

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2022



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.7325 OF 2022

C/W

CRIMINAL PETITION No.7345 OF 2022

IN CRIMINAL PETITION No.7325 OF 2022

BETWEEN:

ASSOCIATE LUMBERS PRIVATE LIMITED
A COMPANY WITHIN
THE MEANING OF COMPANIES ACT, 2013
HAVING REGISTERED OFFICE AT: ASSOCIATE HOUSE
85-A SANT SAVTA MARG
MUSTAFA BAZAR
MUMBAI MAHARASHTRA 400010
REPRESENTED HEREIN BY ITS DIRECTOR
MR. MOHAMED FAROUK SULEMAN DARVESH.

... PETITIONER

(BY SRI HASHMATH PASHA, SR.ADVOCATE A/W
SRI SHRAVANTH ARYA TANDRA, ADVOCATE)

AND:

1. STATE BY CENTRAL BUREAU OF INVESTIGATION
CONSTITUTED BY DELHI SPECIAL
POLICE ESTABLISHMENT ACT, 1946
BANKING SECURITIES FRAUD BRANCH
NO.36, BELLARY ROAD,

GANGANAGAR
BENGALURU – 560 032
THROUGH SPECIAL PUBLIC PROSECUTOR

2. UNION BANK OF INDIA
A PUBLIC SECTOR BANK CONSTITUTED
UNDER THE BANKING COMPANIES
(ACQUISITION AND TRANSFER OF
UNDERTAKINGS) ACT, 1970
HAVING ITS REGISTERED OFFICE AT:
UNION BANK BHAVAN
239, VIDHAN BHAVAN
MARG, NARIMAN POINT MUMBAI - 400 021
MAHARASHTRA, INDIA.

HAVING ITS BRANCH OFFICE
1ST FLOOR, POONJA ARCADE BUILDING
K.S. RAO ROAD, HAMPANKATTA
P.B. NO. 224, MANGALURU – 575 001
KARNATAKA, INDIA.

... RESPONDENTS

(BY SRI P.PRASANNA KUMAR, SPL.P.P., FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR BEARING NO.RC0782022E0001 DATED 17.02.2022 REGISTERED U/S.13(2) R/W SEC.13(1)(d) OF PREVENTION OF CORRUPTION ACT, 1988 R/W SEC.120-B OF IPC 1860 AND SEC.420 OF IPC 1860 ON THE FILES OF RESPONDENT NO.1 (ANNEXURE-A) AND ALL PROCEEDINGS ARISING PURSUANT TO THE COMPLAINT DATED 15.02.2022 OF RESPONDENT NO.2 (ANNEXURE-B) THEREFROM BEFORE XXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND PRINCIPAL SPECIAL JUDGE FOR CBI CASES, BENGALURU IN RC-1/E/2022 - CBI/BSFB/BLR.

IN CRIMINAL PETITION No.7345 OF 2022**BETWEEN:**

1. MOHAMED FAROUK SULEMAN DARVESH
AGED ABOUT 70 YEARS,
R/O HOOR MANZIL,
7 PERRY CROSS ROAD
BANDRA (WEST) MUMBAI
MAHARASHTRA – 400 050.
2. EBRAHIM SULEMAN DARVESH
AGED ABOUT 65 YEARS
HOOR MANZIL 7 PERRY
CROSS ROAD BANDRA (WEST) MUMBAI
MUMBAI CITY
MAHARASHTRA 400 050.
3. MANOHARLAL SATRAMDAS AGICHA
AGED ABOUT 77 YEARS,
R/O THE AGICHAS, 6, VINAYAKA ROAD
BANDRA (WEST), MUMBAI
MUMBAI CITY
MAHARASHTRA – 400 010.

... PETITIONERS

(BY SRI C.V.NAGESH, SR.ADVOCATE A/W
SRI PRADEEP NAYAK, ADVOCATE)

AND:

1. CENTRAL BUREAU OF INVESTIGATION
BANK SECURITIES AND FRAUD BRANCH
BENGALURU
CONSTITUTED UNDER THE DELHI
SPECIAL POLICE ESTABLISHMENT ACT 1946
ACB NO.36, BELLARY RD

GANGANAGAR
BENGALURU
KARNATAKA – 560 032.

2. UNION BANK OF INDIA
A PUBLIC SECTOR BANK
CONSTITUTED UNDER THE
BANKING COMPANIES (ACQUISITION AND
TRANSFER OF UNDERTAKINGS) ACT, 1970
HAVING ITS REGISTERED OFFICE AT
UNION BANK BHAVAN
239, VIDHAN BHAVAN MARG
NARIMAN POINT
MUMBAI – 400 021
MAHARASHTRA INDIA

HAVING ITS BRANCH OFFICE
1ST FLOOR, POONJA ARCADE BUILDING
K.S.RAO ROAD
HAMPANAKATTA, P.B.NO.224
MANGALURU – 575 001.

... RESPONDENTS

(BY SRI P.PRASANNA KUMAR, SPP.P.P. FOR R1;
SRI V.B.RAVISHANKAR, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR NO.RC0782022E0001 DATED 17.02.2022 REGISTERED U/S 13(2) R/W 13(1)(d) OF PC ACT R/W 120B, 420 OF IPC ON THE FILE OF THE RESPONDENT NO.1 AND ALL PROCEEDINGS ARISE THEREFROM.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.09.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners in these petitions call in question First Information Report registered on 17-02-022 by the Central Bureau Investigation in No. RC0782022E0001 for offences punishable under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short) and Section 120B read with Section 420 of the IPC.

2. The petitioner in Criminal Petition No.7325 of 2022 is the company/accused No.1. Petitioners in Criminal Petition No.7345 of 2022 who are accused 2 to 5 are Directors of the Company/accused No.1. Since all the petitioners challenge the very same crime registered against them, these cases are taken up together and considered by this common order.

3. The petitioner in Criminal Petition No.7325 of 2022 is 'Associate Lumbers Private Limited' (hereinafter referred to as 'the Company' for short). The Company, one incorporated under the Companies Act, 1956, is engaged in the business of trading timber, teakwood, packing cases, plywood and other wood products. It is

the claim of the Company that the Company had been a customer of the then Corporation Bank ('the Bank' for short) presently merged with the 2nd respondent/Union Bank of India since 1988. On 05-03-2003, on an application made by the Company, a loan facility was extended by Poonja Arcade Branch, Mangalore of the Bank. The same was sanctioned and a credit limit of Rs.23/- crores was granted on 05-03-2003. The credit limit was extended/enhanced from time to time at the request of the petitioner and on 21-09-2015 loan account was renewed and enhanced to Rs.60/- crores. The date 21-09-2015 was the last of the renewal made for a credit limit of Rs.60/- crores. It is the claim of the petitioner/Company that due to economic slowdown in the domestic market there was severe cash crunch generated and the Company was not in a position to pay the debt in time.

4. On account of the account becoming a non-performing asset, the Bank took several actions against the petitioner/Company by initiating proceedings under the SARFAESI Act, through which a portion of the outstanding dues to the credit facility was recovered. Not stopping at that, the Bank in terms of Reserve

Bank of India guidelines declared the account of the Company to be a fraud, and account holders to be willful defaulters and initiated several proceedings to recover the amount. Those proceedings are not the one that is the issue in the case at hand. After initiation of proceedings under the SARFAESI Act and also getting in possession of the recovery certificate from, the hands of the competent *fora*, the Bank registered a complaint against the petitioner/Company on 15-02-2022 terming the account to be a fraud and alleging offences of cheating, criminal conspiracy by the petitioner and its Directors.

5. On the basis of the said complaint, the Central Bureau of Investigation ('CBI' for short) registered FIR in Crime No. RC0782022E0001 for offences punishable under Section 13(2) r/w Section 13(1)(d) of the Act and Section 120B r/w 420 of the IPC. The petitioners in both these petitions called in question the action of the Bank in declaring the account of the petitioner to be a fraud in terms of the Master Circular issued by the RBI before this Court in Writ Petition No.5223 of 2022. A Division Bench of this Court directed that no coercive action shall be taken against the petitioners pursuant to the fraud classification. After passing of the

aforesaid interim order, the present petitions are preferred by the petitioners calling in question the very registration of crime. This Court by an order dated 12-08-2022 following, what the Division Bench had directed i.e., not to take coercive steps, directed that no coercive steps shall be taken against the petitioners.

6. Heard Sri Ashok Haranahalli, Sri Hashmath Pasha and Sri C.V.Nagesh, learned senior counsel appearing for the petitioners, Sri P.Prasanna Kumar, learned Special Public Prosecutor for respondent No.1 and Sri V.B.Ravishankar, learned counsel for respondent No.2.

7. The learned senior counsel Sri Ashok Haranahalli and Sri Hashmath Pasha, in unison, would contend that the complaint itself narrates that there is no staff accountability issue in the case at hand and the classification of fraud of the petitioner/Company is after 4 years of getting recovery certificate by the Bank at its hands. They would submit once having initiated proceedings under the SARFAESI Act and having obtained recovery certificate against the petitioners, the account could not have been declared to be a fraud and complaint of the nature that is found could not have been

registered against the petitioners. The counsel would submit that the Bank has sold immovable properties and other securities that were available with them. The crime is registered on a solitary score that those properties did not fetch the amount that the Bank was entitled to get and, therefore, would submit that the entire proceedings should be obliterated.

8. The learned senior counsel Sri C.V.Nagesh would take this Court through the complaint so registered. The complaint is registered for offences punishable both under the Act and the IPC. For invoking the Act, there is no public servant involved in the case at hand. The public servants are given a clean chit in the complaint itself. For the IPC offences, the CBI would not get jurisdiction to register a complaint against the petitioner/ Company and when the CBI had no jurisdiction to register the complaint the entire proceedings have to be quashed. He would further emphasise the fact that the CBI draws its strength for entering into these proceedings only on the basis of Master Circular issued by the Reserve Bank of India which cannot confer jurisdiction, as any circular or Master Circular issued under any enactment will not

confer jurisdiction, but only in cases where the statute itself confers. Therefore, he would submit that the entire registration of crime by the CBI is rendered without jurisdiction.

9. Joining the issue, the learned senior counsel Sri Hashmath Pasha would submit that the offence punishable under Section 120B of the IPC cannot be a standalone offence as the FIR is for the offences punishable under Section 120B r/w 420 of the IPC; the substantive offence being Section 120B of the IPC. Therefore, the entire proceeding is vitiated. He would also place reliance on a judgment rendered by this Court in the case of ***STEEL HYPERMART INIDA PRIVATE LIMITED AND OTHERS v. CBI AND ANOTHER – Criminal Petition No.919 of 2021*** decided on ***2.08.2022*** to contend that once a writ petition is pending against declaration of the account of the petitioner to be a fraud, the entire action of registration of crime is vitiated.

10. On the other hand, the learned Special Public Prosecutor representing the respondent/CBI Sri P.Prasanna Kumar would vehemently refute the submissions to contend that the Circular itself empowers the CBI to register the crime. In fact, the Bank has

to complain to the CBI in terms of the Master Circular if the loan transaction or the amount that has slipped into becoming an NPA/fraud is between Rs.25/- crores to Rs.50/- crores. Admittedly in the case at hand, the amount does come within the said figure. The circular also directs that even if a public servant is not involved, such cases shall be entrusted to the CBI only. He would, therefore, contend that the question of CBI having no jurisdiction is imaginary and deserves to be rejected. He would place reliance upon the judgments of the Apex Court which have recognized the said Master Circular and entrustment of case to the CBI in the case of **PEERLESS GENRAL FINANCE AND INVESTMENT CO.LTD. AND ANOTHER v. RESERVE BANK OF INDIA – (1992)2 SCC 343**; Five Judge Bench judgment of the Apex Court in the case of **CENTRAL BANK OF INDIA v. RAVINDRA AND OTHERS - (2002) 1 SCC 367** and a judgment of the Apex Court in the case of **R.VENKATKRISHNAN v. CBI - (2009)11 SCC 737**. The learned counsel would further submit that Section 120B of the IPC is a standalone offence and can definitely be charged with and proceeded in a trial. He would contend that FIR is now registered. It cannot be an encyclopedia of offences or the offenders. The

matter is now under investigation. Public servants who are now given a clean chit can also be added later, at the time when the charge sheet is filed. Therefore, it is too early in the day to contend that in the absence of public servant, there cannot be a crime under the Act. He would also submit that the petition be dismissed, as there is no scope for entertainment of the petition at this juncture.

11. The learned counsel appearing for the Bank Sri V.B.Ravishankar, taking this Court through the documents appended to the statement of objections would contend that the account of the petitioners though was old, it is on the auditing that took place in the year 2015 the Bank gets to know that hypothecated movable goods – timber and wood articles were clandestinely sold by the petitioners. Though the Bank also had sold movables, the sale of goods by the Company has generated a loss of Rs.23/- crores to the Bank and therefore, it was declared to be a fraud, as out of deceit they have sold hypothecated goods. Therefore, the learned counsel would contend that it is a matter of trial as the petitioners have defrauded the Bank. Both the counsel

appearing for the respondents, in unison, seek dismissal of the petitions.

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

13. The afore-narrated facts are not in dispute as they are all a matter of record, but they would require reiteration with little elaboration. The Company and the Directors of the Company are the petitioners in the cases at hand. The business of the Company is not in dispute. The loan that was sanctioned to the petitioners' right from 2003 is also not in dispute. Last of the renewal and sanction of the enhanced capital is on 21.09.2015 is an undisputed fact. The sanction accorded to the petitioners for extension of credit limit up to Rs.60/- crores was on the following conditions:

"For CC (Hyp)/Demand Loan: (Sub Limit)

<i>Purpose:</i>	<i>Working Capital Finance</i>
<i>Margin:</i>	<i>25% (Existing)</i>
<i>Security:</i>	<i>Hypothecation of stocks/book debts of the Company.</i>
<i>Rate of Interest:</i>	<i>BR+3.10% i.e., 13.35% p.a. at present subject to revision from time to time. The</i>

Bank reserves the right to vary the negative spread, at any future date.

Repayment: On Cash Credit terms.

Other terms:

1. Drawings to be regulated within available Drawing Power.
2. The goods procured on DA basis under LC, if any, shall be shown separately in the stock statements and the same shall not be reckoned for computation of drawing power until such raw materials are fully paid for by the Company.
3. **The Company shall submit monthly statement on stock/receivables within 45 days from the close of the month to which it pertains. The Book Debt statements submitted monthly shall contain age wise breakup of receivables and details of bills discounted/purchased, if any.**
4. The book debts of upto 180 days are to be reckoned for the purpose of arriving drawing power. Branch to inspect regularly and deeply at least in every month the entire receivables quality to ensure that the entire receivable is realizable while computing for DP.
5. **The Company shall; arrange to submit once in six months the statement of Book debt duly certified by a Chartered Accountant., with age-wise break-up.**
6. Working capital demand loan shall be carved out as per our extant internal guidelines."

... ..

Other Terms and Conditions

1. Releases under the limit be made only against irrevocable LCs/confirmed orders.
2. Advance under the limit shall be covered under WTPCG of ECGC. Necessary reporting requirement shall be complied with.
3. No PCL shall be released if earlier PCL/export bill has become overdue.
4. In the event of non-shipment/non-export of goods covered under the packing credit loan, the rate of interest

shall be charged at commercial rate as per the Bank/RBI rules.

5. *Packing credit shall not be granted for exports to Countries placed under restricted cover by ECGC.*
6. *Stock statement shall be submitted by the Company at monthly intervals.*

Branch is permitted extension of the period of the PCFC facility of USD 250000 which has fallen due for closure on 31-12-2013 by another 90 days subject to compliance of requirements of reporting to ECGC."

(Emphasis added)

After the enhancement of loan in terms of conditions stipulated therein, a stock audit report of the Company was undertaken by one M/s Kamath & Kamath Associates. What comes out is the opinion or summary of the said audit which reads as follows:

"SUMMARY:

Availability of adequate drawing power in relation to limits sanctioned/availed from the Banking system:

<i>Total Capital limits by the Banking System</i>	<i>Working (W.C) sanctioned</i>	<i>Total balance outstanding under WC limits from the Banking system as on date of inspection</i>	<i>Aggregate drawing power available</i>	<i>Excess of drawings over DP</i>
Rs.60.00 crores		Rs.59.14 Crores	Rs.58.01	1.13

The drawing power is restricted to the limits sanctioned.

Note: In case of excess of drawings over DP, the share of DP of Corporation Bank vis-à-vis excess drawings, if any, may be mentioned separately.

In view of the time gap between the end of the month and the submission of the stock/book debts statement (45 days), we have calculated the availability of the necessary drawing power as on 30-06-2015, the last stock/book debts

statement made available to us. A proper reconciliation of the stock and book debts as on the date of the statement and as on the date of our verification has been made by us."

The summary/observations and general check list are as follows:

- "1. The unit has not been subjected to legal audit as per the terms of sanction. A search report may be obtained after inspection of the records for creation of the appropriate charge on the assets of the company.***
- 2. The limits are secured collateral by EMG of LAND & Building of the company situated at Vas Lane, Attavar, Mangalore, valued at Rs.40 lakhs. The latest tax paid receipt & annual Encumbrance Certificate of the property mortgaged is not held. Valuation reports of the properties mortgaged are not held.***
- 3. The sanctioning authority has waived insurance for stock of round logs held by them. The company does not hold insurance for cut piece woods except as stated elsewhere. The company's undertaking to assume full risk and responsibility in case of loss is not held by the branch.***
- 4. The company is not showing the stock received under import bills received on DA basis, if any. Age wise bifurcation of book debts as certified by Chartered Accountant is not held on half-yearly basis as stipulated.***
- 5. The company has a credit rating from CARE with the rating of "CARE D" as against "CARE B+" in the previous rating cycle.***
- 6. The company enjoys the status of a star export house for the period 1-04-2012 to 31-03-2017 as per the certificate awarded by the Office of the***

**Zonal Joint Director of Foreign Trade, Ministry of
Commerce & Industry."**

Based upon the said audit report and other factors i.e., inspection carried out in the stock yard, a communication is made by the Bank which reads as follows:

"To

- 1) M/s Associate Lumbers Pvt.Ltd.,
Associate House, 85-A, Victoria Road,
Mustafa Bazar, Mumbai-400010
- 2) Mr. Manohar S.Agicha, (3) Mr. Mohammed Farouk S.Darvesh, (4) Mr. Ebrahim S.Agicha,(5) Mr. Srichand S.Agicha, (6) Mrs. Shahana Oosman S.Darvesh, (7) zMr.Satish S.Agicha, All C/o No.1 as above.

Sir/Madam,

Sub: *Inspection of Stock at Chennai hypothecated to the Bank for the credit facilities availed.*

With reference to the above, we wish to inform you the following:

On 7-02-2018 we have visited Chennai to inspect the stock held/stored at 33/1A, Annai Avenue, Vinayaga Puram, Near IOC Petrol Pump, Vadaperumbakkam, Chennai-600060. In the earlier occasions you had arranged for the inspection of the stock at the said place only. At this time when we visited the above said place/yard, we have not found the name board of your Company. The Security guard present in the place has informed that you have shifted all your stock from the said yard/place to some other place and he is not aware of the address of the new place reportedly shifted by you.

We have made all efforts to locate/ascertain your new address/stock yard at Chennai for stock inspection and even tried your telephone number to ascertain the address. However, we could not get you on the telephone and also could not locate your new address where you have stored the stock in trade.

Therefore, please arrange for the inspection of stock hypothecated to the Bank for the loan availed by you immediately."

This is the genesis of the problem. The communication is made on 08-02-2018 based upon the aforesaid report as continuously the stocks which were held in hypothecation were not being divulged to the Bank. It is then action under the SARFAESI Act had been taken up and proceedings before the Debt Recovery Tribunal were also initiated. These are facts that are not in dispute. Later, when the aforesaid communication for divulging of the address where the stocks are kept did not come about, the Bank then declares the petitioners' account to be a fraud under the Master Circular on fraud classification issued by the Reserve Bank of India in the year 2019. During the period when the decision of declaration of fraud was being taken to its logical end, the Debt Recovery Tribunal in O.A.No.1136 of 2017 initiated by the Bank has ordered in favour of the Bank. A Review Application is filed by the petitioners and the

same is pending consideration before the Debt Recovery Appellate Tribunal. Those are not the issues in the case at hand.

14. On declaration of fraud a complaint comes to be registered against the petitioners before the CBI by the Bank on 15-02-2022. Clauses of the complaint which are germane to be noticed are extracted hereunder for the purpose of ready reference:

"3.0 Introduction

*M/s Associate Lumbers Pvt.Ltd. (ALPL) was incorporated on 10th May 1986 as a private company for carrying on the business of trading in timber. The company was provided with **CIN – U20101MH1986PTC039719** and registration No.039719. The Company has its Registered Office at Associated **House 85-A, Victoria Road, Mustafa Bazar, Mumbai-4000010** and operates from its offices at Mumbai, Delhi, Kandla, Tuticorin and Mangalore. The Associate Lumbers group of companies is an agglomeration of two business houses viz., (i) M/s Farouq Soudagar Darvesh & Co and (ii) M/s Jawahar Saw Mills (Agicha). The Company imports logs from foreign countries (particularly from Myanmar) through different parts of India, viz., Mangalore, Cochin, Chennai, Tuticorin, Visakhapatnam and Mumbai. The affairs of the Company are managed by Mr. Mohamed Farouk Suleman Darvesh, Mr. Srichand Satramdas Agicha, Mr. Abraham Suleman Darvesh and Mr. Manoharlal Satramdas Agicha, who are the Directors of the Company.*

Details of the Directors:-

Mohamed Farouk Suleman Darvesh (DIN-00364297) resident of 85-A, Victoria Road, Mustafa Bazar, Mazagaon, Mumbai – 400001 also at 7 Perry Cross Road, Bandra (W), Mumbai 400050.

Srichand Satramdas Agicha (DIN-00364370) resident of Kunjethur Village, Manjeshwar Taluk, Kasargod District also at 'THE AGICHA'S', 6, Vinayak Road, Bandra West, Mumbai 400050.

Ebrahim Suleman Dervesh (DIN -00364630) resident of 85-A, Victoria Road, Mustafa Bazar, Mazagaon, Mumbai 400001 also at 'HOOR MANZIL' 7 Perry Cross Road, Bandra (W), Mumbai 400050.

Manoharlal Satramdas Agicha (DIN – 00364700) resident of The AGICHA'S', 6, Vinayaka Road, Bandra West, Mumbai 400050 also at No.6, Perry Cross Road, Bandra (W) Mumbai-400050.

The company was doing business with our Poonja Arcade Branch, Mangalore (erstwhile Corporation Bank) since 2003. The limit of RS.60.00 crores were last renewed on 27-03-2014 with sub-limits of Import Trust Receipt Loa/CC (Hyp.) WCDL/dl OF 50.00 Crores., PCL/PCFC/FDBN/P/ PSCFC of 14.00 crores, DBC/BDD/BE 10.00 Crores, Bank Guarantee of Rs.10.00 Crores., Buyers credit of 30.00 Crores and foreign Currency DL of 37.80 Crores. A short renewal was done on 21-09-2015 of the above limit of 60.00 crores. Personal guarantee was given for the above mentioned limits by 4 directors and 3 other persons. The Account was classified as NPA as the account remained irregular and interest was not served for more than 3 months as on 29-01-2016 effective date of account turning NPA was 31.10.2015 as per RBI Inspection and the laid down procedure of the Bank. The outstanding amount as on the date of NPA was Rs.560058977.00."

... ..

4.0 Investigation Findings:

- 4.1 The investigation conducted by Vigilance Division, Head Office, Mangalore has observed the following:
- 4.2 The then Corporation Bank, Poonja Arcade Branch, Mangalore obtained a letter of Undertaking from the Company stating that it would not undertake guarantee to any other company without the permission from our Bank during the tenure of credit facility. However, the borrower

Company extended the corporate guarantee to other loan accounts.

- 4.3 *On verifying the statement of the CC account of the Company, it was found that the sale proceeds were not routed through said account. The major part (more than 50%) of the Sundry Debtors were of the sister concerns viz., M/s Farouq Soudagar Darvesh & Co Pvt.Ltd. and M/s Jawahar Saw Mills.*
- 4.4 *M/s Farouq Soudagar Darvesh & Co.Pvt.Ltd. have the directors Mr. Mohd. Farouk Suleman Darvesh, Mr.Ebrahim Suleman Darvesh, Mr. Yahya M.F. Darvesh, Mr. Zakira M.F., Darvesh and Mr.Rurab Darvesh.*
- 4.5 *M/s Jawahar Saw Mills having registered address at 47, Victoria Road, Musafa Bazar, Byculla, Mumbai 400010 have directors Mr. Gaurav M. Agicha, Mr., Rajesh M.Agicha, Mr.Aditya S.Agicha, Mr.Siddartha S. Agicha.*
- 4.6 *It can be clearly seen that the directors of all the companies belonged to the same families i.e., 'Darvesh and Agicha family' and hence they could easily divert the funds.*
- 4.7 *During 2014-15 an amount of Rs.9.19 crore was diverted from CC account through NEFT/RTGS/ transfer to the accounts of M/s Farouq Soudaar Darvesh & Co.Pvt.Ltd.*
- 4.8 *In addition to the above, an amount of Rs.2.82 crore was diverted from CC account of M/s Associate Lumbers through RTGS/NEFT to their account held with Union Bank of India, where M/s Farouq Soudagar Darvesh & Co. Ltd. is enjoying credit limits. The above details indicate diversion of funds.*
- 4.9 *It was observed by the Bank officials and stock auditor that the stocks of the company claimed to be held at Chennai yard was not found at the time of inspection. The company had disposed of the stocks without taking prior consent of the Bank and did not bring the proceeds to clear the dues of the Bank.*

4.10 The Branch has reported that even though the Company/Directors have the capacity to repay the loan, they are not extending any co-operation to clear the overdue.

4.11 Stock Audit Observations: As per the Stock Audit Report dated 9-09-2015 conducted by M/s Kamath & Kamath Associates, the total Book Debts as on 30.06.2015 was Rs.32,75,12,625/-, outstanding up to 180 days. The Associate Concerns viz., M/s Jawahar Saw Mills and M/s Farouq Soudagar Darvesh & Co.Pvt.Ltd. were having more than 50% of the total outstanding of the Book Debts [Rs.2,09,25,208/- and Rs.14,55,01,571.00 (6.38% and 44.43%)]. As per the auditors, there was an excess drawing, aggregating to an extent of Rs.1.13 crore over the aggregate DP available for the working facilities.

The above reports clearly indicated diversion of funds and the account was declared as fraud on 12-04-2019 and the same was reported to RBI on 2-05-2019. We respectfully submit that the loan is not a consortium loan account.

Modus Operandi:

The sale proceeds of the stock of Company were not routed through their CC account held with the Branch and the Company resorted to Diversion of Funds. The major part (more than 50%) of the Sundry Debtors of the Company pertains to its sister concerns viz., M/s Farouq Soudagar Darvesh and Co.Pvt.Ltd., and M/s Jawahar Saw Mills. The stocks of the Company were disposed of by the company and proceeds not brought in to clear the Bank dues.

Recovery Acton:-

SARFAESI: Demand notice issued on 08-03-2017; Mangalore property sold out (e-auction dated 12-02-2019) and registered in favour of buyer in April 2019 for Rs.1.00 crore. Possession notice of 'Sharma Resorts Complex' Gandhidham, District – Kuchehh State – Gujrat have been issued on 14-06-2017.

Demand notice dated 6-12-2017 and possession notice dated 21-06-2018 have been issued for Kirti Nagar Packaging Complex, Kriti Nagar, New Delhi. The Bank have been ordered to maintain Status Quo against the Kirti Nagar property under SA 276/2018 by DRT-1, New Delhi. The case is now listed 18-02-2022 for hearing matter.

Suit file: DERT Suit is filed in Bangalore DRT-1 on 18.07.2017 (O.A.1136/2017) has been disposed on 29.01.2021.

We submit that the documents pertaining to the account are with the Bank the same will be produced as and when required.

We also submit that the Staff Accountability Study has been conducted in the account and no staff found accountable. However, the role and involvement of any unknown persons or others may also be looked into.

In view of the above facts, we request you to register our complaint against the Company M/s Associate Lumbers Pvt.td., and its directors and any other unknown persons including any public servant involved for committing the act of fraud with an intention to gain wrongfully and thereby causing wrongful loss to the Bank to the extent of Rs.122.19 crores. We request you to take appropriate actions against those involved in committing the offences of Fraud, Cheating, Criminal breach of trust and criminal misappropriation of funds. All the required documents connected to this complaint are with the Bank and will be provided to your office as and when required."

(Emphasis added)

It is based upon this complaint, a FIR comes to be registered by the CBI. The issue now to be considered is, in the teeth of the complaint, not alleging offences against any of the staff or public servants, whether a complaint can be made to the CBI and the CBI in turn could have registered a crime. The Reserve Bank of India

has issued certain Master Circulars or guidelines for Prevention, Classification and Reporting of Frauds and is communicated to all the Banks. In the guidelines Clause-8 of the said Master Circular deals with guidelines for reporting frauds to Police/CBI and Clause 8.1 therein reads as follows:-

"8. GUIDELINES FOR REPORTING FRAUDS TO POLICE/ CBI

8.1 *RBI has advised that in dealing with cases of fraud/ embezzlement, banks should not merely be actuated by the necessity of recovering expeditiously the amount involved, but should also be motivated by public interest and the need for ensuring that the guilty persons do not go unpunished. Therefore, as a general rule, the following cases should invariably be referred to the State Police or to the CBI as detailed below:*

<i>Amount involved in the fraud</i>	<i>Agency to whom complaint should be lodged</i>	<i>Remarks</i>
<u><i>Below Rs.3 crore</i></u> <i>1. Above Rs.10,000/- but below Rs.1 lakh.</i>	<i>State Police To the local Police Station</i>	<i>If committed by staff.</i>
<i>2. Rs.1 lakh & above but below Rs.3.00 lakh</i>	<i>To the State CID /Economic Offices Wing of the State concerned</i>	<i>To be lodged by the Regional Head of the Bank concerned.</i>
<i>Rs.3 crore and above and up to Rs.25 crore</i>	<i>CBI</i>	<i>To be lodged with Anti Corruption Branch of CBI (where staff involvement is prima facie evident)</i> <i>Economic Offences Wing of CBI (where staff involvement is prima facie not evident)</i>
<i>More than Rs.25</i>	<i>CBI</i>	<i>To be lodged with Banking</i>

<i>Crore and up to Rs.50 crore</i>		<i>Security and Fraud Cell (BSFC) of CBI (irrespective of the involvement of a public servant)</i>
<i>More than Rs.50 crore</i>	<i>CBI</i>	<i>To be lodged with the Joint Director (Policy) CBI, HQ New Delhi.</i>

(Emphasis supplied)

Clause 8.1 mandates that the amount involved in the fraud, if it is more than Rs.25.00 crores and up to Rs.50.00 crores the Bank would complain to the Banking Security and Fraud Cell of the CBI **“irrespective of the involvement of a public servant”**. Therefore, there can be no submission that the CBI cannot be complained of in a Bank fraud which does not involve any public servant. The Master Circular mandates that the Bank shall complain to the CBI if the amount involved is between Rs.25.00 crores to Rs.50.00 crores. Therefore, the jurisdiction of the CBI is amount specific, as depicted in the Master Circular and it cannot be said that the CBI does not get any jurisdiction to entertain complaints where there are no public servants.

15. The jurisdiction of the CBI, as narrated hereinabove, is in terms of the Master Circular or guidelines issued by the RBI. The Apex Court has considered the purport of the circular so issued by

the RBI and for the purpose for which it is issued and holds that those circulars have statutory flavour as they are guidelines and administrative instructions issued in terms of the Banking Regulation Act. The Apex Court in the case of **CENTRAL BANK OF INDIA v. RAVINDRA AND OTHERS**¹ has held as follows:

"56. In view of the law having been settled with this judgment, it is expected henceforth from the banks, bound by the directives of the Reserve Bank of India, to make an averment in the plaint that interest/compound interest has been charged at such rates, and capitalised at such periodical rests, as are permitted by, and do not run counter to, the directives of the Reserve Bank of India. A statement of account shall be filed in the court showing details and giving particulars of debit entries, and if debit entry relates to interest then setting out also the rate of, and the period for which, the interest has been charged. On the court being prima facie satisfied, if a dispute is raised in that regard, of the permissibility of debits, the onus would be on the borrower to show why the amount of debit balance appearing at the foot of the account and claimed as principal sum cannot be so accepted and adjudged. This practice would narrow down the scope of controversy in suits filed by banking institutions and enable an expeditious disposal of the suits, the issues wherein are by and large capable of being determined by documentary evidence. RBI directives have not only statutory flavour, any contravention thereof or any default in compliance therewith is punishable under sub-section (4) of Section 46 of Banking Regulation Act, 1949. The court can act on an assumption that transactions or dealings have taken place and accounts maintained by banks in conformity with RBI directives."

(Emphasis supplied)

¹ (2002) 1 SCC 367

The Apex Court in the aforesaid paragraph holds that RBI directives have not only a statutory flavour but any contravention thereof or any default in compliance therewith is punishable under sub-section (4) of Section 46 of the Banking Regulation Act, 1949. The Court can act on an assumption that transactions or dealings have taken place and accounts maintained by Banks in conformity with RBI guidelines. Therefore, the Five Judge Bench of the Apex Court clearly holds that the guidelines/directives issued by the RBI, to have a statutory flavour. If it is held by the Apex Court that those guidelines have statutory flavour, the contention of the learned senior counsel that the CBI would not get jurisdiction unless it is conferred by the statute tumbles down. The CBI does have jurisdiction in terms of what is depicted in the Master Circulars and such Master Circulars are held to have a statutory flavour.

16. The jurisdiction of the RBI to issue such circulars in furtherance of its role of being a 'Bankers Bank' or a 'Lender of the Last Resort' (LLR) is recognized by the Apex Court way back in the year 1992 in the case of **PEERLESS GENRAL FINANCE AND INVESTMENT CO.LTD. AND ANOTHER v. RESERVE BANK OF**

INDIA² wherein the Apex Court following its earlier dictum has held as follows:

"53. In State of U.P. v. Babu Ram Upadhyaya [(1961) 2 SCR 679; AIR 1961 SC 751; (1961) 1 Cri LJ 773] this Court held that rules made under a statute must be treated, for all purposes of construction or obligations, exactly as if they were in that Act and are to the same effect as if they were contained in the Act and are to be judicially noticed for all purposes of construction or obligations. The statutory rules cannot be described or equated with administrative directions. In D.K.V. Prasada Rao v. Government of A.P. [AIR 1984 AP 75; (1983) 2 Andh WR 344] the same view was laid down. **Therefore, the directions are incorporated and become part of the Act itself. They must be governed by the same principles as the statute itself. The statutory presumption that the legislature inserted every part thereof for a purpose and the legislative intention should be given effect to, would be applicable to the impugned directions.**

54. The RBI issued the directions to regulate the operations of the RNBCs, to safeguard the interest of the depositors. Payment of interest, bonus, premium or other advantage, in whatever name it may be called is reward for waiting or parting with liquidity. It is paid because of positive time preference (one rupee today is preferred to one rupee tomorrow) on the part of the depositor. Therefore, the directions avowed to preserve the right of the depositors to receive back the amount deposited with the contracted rate of interest; it aims to prevent depletion of the deposits collected from the weaker segments of the society and also tends to affect free flow of the business of the RNBCs who would desire to operate in their own way. The question, therefore, emerges whether the directions in paras (6) and (12) violate Articles 14 and 19(1)(g) of the Constitution."

(Emphasis supplied)

² (1992)2 SCC 343

The Apex Court here also holds that the directions issued by the RBI are incorporated to become part of the Act itself. They must be governed by the same principles as the statute itself. The statutory presumption is that the legislature has inserted every part thereof for a purpose and the legislative intention of such purpose should be given effect to and that would become applicable to the directions. Therefore, the Apex Court has consistently held that the directives of the RBI by way of its Master Circular do have the legislative intent and statutory flavour and it is the Master Circular of the kind that had fallen for interpretation before the Apex Court, which are the ones that are continued by the RBI. Objection, taken to by contending that the CBI in terms of the directives of the RBI cannot get jurisdiction unless the statute accords such jurisdiction, is rendered unsustainable and the submission *sans* countenance.

17. Insofar as the contention that these offences cannot be looked into as there is no public servant involved in the case at hand, the offences that are alleged are punishable under Section 120B and 420 of the IPC. It is necessary to notice the Delhi Special Police Establishment Act, 1946 (for short 'the 1946 Act') under

which the Central Bureau of Investigation takes its genesis. Section 3 of the 1946 Act reads as follows:

"3. Offences to be investigate by special police establishment. – The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment."

(Emphasis supplied)

In terms of Section 3, the Central Government by notification is empowered to declare the offences or classes of offences that could be investigated by the Delhi Special Police Establishment. The Government of India in terms of Section 3 has issued notification which forms part of the CBI Manual as to what are the offences that can be investigated into by the CBI which forms part of the Indian Penal Code. Both Sections 420 and 120B of the IPC, form a part of the said notification. Therefore, the contention that the CBI would not get jurisdiction to enquire into any offence other than the offences under the Act is again rendered unacceptable.

18. The aforesaid submission is made on the strength of the fact that the staff accountability being given up at the time of registration of the complaint. It is rather surprising to note as to

how staff accountability has been given up in the case at hand, as the report of the auditor clearly brought out grave lacunae in the sanctioning process. Such lacuna in the sanctioning process only has led to registration of the complaint before the CBI by the Bank. But while so registering a crime, the staff accountability is completely given up though the offence under the Act is invoked against unknown officials. The matter is still at the stage of investigation. The CBI is investigating into the matter and not yet filed its final report. It is too early in the day for the petitioners to contend that no Bank official being named as accused, the offence under the Act is unnecessarily made, only to empower the CBI to conduct investigation are all contentions that cannot be countenanced at this stage.

19. The complaint or the FIR, as it is settled principle of law, cannot be a mirror to all the allegations or offences as it triggers conduct of investigation. There are scores and scores of cases where the complaint itself does not inspire confidence or is filled with several embellishments where this Court has exercised its jurisdiction under Section 482 of the Cr.P.C. and obliterated the

proceedings against those accused. This is not a case where the proceedings at the stage of investigation should be interfered with, in the light of unequivocal finding by the Committee that conducted audit and also inspection later in the year 2017 where no staff was available at the place where they mandated to be available. Therefore, this is not a case where this Court would interfere at the stage of investigation. The matter requires to be investigated into on every aspect – role of public servants, as also, the role of the petitioners, as it is *prima facie* brought out in the complaint against the petitioners and giving up of the staff *qua* their accountability is also, *prima facie*, is a matter to be investigated into.

20. Reference being made to a judgment rendered by this Court in the case of **STEEL HYPERMART INIDA PRIVATE LIMITED AND OTHERS v. CBI AND ANOTHER**³ to contend that this Court has quashed the crime registered against Steel Hypermart at the crime stage itself and, therefore, the finding so rendered by the Court would cover the issue in the case at hand is

³ **Criminal Petition No.919 of 2021** decided on **02.08.2022**

again unacceptable. This Court in **STEEL HYPERMART** has held as follows:

"13. In the light of the afore-quoted framework, if the facts narrated in the case at hand are considered, the unmistakable inference would be that the entire proceedings having been initiated against the petitioners in terms of the afore-quoted circulars, the submission that the circulars are not applicable to the facts of the case at hand is rendered unsustainable, as it is fundamentally flawed. The issue with regard to applicability of the circular or otherwise, will have to be placed to the background, in the light of the other submission made by the learned senior counsel for the petitioners with regard to the act of the respondents in overreaching the order, albeit, interim, passed by this Court.

14. The petitioners had been declared to be willful defaulters by communications dated 14-02-2020 and 20.02.2020 by invoking the aforesaid circulars. They were called in question before this Court in Writ Petition No.4777 of 2020. This Court granted an interim order of stay of all further proceedings pursuant to declaration of the petitioner/company to be a willful defaulter. The interim order was operating up to 15-04-2021. On 15-04-2021 the counsel appearing for the 2nd respondent appeared before the Court and submitted that the petition may be disposed of remitting the matter to the Review Committee of the Indian Bank. Reserving liberty to the Committee to consider the matter afresh in the light of the judgment of the Apex Court in the case of State Bank of India v. M/s Jah Developers Private Limited, an order is passed by the Court accepting the submission of the learned counsel for the Indian Bank while disposing of the petition, which reads as follows:

"ORDER

Sri Shashi Kiran Shetty, learned senior Advocate for the respondent-Indian Bank,, in his usual fairness, submits that this petition may be disposed of by remitting the matter to the Review Committee of the Indian Bank, reserving liberty to the Committee to consider the matter afresh in the light of the decision of the Hon'ble Supreme Court in State Bank of India Vs.

M/s Jah Developers Pvt.Ltd. & Ors. (Civil Appeal No.4776 of 2019).

2. Shri Akshay Ravindra Prabhu, learned Advocate for petitioners is satisfied with the submission of learned senior Advocate.

3. In view of the submission of Sri Shashi Kiran Shetty, this petition is disposed of by remitting the matter to the Review Committee of the Indian Bank to consider the same afresh in the light of the judgment of the Apex Court referred to supra."

The order was passed on 15-04-2021. What the 2nd respondent/ Bank would do is register a complaint before the CBI on 12.01.2021, the knowledge of which was never with the petitioners. It is not demonstrated by the 2nd respondent/Bank that the petitioners had the knowledge of registration of crime at any time before summons. Though the complaint was made by the 2nd respondent/Bank on 12-01-2021, it appeared before the Court and made a submission that the root of the matter would be re-considered, the root of the matter being declaration of the petitioner/company as a willful defaulter. To a pointed query of this Court to the learned counsel representing the 2nd respondent as to what has happened to the submission made on 15-04-2021 before this Court with regard to re-consideration of the case of the petitioner to be a willful defaulter, the learned senior counsel would submit that the matter is still pending consideration before the competent authority. Therefore, from 15-04-2021 till 14.07.2022 there was no progress in re-consideration of the case of the petitioner to be a willful defaulter.

15. The entire issue of declaration of the petitioner as willful defaulter and subsequent action of registration of a crime was on the basis of the declaration of the petitioner to be a willful defaulter or a fraudulent borrower. That having been stayed by this Court and the stay being in operation up to 15-04-2021, the 2nd respondent concealing the said fact of pendency of the case, could not have registered the crime, as the basis for registration of crime was the account being slipped into NPA on whatever account it would be, and the declaration of the petitioner as willful defaulter having been stayed, it could not have appeared

before the Court without divulging the fact that a complaint had already been registered before the CBI, get the matter disposed of to re-consider the very root that led to registration of the crime. **If the very root is to be reconsidered according to the Bank, it can hardly be justified as to how a crime could be registered in the teeth of subsistence of interim order during the pendency of the writ petition and subsistence of reconsideration at the hands of the 2nd respondent/Bank.** It is not the merit of the matter that needs consideration at the hands of this Court, but it is the act of the 2nd respondent/Bank in trying to overreach the interim order of this Court by registering the crime.

16. As a matter of fact even disposal of the writ petition did not obliterate the interim order. The petition was disposed of by remitting the matter to the Review Committee to consider the same afresh that too on the submission made by the senior counsel representing the respondent/Bank. Therefore, the very act of the Bank in registering the crime during subsistence of the interim order and getting the matter closed where interim order was subsisting on the ground that it would reconsider the very declaration of the petitioner to be a willful defaulter was flawed. Without arriving at the said decision even as on date, the 2nd respondent cannot now justify that the proceedings have to go on pursuant to registration of crime. The meat in the merit of the matter need not be gone into at this juncture, as it is on the submission of the 2nd respondent/Bank itself, in the earlier proceedings, the matter is required to be reconsidered from the issue of declaring the petitioner to be willful defaulter.

17. **The submission of the learned senior counsel representing the 2nd respondent/Bank that master circulars are not even applicable to the case at hand is to be repelled as it is fundamentally flawed, as every action against the petitioner is taken under the master circulars. Since the matter is pending consideration before the Review Committee of the Indian Bank even as on date, it would be highly inappropriate to permit the 1st respondent/ CBI to continue with the proceedings which were registered in the teeth and contrary to the interim order passed by this Court.**

18. The other submissions made by the learned senior counsel with regard to the declaration of willful defaulter or a fraud would have to be placed behind the curtains, albeit, for the present, as it would depend upon the outcome of the decision of the Review Committee, before whom all the issues of declaration of the petitioner to be a willful defaulter are pending consideration. All further actions of the respondents would depend upon the outcome of the Review Committee decision. Permitting further proceedings to continue in the teeth of the aforesaid facts would become an abuse of the process of law and result in permitting an action which is initiated in an attempt to overreach the orders of this Court, which action sans countenance."

(Emphasis supplied)

This Court has held that Master Circulars are applicable to Banks and there was declaration of **STEEL HYPERMART** to be willful defaulter in terms of the Circulars, but what merited consideration was that there was an interim order of stay of the very declaration that **STEEL HYPERMART** was a willful defaulter or a fraud. When the matter was stayed by this Court, the complaint comes to be registered. Without divulging to the Court that the complaint had been registered, a submission was made that they would reconsider the very act of declaring the **STEEL HYPERMART** to be a willful defaulter. Therefore, it cut at the very root and the Bank had conceded before the Court that they would reconsider the act of **STEEL HYPERMART** being declared to be a willful defaulter. It is in

that light in two circumstances the case was allowed – one being the concession of the Bank that they would reconsider the case and the fact that in the teeth of an interim order subsisting a complaint could not have been registered as all further proceedings pursuant to declaration of **STEEL HYPERMART** as willful defaulter had been stayed. None of those circumstances would arise in the case at hand.

21. The contention of the learned senior counsel is that the petitioners also have approached this Court in a writ petition where the declaration of the petitioners to be willful defaulter is called in question. A Division Bench in the said writ petition noticing the judgment of the Division Bench of the High Court of Telangana has passed an interim order on 08-03-2022 which reads as follows:

“Sri Uday Holla, learned Senior Counsel for the petitioner.

Heard on the question of admission as well as on the prayer for interim relief.

Issue emergent notice to the respondents.

Learned Senior Counsel for the petitioner submits that the Circular dated 01.07.2016 as updated on 03.07.2017 issued by the Reserve Bank of India is unconstitutional, in as much as, the Reserve Bank of India has delegated the essential legislative function. It is further submitted that the petitioner is entitled to be put on notice before their accounts are declared to be

fraudulent. It is further submitted that a Division Bench of the High Court of Telangana has already adjudicated upon the validity of the aforesaid circular and struck down the same and has held that the principles of natural justice have to read in the provisions of the circular. It is also fairly stated that against the aforesaid order passed by the Division Bench of the High Court of Telangana, a special leave petition was preferred before the Supreme Court of India which has been entertained vide order dated 15.04.2021 passed in SLP.No.3931/2021 and the order of the Division Bench passed by the Telangana High Court in so far as it pertains to requirement of personal hearing, has been stayed. It is, therefore, submitted that as the mandatory measure, the respondents be restrained from taking any coercive action against the petitioner.

In view of the aforesaid submission and in the facts of the case, the respondents shall not take any coercive action against the petitioner in pursuance of the impugned notification dated 01.07.2016 as amended on 03.07.2017, till the next date of hearing.

List this petition along with W.P.No.5214/2022 for analogous hearing on 30.03.2022."

What is directed is that the respondents shall not take any coercive action against the petitioner pursuant to the impugned notification dated 01-07-2016 as amended on 03-07-2017. Those two notifications are the Master circulars. What it directed is no coercive action shall be taken. It is not a blanket interim order that is granted in favour of the petitioner herein like the one that was granted in the case of **STEEL HYPERMART**. In the case of **STEEL HYPERMART** there was an interim order of stay of all further proceedings. Those were the admitted facts therein. Therefore, the

order that no coercive step would be taken against the petitioners in terms of the declaration of their accounts to be a fraud cannot be considered to be a blanket stay, as it is neither eclipsed nor extinguished, if, it is neither, then the petitioners cannot derive any benefit of the said order. At best coercive step would be that their personal liberty should not be curtailed on the strength of registration of crime pursuant to the declaration of the account to be a fraud. That would not mean that no proceeding could be instituted or investigated into. The facts in the case of **STEEL HYPERMART** are entirely different from what are obtaining in the case at hand. Crime in the case at hand is registered on 15.02.2022, interim order, as aforesaid, not to take coercive steps is granted on 08.03.2022. Therefore, by then crime had already been registered.

22. It is also not in dispute that the Bank has exercised its right and has instituted proceedings before the Debt Recovery Tribunal invoking the provisions of the SARFAESI Act and are also in possession of the recovery certificate with regard to immovable that was the subject matter of security and certain movables are

also sold, but the issue is the sale of movables i.e., the hypothecated stock by the petitioners is what forms the crux of the complaint. This Court again in plethora of cases has clearly held that when the jurisdiction of the Tribunal is invoked by the Bank, unless such an action is declared to be a fraud, they cannot maintain two proceedings – one before the Debt Recovery Tribunal and the other setting the criminal law in motion. If the account is declared to be a fraud and the account holders to be willful defaulters, then it would become open to initiate such proceedings in terms of the Master Circular. Therefore, having initiated recovery proceedings before the Debt Recovery Tribunal and having a recovery certificate in their hand would not mean that the proceedings cannot be initiated against these petitioners, to iterate the matter is still at the state of investigation. In the peculiar facts of this case, it is too premature for this Court to interfere in the allegations of the nature that is made in the case at hand. The petitioners always have remedies in law at a later stage of the proceedings.

23. The other contention that criminal conspiracy as obtaining under Section 120B of the IPC is not a standalone offence and what is alleged is criminal conspiracy read with cheating cannot mean that there is any offence even as contended by the learned senior counsel Sri Hashmath Pasha is again unacceptable. The Apex Court in plethora of cases has held that offence of criminal conspiracy can be a standalone offence in certain circumstances particularly in cases where money is borrowed from the Banks. To quote one, in the case of **R.VENKATKRISHNAN v. CBI**⁴ the Apex Court has held as follows:

"72. Criminal conspiracy in terms of Section 120-B of the Code is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

73. The ingredients of the offence of criminal conspiracy are:

(i) an agreement between two or more persons;

⁴ (2009)11 SCC 737

(ii) the agreement must relate to doing or causing to be done either

(a) an illegal act;

(b) an act which is not illegal in itself but is done by illegal means.

Condition precedent, therefore, for holding the accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by the prosecution viz. meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

74. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/or by necessary implication. (See *Mohd. Usman Mohammad Hussain Maniyar v. State of Maharashtra* [(1981) 2 SCC 443 : 1981 SCC (Cri) 477].)"

(Emphasis supplied)

In the light of the said judgment rendered by the Apex Court, the contention of the learned senior counsel as also the judgment rendered by the Apex Court in the case of **LEO ROY FREY v. THE SUPERINTENDENT, DISTRICT JAIL – AIR 1958 SC 119** to

contend that Section 120B of the IPC cannot be laid as a main offence again is rendered unacceptable.

24. Plethora of judgments relied on by the respective learned senior counsel representing the petitioners other than what is considered hereinabove would all be inapplicable to the facts of the case at hand and would not merit any consideration at this stage of the proceedings.

25. In view of the preceding analysis, I do not find any merit to entertain the petitions. Accordingly, the petitions stand dismissed.

It is made clear that the observations made in the course of this order are only for the purpose of consideration of the case of the petitioners under Section 482 of the Cr.P.C.

**Sd/-
JUDGE**

bkp
CT: MJ