

Chhattisgarh High Court

Sheikh Salim Raza vs State Of Chhattisgarh on 19 August, 2021

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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 16.07.2021

Pronounced on : 19.08.2021

WPCR No. 419 of 2020

Sheikh Salim Raza, S/o Late Rehm Raz, Aged About 63 Years R/o  
Moti Talab Para, Subhash Ward No. 09, Infront Of Akansha Hotel,  
Jagdalpur, Bastar Chhattisgarh., District : Bastar(Jagdalpur),  
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Superintendent Of Police, District  
Bastar Jagdalpur Chhattisgarh., District : Bastar(Jagdalpur),  
Chhattisgarh
2. Station House Officer Police Station Kotwali, Bastar, Jagdalpur  
Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
3. Abdul Vahab Khan, S/o Late Abdul Hafeez Khan, Aged About 50 Years  
R/o Mahaveer Chowk, Sadar Ward, Jagdalpur, Bastar Chhattisgarh.,  
District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents

For Petitioner : Mr. S.P. Yadav & Mr. Raza Ali, Advocate.

For Respondents No.1 & 2 : Mr. Rakesh Sahu, Dy. Govt. Adv. For respondent No.3. : Mr. Varun  
Sharma, Advocate. For Intervener : Mr. Malay Shrivastava, Adv.

Hon'ble Shri Justice Narendra Kumar Vyas CAV Order

1. The petitioner has filed this writ petition (Criminal) under Article 226 of the Constitution of India for quashing of the FIR in connection with Crime No. 108 of 2020 registered at Police Station Kotwali, Bastar, Jagdalpur on 04.03.2020 against the petitioner for offence punishable under Sections 420, 406. 467, 468 and 471/34 of IPC.

2. The brief facts, as projected by the petitioner, are that as per contents of F.I.R dated 4/03/2020 it has been alleged that the petitioner and other co-accused persons who were working as office bearers of Anjuman Islamia Society (In Short Society ) , committed financial irregularities for the period from 2011 to 2019 and caused loss to the society to the tune of Rs. 3,58,56,530/- thereby they have committed offence punishable under Sections 420, 406. 467, 468 and 471/34 of IPC.

3. Learned counsel for the petitioner would submit that the Waqf Board has already filed a complaint against the petitioner and other co-accused persons before the Chief Judicial Magistrate,

Jagdalpur, Bastar for financial irregularities alleged to have been committed by them since 2011 bearing Criminal Case No. 159 of 2017, therefore, the registration of FIR in respect of same incident is in violation of Article 20 of the Constitution of India. He would further submit that the Anjuman Islamia is society registered under Firms and Society Registration Act Waqf Board has taken over management of Anjuman Islamia Society and after taking over the Waqf Board has removed the petitioner from the post of President though he was elected President Society. He would further submit that the petitioner has challenged the order of removal by filing an appeal before the Waqf Tribunal which was dismissed and thereafter, he preferred a civil revision bearing No. 117 of 2019 before this court which is still pending consideration.

4. He would further submit that the Waqf Act, 1995 (for short, "the Act, 1995") has prescribed the procedure and provisions to take cognizance of offences committed in respect of the Waqf property, as per Section 61(2)(b) and Section 61(3) of the Act, 1995., cognizance can be taken only upon filing of the complaint by Waqf Board or its authorized officer. As per Section of 72(6) (7)(8) of the Act , 1995 the detailed procedure has been prescribed for any irregularity which has been committed in respect of Waqf property but that has not been followed, therefore, the registration of FIR against the petitioner is against the law. He would further submit that in the FIR nothing has been explained what kind of irregularity the petitioner has committed. It has been further contended by learned counsel for the petitioner that FIR has been registered against the petitioner on the false ground that the petitioner along with other co-accused persons caused huge financial loss to the Waqf Board, without verifying audit report of Society. He would further submit that the allegation levelled against the petitioner is of the civil nature i.e., if there is financial irregularity, initiation of FIR is nothing but an abuse of process of law, therefore, he prayed for quashing of proceedings of FIR No. 108 of 2020 registered at Police Station Kotwali, Jagdalpur, Bastar. He would rely upon the judgment of Hon'ble the Supreme Court in case of Sundar Babu and others vs. State of Tamil Nadu, reported in (2009) 14 SCC 244.

5. This court has issued notice to the respondents and respondents No. 1 and 2 have filed their reply in which they have contended that FIR has been rightly registered and there is no miscarriage of justice, therefore, no interference is called for in this case by this court. It has been further submitted that FIR has been registered after thorough investigation which is carried out by the investigation agency.

6. Respondent No.3/Chhattisgarh State Waqf Board has filed an application for intervention of the writ petition mainly contending that Chhattisgarh State Waqf Board has conducted enquiry as the amount of which was embezzled by the petitioner in connivance with the other co-accused person is the property of the Waqf and the Waqf Board is the custodian of the same. Enquiry has been conducted by the Anjuman Islamia Committee, Jagdalpur and on the basis of enquiry report, written report has been lodged at Police Station Kotwali, District Bastar and on the basis of written report of the intervener, present FIR has been registered against the petitioner and other co-accused persons. The intervener is the necessary party and any decision in the instant wit petition would adversely effect the intervener. The petitioner, knowing fully well, has deliberately not made Waqf Board as party/respondent in this case, therefore, the petitioner may be directed to implead the intervener as party respondent in the instant case.

7. Looking to the fact that FIR has been registered on the basis of a complaint made by the Waqf Board, it is necessary that the Waqf Board be allowed to make its submission. Accordingly, the application for intervention is allowed and Waqf Board is directed to make its submission.

8. I have heard learned counsel for the parties and perused the documents with utmost satisfaction.

9. Learned counsel for the petitioner would submit that the Waqf Act 1995 is a Special Act which has been enacted with aims and objects to provide proper better administration of Waqf and the matter connected therewith or incidentally thereto has provided procedure and provision to take cognizance of the offence committed in respect of Waqf property, therefore, non-compliance of the procedure will vitiate the registration of FIR. To substantiate his submission, he would refer to Section 61 of the Waqf Act, 1995 which is extracted as under:

"61. Penalties.--

(1) If a mutawalli fails to--

(a) apply for the registration of a wakfs;

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information or particulars as required by the Board;

(d) allow inspection of wakf properties, accounts, records or deeds and documents relating thereto;

(e) deliver possession of any wakf property, if ordered by the Board or Tribunal;

(f) carry out the directions of the Board;

(g) discharge any public dues; or

(h) do any other act which he is lawfully required to do by or under this Act. he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to eight thousand rupees.

(2) Notwithstanding anything contained in sub- section (1) if--

(a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act,--

(i) in the case of a wakf created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular, he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the fine imposed under sub-section (1), when realized, shall be credited to the Wakf Fund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default".

He would further submit that for any irregularity with regard to Waqf property, the procedure has been prescribed in Section 71 of the Act . Sections 70 and 71 of Waqf Act, 1995 are extracted as under:

70. Inquiry relating to administration of wakf.-- Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

71. Manner of holding inquiry.--

1) The Board may, either on an application received under section 73 or on its own motion,--

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the

attendance of witnesses and production of documents".

10. Learned counsel for the petitioner would further submit that filing of the complaint under Sections 406, 420, 467 468, 471 and 34 of IPC is amounting to double jeopardy as Waqf Board has already filed a complaint against the petitioner and other co-

accused persons before the Chief Judicial Magistrate, Jagdalpur, Bastar for financial irregularities alleged to have been committed by them since 2011 bearing Crime No. 159 of 2017, therefore, registration of FIR in respect of same incident is in violation of Article 20 of the Constitution of India. He would further submit that present FIR has been lodged with intention to take revenge of grudge, as such it deserves to be quashed.

11. Learned counsel for the respondent No.3 would submit that the registration of FIR under Sections 406, 420, 467 468, 471 and 34 of IPC is not amounting to double jeopardy as the Hon'ble Supreme Court in case of Sangeetaben Mahendrabhai Patel vs State of Gujarat & another, reported in 2012(7) SCC 621 has examined the provisions as well as Section 300 of Cr.P.C., and Section 26 of the General Clauses Act, 1897 and after discussing the entire law on the subject has observed in paragraphs 30 to 35 which are extracted as under:

"30. In State of Rajasthan v. Hat Singh & Ors . AIR 2003 SC 791, this Court held that as the offence of glorification of Sati under Section 5 of the Rajasthan Sati (Prevention) Act, 1987, is different from the offence of violation of prohibitory order issued under Section 6 thereof, the doctrine of double jeopardy was not attracted for the reason that even if prohibitory order is promulgated, a subsequent criminal act even if falls under Section 5 could not be covered under Section 6(3) of the said Act. Doctrine of double jeopardy is enshrined in Section 300 Cr.P.C. and Section 26 of the General Clauses Act. Both the provisions employ the expression "same offence". 31 Similar view has been reiterated by this Court in State of Haryana v. Balwant Singh, AIR 2003 SC 1253, observing that there may be cases of misappropriation, cheating, defamation etc. which may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc. Therefore, it is not always necessary that in every such case the provision of Article 20(2) of the Constitution may be attracted.

32. In Hira Lal Hari Lal Bhagwati v. C.B.I., New Delhi, AIR 2003 SC 2545, this Court while considering the case for quashing the criminal prosecution for evading the customs duty, where the matter stood settled under the Kar Vivad Samadhan Scheme 1988, observed that once the tax matter was settled under the said Scheme, the offence stood compounded, and prosecution for evasion of duty, in such a circumstance, would amount to double jeopardy.

33. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Cr.P.C. or Section 71 IPC or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the

same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.

34. In *Radheshyam Kejriwal v. State of West Bengal & Anr.*, (2011) 3 SCC 581, while dealing with the proceedings under the provisions of Foreign Exchange Regulation Act, 1973, this Court quashed the proceedings (by a majority of 2:1) under Section 56 of the said Act because adjudication under Section 51 stood finalised. The Court held :

"The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases." The ratio of the aforesaid judgment is not applicable in this case for the reason that proceedings under Section 138 of N.I. Act are still sub judice as the appeal is pending and the matter has not attained finality.

35. Learned counsel for the appellant has further placed reliance on the judgment in *G. Sagar Suri & Anr. v. State of U.P. & Ors.*, (2000) 2 SCC 636, wherein during the pendency of the proceedings under Section 138 N.I. Act, prosecution under Sections 406/420 IPC had been launched. This Court quashed the criminal proceedings under Sections 406/420 IPC, observing that it would amount to abuse of process of law. In fact, the issue as to whether the ingredients of both the offences were same, had neither been raised nor decided. Therefore, the ratio of that judgment does not have application on the facts of this case.

13 On above facts projected by the petitioner which are denied by the respondents, this Court has to consider whether the registration of FIR under Sections 406, 420, 467, 468, 471 and 34 of IPC is amounting to double jeopardy or it is in violation of Article 20 of the Constitution of India as alleged by the petitioner that for the same offence, complaint has already been registered and the trial is pending before the learned Chief Judicial Magistrate. The FIR dated 4-3-2020 reads as under:

"batqeu bLykfe;k desVh [kkrk dzeakd 1656678574 lsUV<sup>ay</sup> cSad vkQ bafM;k txnyiqj czakp o"KZ 2011&12 ,oa 2012&13 rd esa vatqeu bLykfe;k desVh ds rRdkyhu lnj Jh lyhe jtk rRdkyhu lsdzsVjh vrkmjZjgeku [kku uk;c lnj Jh bZljbZy gd ,oa desVh }kjk dh xbZ vkfFkZd vfu;ferrk ds laca/k esa nLrkost feyku djus ij ik;k fd bu nksuks o"KZ esa lho,o vkfMV fjiksVZ vkSj ds'k cqd esa lsUV<sup>ay</sup> cSad vkQ bafM;k 'kk[kk txnyiqj ls fd;s x;s leLr V<sup>a</sup>ktsD'ku dks ugh fy[kk x;k rFkk bls lacaf/kr dksbZ Hkh izek.kd laxzfr ugh fd;k x;k gS A vkSj leLr jkf'k dks euekus rfjds ls vkgfjr dj fy;k x;k A 'kklu ,oa Noxo oDQ cksMZ dks Hksth xbZ fjiksVZ dqV jfpr vkSj vkne O;; dks fNikrs gq;s rS;kj fd;k x;k tks iw.kZr% vkfFkZd vfu;ferrk ,oa xcu jkf'k dh Js.kh gS A bl [kkrs ls 2 o"KZ esa jkf'k 69]32]43800 dh vkfFkZd vfu;ferrk dj xcu fd;k x;k A 2 +vatqeu bLykfe;k desVh [kkrk nk:y myqe ft;kmy bLyke dk [kkrk dzeakd 2225000100058098 iatkc us'kuy cSad 'kk[kk txnyiqj czakp o"KZ 2011&12 ls 2014&15 rd esa vatqeu bLykfe;k desVh ds rRdkyhu lnj Jh lyhe jtk rRdkyhu lsdzsVjh vrkmjZjgeku [kku uk;c lnj Jh bljkbZy gd ,oa desVh }kjk dh xbZ vkfFkZd vfu;ferrk ds laca/k esa nLrkost feyku djus ij ik;k x;k fd bu nksuksa o"KZ esa lho,o vkfMV fjiksVZ vkSj ds'k cqd esa lsUV<sup>ay</sup> cSad vkQ bafM;k 'kk[kk txnyiqj ls fd;s leLr V<sup>a</sup>katsD'ku dks ugh fy[kk x;k rFkk bls lacaf/kr dksbZ Hkh izek.kd laxzfr ugh fd;k x;k gS A vkSj leLr jkf'k dks euekus rfjds ls vkgfjr dj fy; x;k A 'kklu ,oa Noxo oDQ cksMZ dks Hksth xbZ fjiksVZ dwVjfr vkSj vken O;; dks Nqikrs gq, rS;kj fd;k x;k tks iw.kZr% vkfFkZd vfu;ferrk ,oa jkf'k xcu dh Js.kh gS A bl [kkrs esa o"KZ 2011&12 ls 2014&15 rd esa jkf'k 41]23]60500 dh vkfFkZd vfu;ferrk dj xcu fd;k x;k A 3 + vatqeu bLykfe;k desVh txnyiqj ds rRdkyhu lnj Jh lyhe jtk ] rRdkyhu lsdzsVjh vrkmjZjgeku [kku uk;c lnj Jh bljkbZy gd ,oa desVh }kjk o"KZ 2011&12ls 2019&20 rd esa rRdkyhu desVh }kjk dh xbZ vkfFkZd vfu;ferrk ds laca/k nLrkost feyku djus ij ik;k fd o"KZ 2011&12 ls 2019&20 rd esa dkVh xbZ Mksus'ku izkIr jf'knks dks ds'k cqd ,oa ystj cqd esa ugh fy;k x;k tks iw.kZr% vkfFkZd vfu;ferrk ,oa jkf'k xcu dh Js.kh gS A bl [kkrs ls o"KZ 2011&12 ls 2019&20 rd esa jkf'k 1]11]88]59500 dh vkfFkZd vfu;ferrk dj xcu fd;k x;k A 4 +vatqeu bLykfe;k desVh ds rRdkyhu lnj Jh lyhe jtk] rRdkyhu lsdzsVjh vrkmjZjgeku [kku] uk;c lnj Jh btjkbZy gd ,oa desVh }kjk o"KZ 2013&14 ls 2019&20 rd esa izkIr vken jkf'k dks ds'k cqd ds vken esa uk ysrs gq, mDr ds'k cqd dks dqVjpuk djrs gq, O;; fd;k tkuk cuk;k x;k gS A lsUV<sup>ay</sup> cSad [kkrk dzeakd 1656678574 'kk[kk txnyiqj ,oa Noxo xzkeh.k cSad [kkrk dzeakd 77036189607 'kk[kk /kjeiqj ds cSad LVsV esaV@iklcqd ls Li"V gS fofHkUu psd ds ek;/e ls izkIr jkf'k;ksa dks ds'k cqd dh vken esa izfof"V;k ugh fd xbZ gS A rFkk mDr jkf'k;ksa dks dqVjpuk djrs gq;s dsoy ds'k cqd ds O;; esa n'kkZrs gq, ,dkmaV dks lek;ksftr fd;k x;k gS A dqVjfr bu o"KZ ds'k cqd@ystjcqd ,oa cSad LVsVesaV ds feyku ls ;g li"V gS jkf'k 1]14]83]99500 dks dqVjpuk dj xcu dj fy;k x;k A 5 + vatqeu bLykfe;k desVh ds rRdkyhu lnj Jh lyhe jtk] rRdkyhu lsdzsVjh vrkmjZjgeku [kku] uk;c lnj Jh btjkbZy gd ,oa desVh }kjk nk:y myqe ft;kmy bLyke uke ij o"KZ 2015&16 ls

2018&19 rd dks jkf'k 21]27]900@&¼,Ddhl yk[k lRrkbZ'k gtlj ukS lkS ;i;s½ mijksDr jde ds'keqd vken esa ntZ ugh fd xbZ gS A cSad fofHkUu fnukadks dks vkgj.k dj yh xbZ gS A vatqeu bLykfe;k desVh ds rRdkyhu lnj Jh lyhe jtk] rRdkyhu lsdzsVjh vrkmjZjgeku [kku] uk;c lnj Jh btjkbZy gd ,oa desVh } kjk o"kZ 2011&12 ls o"kZ 2019&20 rd esa dqy jkf'k vkfFkZd vfu;ferrk djrs gq, mijksDr dafMdk 1 ls 5 rd esa of.kZr jkf'k xcu dj yh xbZ "A +

12. If we see the complaint filed by the complainant/respondent No.3

- Waqf Board before the Chief Judicial Magistrate, First Class, Jagdalpur, it would be clear that the complaint has been filed against the petitioner and the other co-accused persons for non-compliance of the order issued by the Waqf Board. It has also been mentioned in the complaint that the petitioner has not paid Rs. 9,00,000/- towards contribution, which is to be payable by the accused including the petitioner to the Waqf Board as per fixed rate. It is apparent from the complaint (Annexure P/2) that the said complaint has been filed for non-compliance of the direction of the Waqf Board, therefore, their act falls within the ambit of Section 61 of the Act, 1995 whereas in the present case, FIR has been lodged for misappropriation of fund of the Waqf Board. It clearly reflects that both the alleged offences are altogether different and cannot said to be one and the same.

13. Learned counsel for the petitioner has also drawn attention of this court to the audit report which he has filed as Annexure P/3 and would submit that the registration of FIR, without comparing from the audit report and has stated in the FIR that audit report has been prepared fraudulently, may be his defense, which cannot be examined by this court while hearing the petition under Section 482 of Cr.P.C. as held by Hon'ble the Supreme Court in case of State of A.P. Vs. Golconda Linga Swamy & another 1, held as under:-

"10. In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance.

Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is 1 (2004) 6 SCC 522 based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in R.P. Kapoor and Bhajan Lal cases (supra).

11. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

12. So far as Criminal Appeal Nos. 1183/2003, 1193-1196/2003 and Criminal Appeals arising out of SLPs(Crl.) Nos. 2191/2003, 2632/2003, 2633/2003, and 3463/2003 are concerned, we find that the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Though the FIR is not intended to be an encyclopedia of the background scenario, yet even skeletal features must disclose the commission of an offence. The position is not so in these cases. Therefore, the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court do not have our approval."

14. Hon'ble the Supreme Court in *Rajiv Thapar & others Vs. Madan Lal Kapoor*<sup>2</sup>, held as under:-

"28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/ complainant against the accused.

Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

15. It has been further contended that the dispute pertains to civil dispute as there is financial irregularity and it cannot be said that the petitioner is beneficiary or receiver of the amount. This is also his defence, which cannot be taken by this Court because the contents of FIR which has been extracted above, clearly reveals that the audit report has been prepared after manipulating records, which has to be examined and tested before the trial Court where the evidence has to be examined meticulously by the trial Court. Hon'ble the Supreme Court very recently in the case of *Priti Saraf & another Vs. State of NCT of Delhi & another*<sup>3</sup>, held as under:-

"31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction.

32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/ charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the 3 AIR 2021 Supreme Court 1531 basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings."

16. This court while hearing the petition under Section 482 of the Cr.P.C., cannot have thread-bear examination of the evidence material collected during investigation, in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. Hon'ble the Supreme Court in State of Madhya Pradesh Vs. Kunwar Singh<sup>4</sup>, has again held that the High Court ought not to be. The Hon'ble Supreme Court in paragraph 8 held as under:-

"8. Having heard the submissions of the learned counsel appearing on behalf of the appellant and the respondent, we are of the view that the High Court has transgressed the limits of its jurisdiction under Section 482 of CrPC by enquiring into the merits of the allegations at the present stage. The fact that the respondent was a signatory to the cheques is not in dispute. This, in fact, has been adverted to in the judgment of the High Court. The High Court has also noted that a person who is required to approve a financial proposal is duty bound to observe due care and responsibility. There are specific allegations in regard to the irregularities which have been committed in the course of the work of the 'Janani Mobility Express' under the National Rural Health Mission. At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme. A final report has 4 Criminal Appeal No. 709 of 2021 (decided on 30.07.2021) been submitted under Section 173 of CrPC, after investigation.

Further, Hon'ble the Supreme Court in Kaptan Singh Vs. The State of Uttar Pradesh & others<sup>5</sup>, has held as under:- "9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the

independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/ inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-

sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can 5 Criminal Appeal No. 787 of 2021 (decided on 13.08.2021) exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

17. The main contention of the petitioner is that since there is remedy of filing complaint under Waqf Board, present FIR should not have been registered and same cannot be accepted as Section 61 of the Act, 1995 deals with penalty, If a mutawalli fails to apply for the registration of a waqf, furnish statements of particulars or accounts or returns as required under this Act; but in the present FIR it has been clearly stated that the books of account have been prepared by manipulating in the documents, whose authenticity have to be examined by the trial Court. As such, both the offences are altogether different offences and the petitioner cannot take shelter of Section 300 of Cr.P.C., or Article 20 of the Constitution of India. He can be tried by filing a complaint under Sections 406, 420, 467, 468, 471 and 34 of IPC.

18. The Hon'ble Supreme Court in case of State of Arunachal Pradesh Vs. Ramchandra Rabidas @ Ratan Rabidas reported in 2019 (10) SCC 75 has considered that whether a person can be convicted who causes hurt to any person while driving a motorcycle in a rash and negligent manner under the Motor Vehicle Act can also be convicted under the provisions of IPC. The Hon'ble Supreme Court after elaborating the provision of law has held as under:

"19. In our considered view the position of law is well-settled. This court has consistently held that the MV Act, 1988 is a complete code in itself insofar as motor vehicles are concerned. However, there is no bar under the MV Act or otherwise, to try and prosecute offences under IPC for an offence relating to motor vehicle accidents. On this ground as well, the impugned judgment is liable to be set aside."

19. It has also been contended by the learned counsel for the petitioner that the Waqf Act is special Act, therefore, the provisions of the Act, 1995 will prevail over the general law. This submission cannot be accepted in view of facts of the present case. Section 108-A of the Act, 1995 which deals with overriding provisions of the Waqf Act, 1995. Section 108-A of the Act, 1995 is extracted as under.

"108 -A. Act to have overriding effect.- The provisions of this Act shall have over ride the effect notwithstanding anything in existence therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

20. From perusal of the FIR, it is clear that the FIR has been registered on the pretext that the petitioner has manipulated the records to prepare the balance sheet, misappropriated the huge amount as mentioned in the FIR, the same has not been enumerated in Section 61 of the Act, 1995 which provides that if the mutawalli of a waqf fails to do any other act as enumerated from serial No. (a) to (h) precisely the clause (h), which provides that do any other Act which is lawfully required to do or by under this Act, is liable for penalty. Therefore, the petitioner cannot claim benefits of Section 108A of the Act, 1995.

21. From the above discussion and considering the provisions of law, it is clearly held that the offence committed under Section 61 of the Act, 1995 and FIR lodged under Sections 406, 420, 467, 468, 471 and 34 of IPC are altogether different and the petitioner cannot take protection of Section 300 of Cr.P.C., or Article 20(2) of the Constitution of India.

22. In view of what has been discussed above, present writ petition (cr) being devoid of merit is liable to be and is hereby dismissed.

23. Before parting with the case, this Court this would make it clear that this court has not expressed any thing merit of the case but examined the facts for adjudication of the present writ petition (Criminal ) only and trial court will decide the case on its own merit without being influenced by any of the observation made by this court.

Sd/-

(Narendra Kumar Vyas) Judge Raju