* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

\+ **CRL.M.C. 5717/2024, CRL.M.A. 21829/2024**

PAWAN KUMAR AHLUWALIA & ORS. .....Petitioners

Through: Mr. Dayanan Krishnan, Sr. Advocate with Mr. Vikram Singh, Mr. Ambar Tewari, Mr. Varun Agarwal, Mr. Advait Joshi, Advocates for P-1.
Mrs. Rebecca John, Sr. Advocate with Mr. Vikram Singh, Mr. Ambar Tewari, Mr. Varun Agarwal, Mr. Advait Joshi, Advocates for P-2 to 6.

versus

STATE OF NCT DELHI & ANR. .....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for the State with Mr. Anvesh Chandila, Mr. Ujjwal Gupta, Mr. Nikhil Kunal, Mr. Vishal Kaushik, Mr. Sushant Chaudhary, Ms. Sunita Farswan and Mr. Dishant Tiwari, Advocates.
Mr. Vijay Aggarwal, Mr. Rachit Bansal, Mr. Pankush Goyal, Mr. Kshitiz Garg, Mr. Shekhar pathak, Ms. Barkha, Mr. Sameer Chaudhary, Mr. Avik Sarkar, Advocates for the Complainant.
Insp. Satish Kumar, PS EOW

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of FIR No.47/2024, dated 29.04.2024, registered at Police Station Economic Offences Wing, for offences under Sections 409/420/467/468/471/477A/120B IPC.

2. It is pertinent to mention that the said FIR was registered pursuant to the Order dated 16.04.2024, passed by the learned Chief Metropolitan Magistrate, in CT Case No. 2131/2024.

3. The Facts, leading to the present Petition, are as under:

i. That the Respondent No.2 herein, who is the daughter of one Late Sh. Kamal Jeet Singh Ahluwalia, gave a complaint against the Petitioners herein and other accused. Petitioners No.1 to 5 are the Directors and former Directors of M/s KJS Cement (I) Ltd. (*hereinafter referred to as "KJS"*) which is a public company limited by shares engaged in the manufacturing and supply of building materials, including cement, engineering, and construction, and Petitioner No.6 is the wife of Petitioner No.1.

ii. Material on record indicates that before filing of the present FIR, the Respondent No.2 had earlier filed FIR No.24/2024, dated 02.04.2024, which was registered at Police Station Economic Offences Wing, for offences under Sections 406/409/420/468/471/120B IPC, against the Petitioners herein and other accused. In the said FIR it is stated that KJS is a part of the KJS Group of Companies founded by the family Late Shri Kamal Jeet Singh Ahluwalia. It is further stated in the said FIR that KJS Group of Companies has its presence in Mining, Iron & Steel, Power, Media, and Infrastructure Development such as Housing, Hotels, Commercial Space Development, Logistics, Transportation and Cement. It is stated that the revenue of KJS Group is over Rs. 1500 Crore having a work force of approximately 2000 workers & employees. It is further stated that the first cement plant of KJS Group is having a rated clinker production capacity of 6000 million tons per day and cement production capacity of 2.25 million tons per annum. The plant was commissioned in March 2012. It is stated that KJS launched its product under the brand name 'KJS Cement' in July, 2012. It is further stated in the complaint that KJS is a closely held family company conducting its affairs in the nature of quasi-partnership.

iii. In the complaint it is stated that Sh. Kamal Jeet Singh Ahluwalia passed away on 15.10.2021 leaving behind the Respondent No.2 herein, who is his daughter; his wife and one minor adoptive son. In the complaint it is further stated that Late Sh. KJS Ahluwalia was holding 26.52 % shares in KJS out of the total issued, legal and valid shareholding of KJS, but his shareholding has been reduced to 21% at the time of his death on 15.10.2021 due to various illegalities and fraudulent acts committed by the accused persons by way of illegal & fraudulent allotment of shares. It is stated in the complaint that on the death of Late Sh. KJS Ahluwalia the shares of KJS Ahluwalia were to be transmitted to the Respondent No.2 herein and other Class-I legal heirs of KJS Ahluwalia and a letter dated 01.02.2022 to this effect was sent to KJS on 09.02.2022 along with email dated 09.02.2022, however, despite receipt of the said letter the said shares have not been transmitted in the name of the Respondent No.2 or any of the class-I heir of KJS Ahluwalia.

iv. It is further stated in the Complaint that huge investments were bought into KJS Cements by Late Sh. KJS Ahluwalia ever since its beginning from 2007. It is stated that Late Shri KJS Ahluwalia contributed about Rs. 460 Crores in the form of investments and extended loans of over Rs. 130 Crore in KJS for its growth and expansion. It is stated that since the funds were being provided by Late Shri KJS Ahluwalia alone upon clear understanding that the shares held in individual names of Pawan Kumar Ahluwalia and his family shall always inure to the benefit of Late Shri KJS Ahluwalia and his immediate family. It is stated that Pawan Kumar Ahluwalia, i.e. the Petitioner No.1 herein, did not make any financial contribution in the Company. It is alleged in the complaint that several deeds were forged and fabricated in the name of Late KJS Ahluwalia including a gift deed by which the shares of Late KJS Ahluwalia have been transferred to his sister-in-law, i.e. Petitioner No.6 herein. It is further alleged in the complaint that Petitioner No.1 herein fabricated a forged resignation letter dated 08.06.2017, by faking the signatures of Late Sh. KJS Ahluwalia by virtue of which late KJS Ahluwalia was removed from the Directorship of KJS. In the said FIR, the allegation of the Complainant is that on the basis of these false and fabricated documents, the Petitioner No.1 herein has converted 26,78,572 equity shares of KJS and got them issued in favour of his daughters – Medha Ahluwalia and Shivangi Ahluwalia, who have never worked for KJS and, thereby, diluting the share holding of Late KJS Ahluwalia from 26.52% to 23.53%.

v. The Complainant, apart from stating the grievances in FIR

No.24/2024, also gives details of various proceedings before the NCLT pending the complaint and various demand-cum-show cause notice which have been issued by the Directorate General of GST, Intelligence Bhopal Zonal Unit, stating that KJS has indulged in clandestine manufacture and supply of cement clinker and cement without issue of invoices and without accounting for the same in the books of accounts/records and that the sale proceeds of such clandestine supply/sale of goods were collected in cash that has been utilized for purchase of unaccounted raw material like lime stone, packing material (PP bags), jewellery, paintings and other articles and also used for meeting travel expenses etc.,. It is stated that search operations under Section 67 of the CGST Act, 2017 were conducted at the premises of KJS and their suppliers, clients, and transporters located at various place like Maihar, Satna, Katni, Allahabad, Kanpur, Delhi during the period from 05.08.2020 to 14.08.2020 and incriminating documents, devices and gadgets were seized. It is further stated that scrutiny of the documents and devices indicated clandestine manufacture and supply of clinker and cement without the cover of GST invoices. The Show Cause Notice further states scrutiny of incriminating documents, registers, computer hard discs, electronic data and devices found in the factory premises, registered office, residential premises and the premises of the dealers and transporters revealed large scale evasion of GST by KJS and accordingly further investigation has been carried out. It is stated that during the course of search and seizure operations conducted the premises of KJS statements of employees and top management officials were recorded which confirms under reporting of receipt and use of lime stone in the Standard Accounting Procedure (SAP) which is a software system application & products in data processing (pithily put, it is an accounting software). The Show Cause Notice also indicates unrecorded manufacture and supply of cement and its entries in 600 SAP (quality/development) instead of 900 (production) SAP. It is further stated in the Show Cause Notice that during the search operations, stock taking was done by using professional support which revealed shortage of raw materials like coal, laterite and PP bags indicating clandestine manufacture and supply of clinker and cement. It is further stated that the internal audit reports of the company indicates manipulation of SAP entries and backdating and access to SAP to unauthorized persons.

vi. It is stated that the Complainant filed the complaint before the Police Station New Friends Colony by highlighting the loss caused to the Company by clandestine manufacture and supply of cement clinker and cement without issue of invoices and without accounting for the same in the books of accounts/records and using the sale proceeds for purchase of unaccounted raw material like lime stone, packing material (PP bags), jewellery, paintings and other articles and also used for meeting travel expenses etc.,. It is stated that since the FIR was not registered, an application under Section 156 (3) Cr.P.C was filed before the learned Metropolitan Magistrate. The learned Metropolitan Magistrate vide Order dated 16.04.2024 directed registration of FIR. Relevant portion of the Order dated 16.04.2024 reads as under:

> "*16. The allegations made in the present complaint reveal that offence of criminal criminal breach of trust has been committed in the present matter and, therefore, money trail is to be recovered to find out the actual beneficiaries of the cheated/misappropriated amount. Furthermore, as tax evasion is prima-facie established, in view of ongoing investigation by the concerned GST department officials qua the company, therefore, offence of cheating the company itself, and consequently its shareholders, is also prima facie established. It also appears likely that the alleged cheating/misappropriation of funds of the said company could not have taken place without connivance and conspiracy of persons dealing with day to day affairs of the said company and persons engaged in the business of transportation of material, persons engaged in the profession of creating and maintaining books of accounts/financial report/annual report of companies as well as persons engaged in the business of purchasing and trading in the material supplied by the said company. Therefore, identity of all the persons involved in the commission of the alleged offence may also not be in the knowledge of the complainant in the present matter.*
>
> *17. Furthermore, allegations of forgery of documents like fake transport bills/receipts, e-way bills etc. has also been made in the present matter. The said forgery as an offence requires investigation from the perspective of expert opinion also in the form of forensic examination.*"

vii. Pursuant to the said Order, FIR No.47/2024 was registered which is sought to be quashed in the present Petition.

4. Learned Counsel for the Petitioner contends that FIR No.47/2024 could not have been registered because all the allegations contained in the said complaint forms a part of the Show Cause Notice dated 31.07.2023, issued by the Directorate General of GST. He states that till the said Show Cause Notice is not adjudicated upon and it does not attain finality, the present FIR could not be registered. He states that GST Act itself provides for penalties for offences under Sections 122, 132 of the GST Act and, therefore, the present FIR could not have been registered. It is further stated that the Complainant/Respondent No.2 is not a shareholder of KJS and, therefore, she has no *locus standi* to prefer the complaint. It is contended by the learned Counsel for the Petitioner that the Complainant has misrepresented that she is a shareholder of KJS. Learned Counsel for the Petitioner further contends that a majority of the allegations in the present FIR are a repetition of an earlier FIR, being FIR No.24/2024, and since both the FIRs are identical, a second FIR on the very same grounds could not have been registered. Learned Counsel for the Petitioner places reliance on the Judgment passed by the Apex Court in Amitbhai Anilchandra Shah v. CBI, **(2013) 6 SCC 348**, T.T. Antony v. State of Kerala, **(2001) 6 SCC 181**, to buttress his argument.

5. *Per contra*, learned Counsel for Respondent No.2 states that even if there is an overlap of allegations in both the FIRs, the present FIR is primarily for manipulation of amounts and clandestine manufacture and supply of cement clinker and cement without issue of invoices and without accounting for the same in the books of accounts/records thereby causing wrongful loss to the company. He states that both the FIRs are entirely distinct. He states that the Complaint given by the Respondent No.2 contains

specific instances and transactions which have to be investigated separately and which do nor form a part of earlier FIR, being FIR No.24/2024, and, therefore, the ratio of the Judgments of the Apex Court in Amitbhai Anilchandra Shah (supra) and T.T. Antony (supra) will not apply. Learned Counsel for the Respondent No.2 has taken this Court through various portions of the Show Cause Notice to show that the Show Cause Notice also contains facts which are outside the purview of the GST Act and which can only be investigated by the Police.

6. Heard the Counsels for the parties and perused the material on record.

7. Material on record indicates that there is a dispute going on between the Complainant, who is the daughter of Late Sh. KJS Ahluwalia and the Petitioners herein.

8. Apart from FIR No.24/2024, proceedings are pending before the NCLT and this Court is not adverting into those proceedings at this juncture for the reason that they are germane to the issue before this Court. A comparative chart has been filed by the Petitioner highlighting the similarities between FIR No.24/2024 and the present FIR. The same is being reproduced below:

FIR 24/2024	**FIR 47/2024 (Impugned FIR)**
1. Sh. Pawan Kumar Ahluwalia, 2. Sh. Neeraj Kumar Verma, 3. Sh. Abha Kushal Singh Singhvi, 4. Sh.	1. Sh. Pawan Kumar Ahluwalia; 2. Sh. Neeraj Kumar Verma; 3. Sh. Abha Kushal Singh Singhvi; 4. Sh. Kushal Singh

Kushal Singh Singhvi, 5. Sh. Sanjeev Bhalla, 6. Sh. Manoj Kumar Chaudhary, 7. Sh. Sharad Mehta, 8. Sh. Sanjay Verma, all Directors/former Directors of KJS Cement (I) Limited having registered office at: B-57, Paschimi Marg, Vasant Vihar, South-west, New Delhi-110057 and 9. Smt. Indu Ahluwalia wife of Sh. Pawan Kumar Ahluwalia (Sr. No. 1) For cognizable offences of forgery committed by the accused persons in collusion & connivance with each other. 1. I, Himangini Singh, daughter and Class-I legal heir of Late Shri KJS Ahluwalia, R/o: 75, Friends Colony West, New Delhi-110065, am one of the aggrieved persons and the victim of the fraud perpetrated by the accused persons. I am fully familiar and conversant with the complete facts and circumstances of the present matter and fully competent to lodge the present complaint. My father, Late Shri KJS Ahluwalia, unfortunately passed away on	Singhvi; 5. Sh. Sanjeev Bhalla; 6. Sh. Manoj Kumar Chaudhary; 7. Sh. Sharad Mehta, 8. Sh. Sanjay Verma and 9. Smt. Indu Ahluwalia Sr. No. 1 to 8 are the Directors/former Directors of KJS Cement (I) Limited and S. No. 9. Smt. Indu Ahluwalia is wife of Sh. Pawan Kumar Ahluwalia (Sr. No. 1). For commission of offences of misappropriation, criminal breach of trust, cheating, forgery, falsification of accounts, etc. Dear Sir, 1. I, Himangini Singh, daughter and Class-I legal heir of Late Shri KJS Ahluwalia, R/o: 75, Friends Colony West, New Delhi-110065 which place falls within the jurisdiction of New Friends Colony police station (South-East district). I am one of the aggrieved persons and the victim of the fraud perpetrated by the accused persons as I am a shareholder in the company namely M/s KJS Cement. I am fully familiar and conversant with the complete facts and circumstances of the present matter and fully competent to lodge the present complaint.

15.10.2021 leaving behind the following three Class-I, Legal Heirs: i. Mrs. Manjula Ahluwalia (Wife) ii. Mrs. Himangini Singh (Daughter) iii. Mst. Naman Pal Singh (Minor adoptive son) Copy of the death certificate of Late Shri KJS Ahluwalia dated 22.10.2021 is annexed herewith and marked as Annexure-1. Copy of the Legal Heir Certificate is annexed herewith and marked as Annexure-2. "	2. My father, Late Shri KJS Ahluwalia, unfortunately passed away on 15.10.2021 leaving behind the following three Class-I Legal Heirs: i. Mrs. Manjula Ahluwalia (Wife) ii. Mrs. Himangini Singh (Daughter) iii. Mst. Naman Pal Singh (Minor adoptive son)
2. Pawan Kumar Ahluwalia, the Accused No. 1, is the Managing Director of KJS and younger brother of Late Shri KJS Ahluwalia. The accused persons led by Pawan Kumar Ahluwalia hatched a conspiracy to oust me and my family from the ownership and control of KJS. Neeraj Kumar Verma, the Accused No. 2, is the Whole Time Director of KJS. Abha Kushal Singh Singhvi, the Accused No. 3 is the Whole Time Director of KJS. Sanjeev Bhalla, the Accused	3. Pawan Kumar Ahluwalia, the Accused No. 1, is the Managing Director of KJS and younger brother of Late Shri KJS Ahluwalia. The accused persons led by Pawan Kumar Ahluwalia hatched a conspiracy to oust me and my family from the ownership and control of KJS (as defined herein). Neeraj Kumar Verma, the Accused No. 2, is the Whole Time Director of KJS. Abha Kushal Singh Singhvi, the Accused No. 3 is the Director of KJS and wife of Accused No. 4. Kushal Singh Singhvi, the Accused No. 4, is the whole-time director of KJS.

No. 4, is the Director of KJS. Kushal Singh Singhvi, the Accused No. 5, is the whole time director of KJS. Manoj Kumar Chaudhary, the Accused No. 6, is the Director of KJS. Sharad Mehta, the Accused No. 7, was the Director of KJS at the relevant time when the various cognizable offences were committed. Sanjay Verma, the Accused No. 8, was the Director of KJS at the relevant time when the various cognizable offences were committed. Indu Ahluwalia, the Accused No. 9, is the wife of Pawan Kumar Ahluwalia, the Managing Director of KJS and Accused No. 1. The Accused Person Nos. 2 to 8 have acted at the behest and on the instructions of Pawan Kumar Ahluwalia, the Accused No. 1 by passing and approving various illegal resolutions, forms, etc. on the basis of false documents as part of the conspiracy hatched by them to ensure unlawful gain for themselves.	Sanjeev Bhalla, the Accused No. 5, is the Director of KJS. Manoj Kumar Chaudhary, the Accused No. 6, is the Director of KJS. Sharad Mehta, the Accused No. 7, was the Director of KJSat the relevant time when the various cognizable offences were committed. Sanjay Verma, the Accused No. 8, was the Director of KJS at the relevant time when the various cognizable offences were committed. Indu Ahluwalia, the Accused No. 9, is the wife of Pawan Kumar Ahluwalia, the Managing Director of KJS and Accused No. 1. The Accused Person Nos. 2 to 8 have acted at the behest and on the instructions of Pawan Kumar Ahluwalia, the Accused No. 1 by passing and approving various illegal resolutions, forms, etc. on the basis of false documents as part of the conspiracy hatched by them to misappropriate shares and investment belonging to me to ensure unlawful gain for themselves.
3. The company, namely, M/s KJS Cement (I) Ltd. (herein after	4. The company, namely, M/s KJS Cement (I) Ltd. (herein after referred to as "KJS"

referred to as "KJS"), is a public company limited by shares and is engaged in the manufacturing and supply of building materials, including cement, engineering, and construction. The registered office of KJS is situated at B-57, Paschimi Marg, Vasant Vihar, South-West, New Delhi-110057, which falls within the jurisdiction of your police station. Copy of the Master Data of KJS as available on the official website of the Ministry of Corporate Affairs is annexed herewith and marked as Annexure-3.	or "KJS Cement"), is a public company limited by shares having its registered office in Delhi and is engaged in the manufacturing and supply of building materials, including cement, engineering, and construction. Copy of the Master Data of KJS as available on the official website of the Ministry of Corporate Affairs is annexed herewith and marked as Annexure-3.
4. KJS is part of the KJS Group of Companies founded by the family Late Shri Kamaljeet Singh (KJS) Ahluwalia. KJS Group of Companies has its presence in Mining, Iron &Steel, Power, Media, and Infrastructure Development such as Housing, Hotels, Commercial Space Development, Logistics, Transportation and Cement. KJS Group's revenue is over Rs. 1500 Crore having a work force of	5. KJS is part of the KJS Group of Companies founded by the family Late Shri Kamaljeet Singh (KJS) Ahluwalia. KJS Group of Companies has its presence in Mining, Iron &Steel, Power, Media, and Infrastructure Development such as Housing, Hotels, Commercial Space Development, Logistics, Transportation and Cement. KJS Group's revenue is over Rs. 1500 Crore having a work force of approximately 2000 workers & employees.

approximately 2000 workers & employees.	
5. The first cement plant of KJS Group having a rated clinker production capacity of 6000 million tons per day and a cement production capacity of 2.25 million tons per annum was commissioned in March, 2012. KJS launched its product under the brand name 'KJS Cement' in July, 2012.	6. The first cement plant of KJS Group having rated clinker production capacity of 6000 million tons per day and cement production capacity of 2.25 million tons per annum was commissioned in March, 2012. KJS launched its product under the brand name 'KJS Cement' in July,2012.
6. KJS is a closely held family company conducting its affairs in the nature of quasi- partnership. The accused persons have breached the principles of quasi-partnership by their fraudulent acts as described hereinafter.	7. KJS is a closely held family company conducting its affairs in the nature of quasi-partnership. The accused persons have breached the principles of quasi-partnership by their fraudulent acts as described hereinafter.
7. Late Shri KJS Ahluwalia was holding 26.52 % in KJS, out of the total issued, legal and valid shareholding of KJS. But his shareholding was reduced to 21 % at the time of his death on 15.10.2021 due to various illegalities perpetrated and fraudulent acts committed by the accused persons by way of illegal & fraudulent allotment of shares. After the sad	8. Late Shri KJS Ahluwalia was holding 26.52 % in KJS out of the total issued, legal and valid shareholding of KJS. But his shareholding has been reduced to 21 %% at the time of his death on 15.10.2021 due to various illegalities perpetrated and fraudulent acts committed by the accused persons by way of illegal & fraudulent allotment of shares. After the sad demise of Late Shri KJS Ahluwalia, the said shares were to be transmitted to me, and a

demise of Late Shri KJS Ahluwalia, the said shares were to be transmitted to me, and a letter dated 01.02.2022 to this effect was sent to KJS on 09.02.2022 along with email dated 09.02.2022. However, despite receipt of the said letter and various assurances given thereto, I was surprised and shocked to learn that the said shares have not been transmitted in my name till date and no reply was received by me to the said letter for transmission of shares in my name.	letter dated 01.02.2022 to this effect was sent to KJS on 09.02.2022 along with email dated 09.02.2022. However, despite receipt of the said letter and various assurances given thereto, I was surprised and shocked to learn that the said shares have not been transmitted in my name till date and no reply was received by me to the said letter for transmission of shares.
8. Huge investments were bought into the Company KJS Cements by Late Shri KJS Ahluwalia ever since beginning from 2007, when KJS was acquired by Late Shri KJS Ahluwalia and his family. Pawan Kumar Ahluwalia did not make any financial contribution in the Company. KJS had all along been functioning under the vision and guidance of Late Shri KJS Ahluwalia and emerged as one of India's most ultra-modern cement manufactures.	9. Huge investments were bought into the Company KJS Cements by Late Shri KJS Ahluwalia ever since beginning from 2007, when KJS was acquired by Late Shri KJS Ahluwalia and his family. Pawan Kumar Ahluwalia did not make any financial contribution in the Company. KJS had all along been functioning under the vision and guidance of Late Shri KJS Ahluwalia and emerged as one of India's most ultra-modern cement manufacturers.

10. Late Shri KJS Ahluwalia was induced by the sweet talks, representations and assurances/promises made by Pawan Kumar Ahluwalia and agreed to entrust Pawan Kumar Ahluwalia with authority and involve him in the affairs of KJS. Accordingly, representations and assurances/promises made by Pawan Kumar Ahluwalia he was given the responsibility of looking after the plant activities.	10. Late Shri KJS Ahluwalia was induced by the sweet talks, representations and assurances/promises made by Pawan Kumar Ahluwalia and agreed to entrust Pawan Kumar Ahluwalia with authority and involve him in the affairs of KJS. Accordingly, representations and assurances/promises made by Pawan Kumar Ahluwalia he was given the responsibility of looking after the plant activities.
11. Pursuant to the investments and support provided by Late Shri KJS Ahluwalia, the Company kept growing at a very good pace. Late Shri KJS Ahluwalia contributed approx. over Rs. 460 Crores in the form of investments and extended loans of over Rs. 130 Crore ever since the Company was acquired by Late Shri KJS Ahluwalia and his family for the Company's growth and expansion. Since the funds were being provided by Late Shri KJS Ahluwalia alone upon clear understanding that the shares held in individual names of Pawan Kumar	11. Pursuant to the investments and support provided by Late Shri KJS Ahluwalia, the Company kept growing at a very good pace. Late Shri KJS Ahluwalia contributed approx. over Rs. 460 Crores in the form of investments and extended loans of over Rs. 130 Crore ever since the Company was acquired by Late Shri KJS Ahluwalia and his family for the Company's growth and expansion. Since the funds were being provided by Late Shri KJS Ahluwalia alone upon clear understanding that the shares held in individual names of Pawan Kumar Ahluwalia and his family shall always inure to the benefit of Late Shri KJS

Ahluwalia and his family shall always inure to the benefit of all members of the family of Late Shri KJS Ahluwalia, particularly his daughter (i.e. myself) and his wife. Thus, Pawan Kumar Ahluwalia and his family members were to hold the shares only as trustees in KJS. Late Shri KJS Ahluwalia apart from investments made in KJS, also made substantial investments and extended financial assistance in the form of unsecured loans to various other businesses owned and controlled by the accused persons.	Ahluwalia and his immediate family, particularly his daughter (i.e. myself) and his wife. Thus, Pawan Kumar Ahluwalia and his family members were to hold the shares only in trust for our benefit in KJS. Late Shri KJS Ahluwalia apart from investments made in KJS, also made substantial investments and extended financial assistance in the form of unsecured loans to various other businesses owned and controlled by the Accused Person No. 1 and his family.
12. Seeing the growth of KJS, Pawan Kumar Ahluwalia became greedy and developed malafide intent to gain greater dominance over the management and affairs of KJS. Pawan Kumar Ahluwalia had represented to Late Shri KJS Ahluwalia in my presence that he had gained sufficient experience and knowledge regarding affairs and activities of the Company and assured that he will always work in the best interest of the company and family members of Late Shri KJS	12. Seeing the growth of KJS, Pawan Kumar Ahluwalia became greedy and developed malafide intent to gain greater dominance over the management and affairs of KJS. Pawan Kumar Ahluwalia had represented to Late Shri KJS Ahluwalia in my presence that he had gained sufficient experience and knowledge regarding affairs and activities of the Company and assured that he will always work in the best interest of the company and family members of Late Shri KJS Ahluwalia, therefore, he may be entrusted with the authority and

Ahluwalia, therefore, he may be entrusted with the authority and responsibility for carrying out the affairs of the Company. He further, represented that even, otherwise, he being younger brother of Late Shri KJS Ahluwalia was entitled to be given the authority and responsibility for carrying out the affairs of the Company.	responsibility for carrying out the affairs of the Company. He further, represented that even, otherwise, he being the younger brother of Late Shri KJS Ahluwalia he could be trusted with the authority and responsibility for carrying out the affairs of the Company.
26. It is pertinent to mention here that Pawan Kumar Ahluwalia, the Accused No. 1, has a criminal background. He was held guilty and convicted in the matter titled "CBI Vs. Kamal Sponge Steel & Power Ltd. & Ors." for offences u/s 120-B, 420, 120-B r/w 420 IPC and Sections 13(1)(d)(ii)/ 13(l)(d)(iii) PC Act, 1988 vide judgment dated 19.05.2017 passed by the Court of Shri Bharat Parashar, Ld. Special Judge (PC Act) CBI-07, New Delhi Courts	20. It is pertinent to mention here that Pawan Kumar Ahluwalia, the Accused No. 1, has a criminal background. Pawan Kumar Ahluwalia was held guilty and convicted in the matter titled "CBI Vs. Kamal Sponge Steel & Power Ltd. & Ors." for offences u/s 120-B, 420, 120-B r/w 420 IPC and Sections 13(1) (d)(ii)/ 13(1)(d)(iii) PC Act, 1988 vide judgment dated 19.05.2017 passed by the Court of Shri Bharat Parashar, Ld. Special Judge (PC Act) CBI-07, New Delhi Courts.
27. It is submitted that in order to secure our interest, I along with other victims had initiated civil proceedings against the accused persons by filing a Company	21. It is submitted that in order to secure our interest, I along with other victims have also initiated proceedings against the accused persons by filing a Company Petition bearing CP No. 49/241-

Petition bearing CP No. 49/241-242/PB/2023 titled 'Himangini Singh & Ors. Vs. KJS Cement (I) Ltd. & Ors.' before Hon'ble NCLT as stated hereinabove. The said Company Petition is still pending adjudication. Vide order dated 02.03.2023 passed in the said Company Petition, Hon'ble NCLT granted status quo in favour of the petitioners as under: "20. R-1 Company has been there since 2007 and doing well as per balance sheet. No harm will be caused if the impugned EGM is restrained for the present. The balance of convenience is in favour of Petitioners as they stand reduced by various acts of Respondent. Therefore, we are of the considered view that Respondents should be restrained from proceeding further with the proposed EGM to be held on 06.03.2023. Accordingly, the interim prayer 'a' is granted. Consequently, we direct the Respondent No. 1 Company to maintain the status quo with regard to the shareholding of the R-1	242/PB/2023 titled 'Himangini Singh & Ors. Vs. KJS Cement(I) Ltd. &Ors.' before Hon'ble NCL T as stated herein above. The said Company Petition is still pending adjudication. Vide order dated 02.03.2023 passed in the said Company Petition, Hon'ble NCLT granted status quo in favour of the petitioners as under: "20. R-1 Company has been there since 2007 and doing well as per balance sheet. No harm will be caused if the impugnedEGM is restrained for the present. The balance of convenience is in favour of Petitioners as they stand reduced by various acts of Respondent. Therefore, we are of the considered view that Respondents should be restrained from proceeding further with the proposed EGM to be held on 06.03.2023. Accordingly, the interim prayer 'a' is granted. Consequently, we direct the Respondent No. 1 Company to maintain the status quo with regard to the shareholding of the R-1 Company as on today. This does not preclude Respondent No. 1 Company and the Company Secretary to effect the transmission of shares in favour of Petitioner No. 1 if it is

Company as on today. This does not preclude Respondent No. 1 Company and the Company Secretary to effect the transmission of shares in favour of Petitioner No. 1 if it is otherwise in order and can be lawfully executed." Copy of the order dated 02.03.2023 passed by Hon'ble NCLT is annexed herewith and marked as Annexure-9.	otherwise in order and can be lawfully executed." Copy of the order dated 02.03.2023 passed by Hon'ble NCL Tis annexed herewith and marked as Annexure-7.
28. It is settled law that both civil and criminal proceedings can be initiated by the victim simultaneously with distinct impetus and objective. Hon'ble Supreme Court in P. Swaroopa Rani vs. M. Hari Narayana (AIR 2008 SC 1884) held that "---------- It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case." The criminal cases have to be proceeded with in accordance with	23. It is settled law that both civil and criminal proceedings can be initiated by the victim simultaneously with distinct impetus and objective. Hon'ble Supreme Court in P. Swaroopa Rani vs. M. Hari Narayan a (Al R 2008 SC 1884) held that: " .... It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously .. " The criminal cases have to be proceeded with in accordance with the procedure prescribed under the Code of Criminal Procedure and existence of civil remedy/proceedings cannot take criminal acts out of jurisdiction of courts. Hon'ble Supreme Court took a similar view in Syed Askari Hadi Ali

the procedure prescribed under the Code of Criminal Procedure and existence of civil remedy/proceedings cannot take criminal acts out of jurisdiction of courts. Hon'ble Supreme Court took a similar view in Syed Askari Hadi Ali Augustine Imam and Ors. vs. State (Delhi Admn.) and Ors. (AIR 2009 SC 3232) that "-------- Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case." Further, it has been observed asunder in a five judge bench judgment of Hon'ble Supreme Court titled Iqbal Singh Marwah & Anr vs. Meenakshi Marwah & Anr. 2005 II AD (Cri) SC 12: "24. -------------------------------------. While examining a similar contention in an appeal against an order directing filing of a complaint	Augustine Imam and Ors. vs. State (Delhi Admn.) and Ors. (AIR 2009 SC 3232) that: " .... Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case." Further, it has been observed asunder in a five judge bench judgment of Hon'ble Supreme Court titled Iqbal Singh Marwah & Anr vs. Meenakshi Marwah & Anr. 2005 II AD (Cri) SC 12: "24. -------------------------------------. While examining a similar contention in an appeal against an Order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in M.S. Sheriff vs. State of Madras AIR 1954 SC 397 give a complete answer to the problem posed: "(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. ---------------------------------"

under Section 476 of old Code, the following observations made by a Constitution Bench in M.S. Sheriff vs. State of Madras AIR 1954 SC 397 give a complete answer to the problem posed: "(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. ----------------"	

Undoubtedly, there is an over-lap in the two FIRs. The allegations in FIR No.24/2024 are a part of the present FIR as well but this Court is of the opinion that those facts are only relevant to bring out the history of the case. The present FIR has been filed primarily after the Show-Cause Notice has been issued by the GST wherein certain additional facts have come to light which could not have been acknowledged in FIR No.24/2024.

9. FIR No.24/2024 was filed primarily containing Allegations regarding ousting of the complainant and her family members from management and control of KJS to gain control over the company by the accused and stating as to how the shareholding of Sh. Lt. KJS Ahluwalia was reduced from 26.52% to 21% at the time of his death and also stating how in the event of his demise those shares were to be transferred to the complainant and a letter to that effect along with an email was sent to KJS of which nothing has been done and she hasn't even received a reply. Complainant also explains how Accused No. 1 represented himself to be eligible to take care of the company alone and how he is entitled to be given authority and

responsibility. Allegations regarding creation of forged, false, and/or fabricated documents are explained via explaining the documents and the situations surrounding the creation and fabrication of those, i.e. gift deeds and resignation letter of Lt. Sh. KJS Ahluwalia from KJS cements. The first gift deed in question is dated 10.03.2017 for gift of unsecured loan of huge amount in favor of Accused No. 1 by forging signatures of the deceased and how he misused the forged gift deed in an unauthorized manner to issue debentures to himself misusing his position and how this needs to be investigated as he diluted the deceased's shareholding in this process. The FIR also talks about the forged and fabricated resignation letter of the deceased from KJS dated 08.06.2017 by faking his signatures and by removing him from directorship of KJS. It is stated that the difference in signature in the mentioned documents and actual signature is so stark that it is evident to the naked eye that the signatures are nowhere similar and forged, complainant also states that she even obtained opinion from a Forensic Handwriting expert who concluded similarly that the signatures are different and seem forged, copy of forensic report has also been attached with the FIR. Questions regarding the gift deed dated 27.09.2017 based on Power of Attorney dated 08.08.2000 in which Accused No. 1 transfers shares of Lt. Sh. KJS Ahluwalia in favor of Accused No. 9 are also brought up, questioning its jurisdiction and maintainability on merits also stating that despite the gift deed being almost 6 years old, it has not been acted upon till date and shareholding of the deceased has not been transferred to Accused No. 9. Accused No. 1 has acted maliciously for his greed and to the benefit of his family as stated by the complainant in connivance with other accused by creating false and forged documents and continuing to do so to support them and alleging that they might keep doing so. FIR No.24/2024 does not include the complaint regarding the offence of misappropriation.

10. On the other hand, FIR No.47/2024 while giving out a background of the company primarily talks about how the accused persons have sold a substantial quantity of cement and clinker in clandestine manner without recording the same in the books of accounts of the company, and how they have misappropriated the property and assets of the company causing wrongful losses to the company and shareholders while committing criminal breach of trust. She substantiates all these claims with the help of a Demand-cum-Show-Cause Notice vide No. 24/DGGI/BhZU/JD/GST/2023-24 dated 31.07.2023. She further states that the sale proceeds from clandestine supply and sale of goods in cash was used for purchase of unaccounted raw materials like limestone, packing material, jewelry, and paintings relying on the show cause notice for proof. She also mentions the findings of the GST department to support her case by mentioning the amount up to which they have evaded GST highlighting the losses to the shareholders and the public exchequer. She supplements the allegations by highlighting the roles of the accused which have led to this situation. She additionally states that they indulged in illegal and fraudulent transactions of removal and misappropriation of company stocks and inventory and also falsification of the records and accounts of the company while siphoning funds of the company by showing and booking false and fictitious salary payments to the family members of the Accused No.1 without rendering of any services, she has also attached the details of the salary and consultancy fees thus paid.

11. The Complaint highlights the loss caused to the Company by clandestine manufacture and supply of cement clinker and cement without issue of invoices and without accounting for the same in the books of accounts/records and using the sale proceeds for purchase of unaccounted

raw material like lime stone, packing material (PP bags), jewellery, paintings and other articles and also used for meeting travel expenses etc., by the Petitioners herein.

12. In the considered opinion of this Court the contention of the learned Counsel for the Petitioner that the present FIR could not have been registered as GST Act itself provides for penalties for offences under Sections 122, 132 of the GST Act cannot be accepted because the offence under GST Act would not include misappropriation of funds and conversation of those funds for the personal use of the Petitioners herein which resulted in wrongful loss to the Company and its shareholders. It, therefore, cannot be said that both the FIRs arise out of the same cause of action or that the issue raised in the second FIR, i.e. FIR No.47/2024 can be dealt with under the provisions of the GST Act. There are specific allegations in the Show Cause Notice that the sale proceeds of such clandestine supply/sale of goods were collected in cash that has been utilized for purchase of unaccounted raw material like lime stone, packing material (PP bags), jewellery, paintings and other articles and also used for meeting travel expenses etc. There are specific allegations in the Show Cause Notice against Petitioner No.1 herein. Relevant portion of the Show Cause Notice bringing out specific allegations against the Petitioner No.1 herein are being reproduced herein and the same reads as under:

> "*13 Shri Pawan Kumar Ahluwalia Vice Chairman and Managing Director (hereinafter referred to as the Noticee No.2) was the overall incharge of the factory and being a key management personal was at the helm of all affairs including the clandestine activities of the Noticec No.1. The ultimate beneficiary of all clandestine activities of the Noticee No.1 appears to have gone to the Noticee No 2. Shri B.K. Tripathy. Shri*

K.S. Singhvi and Shri Satyendra Rai who were involved in clandestine activities. all directly reported to him. All of them were directly involved in clandestine supply of clinker and cement and collection of cash and its further disposal. From the Whatsapp chat of Shri Satyendra Rai (Exhibit-CIII) with Shri Pawan Kumar Ahluwalia. it appears that he reported all the minute details to Shri Pawan Kumar Ahluwalia on daily hourly basis and sought his permission for all sales. receipts and payments including cash receipts and payments in cash. The Noticee No.1 vide office order dated 22.04.2020. Mr Satyendra Rai. CFO was ordered to functionally report to Shri Pawan Ahluwalia.MD and administratively to Shri KS Singhvi (Exhibit-CIV).The whatsapp chat between Shri Satyendra Rai and Shri Pawan Ahluwalia shows that he was seeking administrative approval from Shri Pawan Ahluwalia for all financial transactions of the company and also reporting to him the cash collection. The whatsapp chat between Shri M.K.Jain and Shri Pawan Ahluwalia shows that he got information about the quantity of crushed lime stone and the working of the crasher on daily basis on the basis of entries in the manual crusher hopper register. This establish the fact that Shri Pawan Kumar Ahluwalia was directly involved in the day to day management of the company, all clandestine activities including monitoring of collection of cash though he had claimed not to involve in day to day work of company. As per the entries in the cash book and as confirmed by Shri K.S.Singhvi and Shri B.K Tripathy. Shri B.K. Tripathy used to receive cash collected from the dealers and transporters. Cash has also been given to the wife and children of Shri Pawan Kumar Ahluwalia. Shri Pawan Kumar Ahluwalia, used the cash received against the sale of clandestinely manufactured clinker and cement for arranging the foreign trips and marriage of his daughter as well as for buying jewellery. All the persons like Shri B.K. Tripathi. K.s.Singhvi. Satyendra Rai etc.. involved in clandestine supply of clinker and *cement directly reported to him. ...”*

13. All the abovementioned allegations are outside the purview of GST Act and can be only looked into in a criminal case.

14. Similarly there are other allegations that gold and silver coins have been purchased from the sale proceeds and the same has not been accounted for either in the Show Cause Notice or in the FIR No.24/2024.

15. It is pertinent to mention that FIR No.24/2024 is primarily regarding fabrication of documents for ousting the Complainant and other class-I heir of Late KJS Ahluwalia from the Company by forging and fabricating the documents. Whereas the present FIR pertains to misappropriation of funds of the Company for personal use. The contention of the learned Counsel for the Petitioner that the Complainant is not the shareholder of the Company and, therefore, she does not have the locus standi to file the Complaint cannot be accepted. The allegation in the present FIR is regarding misappropriation of funds of the Company and any person who has interest in the company can give the information to the Police and since these allegations constitute a cognizable offence, the Police has to investigate into the allegations. Material on record also indicates that there are several proceedings pending before the NCLT regarding transfer of shares of the Company and, therefore, it cannot be said that the Complainant does not have any locus standi to initiate the proceedings under IPC.

16. It is well settled that High Court should be slow in interfering with the criminal proceedings at the initial stage. The Apex Court in Sanapareddy Maheedhar Seshagiri v. State of A.P., **(2007) 13 SCC 165**, has observed as under:

> “*31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely*

cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence *or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482CrPC."*"

17. In Gorige Pentaiah v. State of A.P., **(2008) 12 SCC 531**, the Apex Court has observed as under:

"*12. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:*

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court; and

(iii) to otherwise secure the ends of justice.

Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."

18. In State of A.P. v. Golconda Linga Swamy, **(2004) 6 SCC 522**, the Apex Court has held as under:

"***5***. *Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the*

High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely : (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that *initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."*

19. In Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, **(2005) 1 SCC 122,** the Apex Court has held as under:

*"**11**. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)*

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

As noted above, the powers possessed by the High

Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the *light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304 : AIR 1999 SC 1044] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503 : AIR 1999 SC 3596] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]*

20. In State of Maharashtra v. Arun Gulab Gawali, **(2010) 9 SCC 701**, the Apex Court has observed as under:

"***13***. *The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent* *powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] , Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] and Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])"*

21. In <u>State of Odisha v. Pratima Mohanty</u>, **(2022) 16 SCC 703**, the Apex Court has held as under:

"***8.2***. *It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or* *considering the application under Section 482CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."*

22. The investigation is at a nascent stage. This Court is of the opinion that the second FIR, i.e. FIR No.47/2024, which is sought to be quashed is based on different set of facts and facts which have come to light after filing of FIR No.24/2024, which are not covered in the earlier FIR. This Court is of the opinion that the scope of both the FIRs are different and only background facts in the two FIRs, which trace the history of the dispute, are common. The fact that there is some over-lap between the two FIRs does not mean that they arise out of same cause of action and, therefore, the second FIR would not be maintainable.

23. In view of the above, the Petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024
Rahul/JP