been granted lands. It is, therefore, he had registered a complaint invoking Section 154(1) of the Cr.P.C. before the jurisdictional Police. But, the complaint registered in Crime No. 276 of 2019 was under Sections 192-A and 192-B of the Act against the Tahsildar which was not even maintainable. No complaint had been registered against these petitioners to contend that the issue is hit by the dictum of the Apex Court in T.T. ANTONY. It is submitted that it is for the first time, the present accused are brought into the web of crime and even before taking up investigation in the crime, it was interdicted by this Court. He would seek dismissal of the petition and conduct of investigation by the jurisdictional Police. It is his submission that such complaints are maintainable in the light of the judgment of the Apex Court in the case of UPKAR SINGH v. VED PRAKASH ${ }^{2}$.

[^1]7. The learned High Court Government Pleader representing the State would contend that investigation in Crime No. 276 of 2019 is still pending and therefore he has handed over the papers of investigation for perusal of the Court which according to the learned High Court Government Pleader would speak for itself. But, it is his submission that despite the crime being registered close to 4 years, investigation is still on and no final report is filed by the Police.
8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.
9. The position of the petitioners at the relevant point in time is a matter of record. The $1^{\text {st }}$ petitioner as Member of Legislative Assembly of Malur Constituency was the Chairman of the Committee and the other petitioners were Members of the said Committee. The positions that they held are not in dispute. What becomes crime in Crime No. 276 of 2019 having been registered on 02-12-2019 is what is required to be noticed. The complaint reads as follows:
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 దాబల షూతుబ బగ్గి.



 సంబ్యి:సబ్బంది (1)~.ఆరా.92/19-20, ది:30-11-2019.

 దినాంళ:02/12/209.
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సై/- 02/12<br>తळకిలల్దారా<br>

The complaint is made by the Tahsildar on the basis of a written complaint by the $2^{\text {nd }}$ respondent. The offences alleged are the ones punishable under Sections 192-A and $192-B$ of the Act. The accused is one V.Nagaraj, the earlier Tahsildar of Malur Taluk. The contents of the crime so registered as found in column No. 10 of the FIR are as follows:













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Several instances of grant of lands by changing title are alleged against the former Tahsildar and nobody else is even arrayed as accused. Investigation commences. In the considered view of this

Court this was farce of a registration of crime for offence under Sections 192-A and 192-B of the Act. Sections 192-A and 192-B of the Act read as follows:
"192-A.- Offences and Penalties.- Notwithstanding anything contained in the Act or the rules made thereunder whoever commits any of the offence specified in column (2) of the Table below, shall on conviction by a judicial Magistrate of first class for each of such offence be punishable with the sentence indicated in the column (3) thereof,-

TABLE

| SI.No. | Offence | Punishment |
| :--- | :--- | :---: |
| .. | .. | . |
| 2. | Cheats and thereby <br> dishonestly <br> documents for the purpose of <br> selling, mortgaging or or <br> transferring by gift or <br> otherwise of any Government <br> land | Imprisonment for <br> three years and <br> fine of rupees ten <br> thousand. |

192-B. Abetment of offences.- Whoever abets any offence punishable by or under this Act or attempts to commit any such offence shall be punished with the penalty provided by or under this Act for committing such offence."

Sections 192-A and 192-B of the Act cannot be alleged against public servants as they are offences to be alleged against public who would grab the land and who should be notified about such encroachment/grabbing prior to registration of the crime. It is nowhere indicated that Sections 192-A and 192-B of the Act can be
alleged against a public servant. Even then investigation is pending and is pending against the Tahsildar. The matter was taken up for hearing on 28-07-2023. Even as on that date the investigation in Crime No. 276 of 2019 was not complete. It is in the interregnum the $2^{\text {nd }}$ respondent wanted to register a crime before the jurisdictional Police against these petitioners. This is turned down by the jurisdictional Police by issuance of an endorsement on the ground that the crime in Crime No. 276 of 2019 is pending investigation by the jurisdictional police registered by the very same complainant. The endorsement so issued by the jurisdictional Police reads as follows:

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The Police would indicate that investigation is still on despite passage of three years; examination of documents is in progress and the accused against whom the complainant wants now to allege offence could be added at the time when the investigation would get complete. It is after the endorsement being issued by the Police, the complainant seeks to register the private complaint. The learned Magistrate/Special Court before whom the complaint is sought to be registered refers the matter for investigation observing that there are ingredients of Sections 468, 464, 465, 471(b), 420 and $120(b)$ of the IPC. The order of reference reads as follows:
"12. Point No.1: The complainant is alleging that the accused have committed the offences punishable under Sections 468, 464, 465, 471(b), 420 and 120(b) of IPC, as averred in the complaint, which is narrated above. On perusal of the complaint averments and also the documents produced along with the complaint, it does to show that the complainant has complied with the directions given by the Hon'ble Apex Court in Priyanka Srivastava's case. The complainant has lodged a complaint before the jurisdictional Police Station, but o action was taken. The complainant has also lodged a complaint in this regard to the Higher Authorities also, but no action is taken in respect of
the complaint lodged by the complainant, even though an endorsement is issued stating that a case is registered in Cr.No.276/2019, based on the complaint of one Smt. Nagaveni B. The complainant has also filed his affidavit stating that the averments made in the complaint are true and correct. As such, the complainant has filed this Private Complaint with the prayer to refer the complaint under Section 156(3) of Cr.P.C. for investigation.
13. The complainant has produced documents in compliance of Section 154 of Cr.P.C. and also filed affidavit in that regard. The complainant has sought to refer this case to the jurisdictional Police for investigation. As such, at this precognizance stage, bar under Section 197 Cr.P.C. will not come into play. And, this Court is guided by the decision of the Hon'ble High Court of Karnataka in CrI.P.No. 5659 of 2021 between Abharam T.J., v. B.S. Yediyurappa dated: 07-092022. I feel this is a fit case to refer the complaint for investigation under Section 156(3) of Cr.P.C. As such, point No. 1 is answered in the AFFIRMATIVE.
14. Point No. 2: The counsel for the complainant has also pressed to pass necessary orders on the Second Prayer made in the complaint. The complainant has prayed to initiate action against the Police Inspector, Malur Police Station, Malur Taluk, Kolar District. He has also referred to the decision of the Hon'ble Apex Court i.e., Lalita Kumari v. Government of U.P. and Ors. I have gone through the said decision. This Court is constituted as a Special Court to deal with the cases filed against the MPs/ MLAs in the State of Karnataka. The Second Prayer sought in the complaint is an independent case, in which any MPs/ MLAs are not involved. The said prayer is sought to initiate action against the Police Officer who did not register the case based on the complaint lodged by the complainant before the Police Station. As such, this Court will not get the jurisdiction to initiate any action against the said Police Officer in this case, as the same will be an independent case. If the complainant is aggrieved by the action of the said Police Officer he may proceed against him separately before the jurisdictional Court. Accordingly, I answer this point No. 2 in the NEGATIVE.
15. Point No.3: For the reasons stated above, I proceed to pass the following:

## ORDER

This complaint is referred to SHO of Malur Police Station, Malur Taluk, Kolar District, under Section 156(3) of Cr.P.C. for investigation."

Immediately after the reference is made, the petitioners knock at the doors of this Court with the present petition. This Court, on

18-11-2022, grants an interim order of stay by the following order:
"Petitioner has assailed the proceedings initiated in P.C.R. No. 15366/2022 primarily on the ground that the proceedings initiated in the said private complaint is also the subject matter of investigation pursuant to an FIR registered vide Crime No.276/2019. It is submitted that investigation regarding Crime No.276/2019 is in progress.

Attention is drawn to the complaint at Annexure-E and annexures to the said complaint. It is submitted that insofar as the alleged illegal grant made when the petitioner was the Chairman of the Land Grant Committee, for the same period the present private complaint has been filed. Reference is drawn to the averments of the private complaint at paragraph No. 7 wherein there is a reference to the earlier FIR registered in Crime No.276/2019.

It is contended that insofar as the FIR registered for an offence, there cannot be subsequent FIRs or complaints regarding the same alleged offence and cause of action. Reliance is placed on the judgments of the Apex Court in the cases of T.T. Antony vs. State of Kerala and others (2001) 6 SCC 181 and Krishna Lal Chawla and others vs. State of Uttar Pradesh and Another - (2021) 5 SCC 435.

In light of the said contentions raised and also taking note of the submission of learned Senior counsel appearing for the
petitioner that the proceedings in Crime No. 276/2019 is still in progress, there would be stay of the order dated 15.10.2022 passed in P.C.R. No. 15366/2022 and consequential proceedings, till the next date of hearing.

Learned HCGP is directed to accept notice for respondent No. 1 .

Issue emergent notice to respondent No. 2.
Petitioner is permitted to take out notice by way of hand summons to respondent No. 2 as well.

List this matter after two weeks."

The interim order is granted on the strength of pendency of crime in crime No. 276 of 2019 and following the judgment in the case of T.T.ANTONY (supra).
10. The issue now is, whether the reference being made for investigation should be permitted to be continued or otherwise, for which I deem it appropriate to notice the allegations in the complaint so made which has become a crime in crime No. 489 of 2022 against the petitioners, pursuant to impugned P.C.R. The genesis of the crime in crime No. 489 of 2022 is a complaint that the $2^{\text {nd }}$ respondent/complainant seeks to register before the jurisdictional police which results in issuance of an endorsement supra. Since it forms the basis for registration of the private
complaint as well, I deem it appropriate to notice the complaint.
The complaint dated 30-08-2022 reads as follows:

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 దనాంళ:15-07-2019, దనలంళ:26-07-2019, దనలంई:03-07-2019











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ముంజూరాతి మూఙిరుత్తారి. (అనుబంధా-బి. సల్లి దినాంళ:26/15/3/8/2019 రల్లి 7 జుघగ్


















 ఝునిగంగరాజు 33) ఆదినందిలోగాఠ బినా एరమిలోశ 34) నారాయయణరాజు బినా






 ఆదొలశ ష్రుగళస్ను లగత్తిచి.)


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13. షృల అజిణదృరరు ఆరా. ఝునిరాబా దినాంశ: 22-01-2005 రండు
 బరఃంర శ్రుముమాగిది.





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18. అజిణదారరగ స్ట్రంత జమిలను ఇద్దరం బలుడ్తిగగ శుమితియు జమిలను ஹుంజృజు యూఙలాగిది.





















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What can be gathered from the complaint, which the complainant had claimed to be the extract from the original records is, proceedings have taken place on three dates - 03.07.2019, 26.07.2019 and 15.07.2019 and the lands have been granted on these dates, to whom, is what forms the fulcrum of the complaint. The allegation is, on quotation of several instances, certain illustrative instances, are that, one Narayanappa, S/o. Muniyappa is granted 1.39 acres of land on 03.07.2019. Narayanappa, S/o. Muniyappa had died on 25.10 .2004 . Therefore, government land of 1.39 acres is granted to a dead person. Therefore, it is prima facie a ghost grant

One Anand Kumar, S/o. Nagappa is granted land on the ground that he has been doing agricultural activity for 30 years as on the date of grant. His age is 31 years. Therefore, according to the grant at the age of one, the applicant is into agricultural activity. Therefore, prima facie, it is a grant in air.

One Amaregowda, S/o. Shamegowda, is has been an agriculturist for the last 40 years and has produced certificates to that effect. His age is 42 years. Therefore, at the age of two, Amaregowda begins agricultural activities. Prima facie, it is also a grant in thin air.

One Anandish Gowda is an agriculturist for the last 50 years is one of the applicants. Enquiry of his credentials reveal that he is 40 years old. Therefore, he is an agriculturist 10 years before his birth. Therefore, prima facie, this is also a ghost grant.

One Ashwathnarayana A.P., is granted 3.18 acres of land on the score that he is landless, notwithstanding the fact that he is already owning 5 acres of land.
11. The aforesaid are few of the illustrations of many that are alleged in the complaint. In all, what the complainant alleges is,
close to 80 acres of government land is granted on paper by misuse of power by the Committee, which has generated a loss to the State Exchequer to the tune of 150 crores.
12. Prima facie, the Government land is bartered away by the Chairman and Members of the Committee and the office is treated as their personal fiefdom, which has resulted in loot of Government land. If the aforesaid facts form the part of the complaint, crime ought to have been registered against the accused as they were all on the face of it cognizable offences. But, alas, it is not, as an endorsement emerges ostensibly on the score that the complaint was against the powers that be, at the relevant point in time. It is then the complainant moved the learned Magistrate by registering the private complaint.
13. If what is the subject matter of crime in crime No. 276 of 2019 is noticed, in juxta position to what is crime in crime No. 489 of 2022, what would unmistakably emerge is, the reference order by the learned Magistrate is in tune with law. In the considered view of this Court, it is not hit by the dictum of the Apex Court either in the case of T.T. ANTONY (supra) or KRISHNA LAL

CHAWLA v. STATE OF UTTAR PRADESH ${ }^{3}$. Those were cases where repeated crimes were registered on one solitary incident against the very same accused. In the case at hand, the first complaint though was concerning grant of land, it was against the Tahsildar, against whom the crime is registered for offences under Section 192-A and $192-B$ of the Act which cannot even become offence against the Tahsildar. Therefore, it is a make believe registration of crime. This would not stand to reason on the scrutiny of original records pertaining to investigation conducted by the Investigating Officer in Crime No. 276 of 2019. The original records would indicate only collection of documents and resumption of lands that were granted by the Committee. Even after 4 years of investigation, it was only resumption of land or collection of papers.
14. The accused, in the case at hand, are different and the offences alleged are entirely different. The crime registered in Crime No. 489 of 2022 is for the offences under Sections 468, 464, $465,471,420$ and 120B of the IPC. It is registered on 03-11-2022. The contents at column 10 of the FIR are the contents of the

[^3]complaint quoted supra. Therefore, it is not a case of multiple FIRs being registered against the accused on the same cause of action. It is for offences against different accused. When such glaring offences were projected before the jurisdictional Police against the powerful, the Police ought to have registered the crime and not issue an endorsement. Now the crime is registered left with no choice, as the learned Magistrate has referred the matter for investigation. Merely because the powers that be are involved in a particular crime, the jurisdictional police cannot shut their eyes when such offences are brought before them, as the offences were cognizable and the crime is registered in terms of the judgment of the Constitution Bench of the Apex Court in the case of LALITA KUMARI V. GOVERNMENT OF U.P. ${ }^{4}$ which directed immediate registration of the complaint when cognizable offences are brought before the Police. The judgment in the case of LALITA KUMARI is again followed in SINDHU JANAK NAGARGOJE v. THE STATE OF MAHARASHTRA ${ }^{5}$ wherein the Apex Court has held as follows:

[^4]The appellant - Sindhu Janak Nagargoje, therefore, approached the High Court by way of the writ petition, which has been dismissed by the impugned order.

In view of the decision rendered by the Constitution Bench in the case of "Lalita Kumar v. State of Uttar Pradesh \& ors.," reported in (2014) 2 SCC 1, we are of the opinion that the registration of FIR is mandatory under Section 154 of CrPC, if the information discloses commission of cognizable offence. We may reiterate summary of law stated therein:-
"120. In view of the aforesaid discussion, we hold:
120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
(a) Matrimonial disputes/family disputes
(b) Commercial offences
(c) Medical negligence cases
(d) Corruption cases
(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.
120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

In the instant case, the complaints submitted by the appellant to the concerned respondents did not disclose the
commission of cognizable offence and also the names of the alleged offenders."

If the aforesaid facts and the kernel of the complaint is noticed, it is a classic case where the power entrusted to the representatives of the public is prima facie misused, as the government lands have been granted to the persons who could not be granted. In the aforesaid circumstance, quoting Benjamin Disraeli would become apposite.

> "9. ... 'All power is a trust - that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist.' Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise."
(Emphasis supplied)

The trust with which the power is entrusted to the powers that be, has been thrown to the winds albeit prima facie. An investigation in the least was necessary for the glaring offences alleged. Merely because one of the petitioners is a Member of the Legislative Assembly, it is no law that no investigation should be conducted. As it is trite that every one, whether individually or collectively, is and are under the supremacy of the law;
whoever they may be, however high may be, they are under the law, how powerful they are hardly matters, in a nation governed by rule of law.
15. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected. Interim order that is subsisting as on date stands dissolved.


[^0]:    ${ }^{1}$ (2001) 6 SCC 181

[^1]:    ${ }^{2}$ (2004) 13 SCC 292

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[^3]:    ${ }^{3}$ (2021) 5 SCC 435

[^4]:    ${ }^{4}$ (2014) 2 SCC 1
    ${ }^{5}$ S.L.P.No. 5883 of 2020 decided on 08-08-2023

