IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.8125 OF 2022

**BETWEEN:**

1 . M/S ib TRACK SOLUTIONS PVT LTD.,
353, GROUND FLOOR, 14TH CROSS
ESHWAR LAYOUT
BENGALURU – 560 038
SHOWN IN FIR AS
M/S ib TRACK SOLUTIONS PVT LTD.,
INDIRANAGAR, BENGALURU CITY
KARNATAKA.

2 . SHRI SUDHENDRA DHAKANIKOTE
AGED ABOUT 61 YEARS
S/O LATE SH. D.NARAYANA RAO
DIRECTOR
M/S ib TRACK SOLUTIONS PVT LTD.,
557, 17TH CROSS ROAD, 2ND STAGE
INDIRANAGAR
BENGALURU – 560 038.

... PETITIONERS

(BY SRI PRASANNA KUMAR P., ADVOCATE)

**AND:**

1 . STATE OF KARNATAKA
BY INDIRANAGAR POLICE STATION
HALASURU SUB-DIVISION

REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BUILDING
OPP. VIDHANA SOUDHA
DR.B.R.AMBEDKAR VEEDHI
BENGALURU – 560 001.

2 . MR.SUNIL S.PATIL
SENIOR INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE
ZONAL UNIT, BENGALURU.

... RESPONDENTS

(BY SRI K.S.ABHIJITH, HCGP FOR R1;
SRI M.N.KUMAR, CGSC, FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.172/2019 DATED 16.07.2019 BY THE 1st RESPONDENT/POLICE AS AGAINST THE PETITIONERS HEREIN/ACCUSED NO.1 AND 2 FOR THE OFFENES P/U/S 66V, 72A OF I.T ACT AND SEC.406, 420, 34 OF IPC PENDING ON THE FILE OF THE I ACMM, NRUPATUNGA ROAD, BANGALORE (PRODUCED VIDE ANNEXURE-A).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.09.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioners are before this Court calling in question registration of crime in Crime No.172 of 2019 on 16-07-2019 for offences punishable under Sections 66C and 72A of the Information Technology Act, 2000 and Sections 406, 420 and 34 of the IPC and pending before the 1st Additional Chief Metropolitan Magistrate, Bangalore City.

2. Heard Sri P.Prasanna Kumar, learned counsel appearing for the petitioners, Sri K.S.Abhijith, learned High Court Government Pleader for respondent No.1 and Sri M.N.Kumar, learned Central Government Standing Counsel appearing for respondent No.2.

3. Brief facts leading to the filing of the present petition, as borne out from the records, are as follows:-

1st petitioner - M/s ib Track Solutions Private Limited ('Company' for short), a Company registered under the Companies Act, 1956 is associated with procuring and supplying of e-seals with Radio Frequency Identification ('RFID') technology for exporters from India. The 2nd petitioner is the Director of the 1st

petitioner/Company. The 1st petitioner/Company claims to have procured unique technology which was the first of its kind for the purpose of exporting cargo with tamperproof seals. The said seals were made to maintain highest level of safety and security. The seals were manufactured by M/s Leghorn Group SRL, Italy and the Company is the authorized distributor of the said seals and the seals are claimed to have been certified by the International Standard Organization (ISO) as high-grade e-seal for containers and M/s Leghorn Group is said to be the pioneer in the field of manufacture and supply of e-seals across the world. RFID is an automatic identification mechanism which is attached to a container and can be accurately read by a handheld device that is operated by a Customs Officer at the relevant port gate.

4. The Union Government intended to implement electronic sealing of cargo by exporters under a self-sealing procedure and in pursuance of the same by circulars called upon various vendors for supply of such seals. The said circulars sought for supply of RFID tamperproof onetime bolt seal. The circulars called upon vendors to supply e-seals with the technology support such as mobile or web

applications in order to reduce use of paper. The Company participated in the vendor approval process and custom officials were responsible with regard to verification of details of shipping and integrity of e-seals. The Company claims to have empanelled as an authorized vendor after detailed scrutiny and due diligence.

5. In terms of the procedure so stipulated in the Circulars, an exporter who intends to ship goods has to mandatorily place the goods sought to be exported into the container and lock the said container with e-seals provided by the authorized vendor. Upon locking with e-seal, the exporter must feed shipping details into the website of the authorized vendor Company. Once the vehicle with the containers along with e-seals reaches the port gate, the Custom Officer must physically check the serial number of the RFID e-seal and cross-verify with other details. If the serial numbers match, the Customs Officer must read the e-seal to examine whether the same has been tampered with, through the application of the vendor on the handheld device. This is the broad procedure for the container to pass through the port gate after checking with e-seals.

6. The Company claims to have been following all the procedure laid down in the Circulars. The Neptune e-seal which is distributed by the Company was proved to be unbreakable without physically breaking the stem of the said seal. It was alleged that on certain occasions the seals though not tampered appeared to be tampered and corrective measures were immediately taken. On 23-10-2018 the Directorate General of Analytics and Risk Management, Central Board of Indirect Taxes and Customs issued a letter directing the Company not to sell RFID e-seals manufactured by M/s Leghorn Group, Italy until further orders. Again on 08-11-2018 the office of the Directorate General temporarily suspends empanelment of the 1st petitioner/Company and subsequently terminates the contract in terms of letters dated 25-03-2019 and 03-04-2019. The Directorate General did not stop at that. A crime in Crime No.172 of 2019 comes to be registered on 16-07-2019 for offences punishable under Sections 66C and 72A of the Information Technology Act, 2000 and Sections 406, 420 and 34 of the IPC. The Company and the Director/2nd petitioner are arrayed as accused Nos. 1 and 2.

7. The allegation in the complaint was that the Company was one of the vendors of RFID e-seals. On verification it was discovered that e-seals supplied by the Company were passing customs clearances even when it was not in a locked condition. It was further alleged that e-seals were tampered regularly and they were being scanned at a distance of few meters without being in locked condition and e-mails of the Company indicated that they had switched off the tampering alerts that led the containers with tampered seals also to get exported. On these facts, it was alleged that the Company had intentionally submitted the reports which had serious ramification on the economy and security of the nation.

8. It appears that accused No.3, as the Managing Director of the Company, had approached this Court calling in question the aforementioned FIR in Criminal Petition No.8197 of 2019. A co-ordinate Bench of this Court by its order dated 13.06.2022 allowed the petition and quashed the FIR insofar as the said Managing Director was concerned on the ground that he had no role to play in the corporate affairs of the Company and the documents produced by him were not controverted. If at all any one is

responsible, it was either the Company or the Director. The present petition is preferred on the ground that the co-ordinate Bench has quashed the proceedings against the Managing Director and, therefore, the issue stands covered by the said judgment and accordingly, the petitioners seek quashment of proceedings in the case at hand as well. It is for that purpose the present petition is preferred.

9. The learned counsel appearing for the petitioners though would admit that economy and security of the nation were involved in the entire transaction but contends that it is the Company that is responsible and not the Director and with regard to the Managing Director the FIR is already quashed by a co-ordinate Bench. Therefore, he would submit that without any role being attributed to the 2nd petitioner/Director, no proceedings should be permitted to continue and therefore, seeks quashment of proceedings as is done by a co-ordinate Bench.

10. On the other hand, at the outset, the learned Central Government Standing Counsel appearing for the 2nd respondent/Directorate of Revenue Intelligence ('DRI') would

submit that the decision of co-ordinate Bench was a judgment rendered without hearing DRI, as DRI was not even represented to bring the facts before the Court. The allegations against the petitioners are very serious concerning economy and security of the nation and, therefore, the matter should be heard on its merits as the Company and the present director were all part of the decision making to switch off the radio tampering alert and therefore, the cargo would pass muster without scanning.

10.1. He would submit that the investigation revealed that seals supplied by Company were not tamper proof and had tampering rate as high as 10% in a single day and the Company has consciously and unanimously taken a decision to switch off the feature to detect tampered e-seals in various ports and it had provided false data/report in respect of result of reading e-seals and had submitted a wrong data report to the Government even after knowing that such declaration was false and nations security was at threat. He would submit that it is a matter of investigation.

10.2. The learned Central Government Standing Counsel would contend that steps are being taken to file necessary application to recall the order passed by the co-ordinate Bench. As per the records, the DRI had not even been notified before rendering the judgment by the co-ordinate Bench. He would further emphasize that revenue loss is one among the possibilities arising out tampering of seals, but the major concern is the risk to the national security as maritime containers need to be secure and locked to prevent pilferage and tampering of the goods while on its way to its destination. Seal integrity, according to the learned counsel, is so essential to ensure that contraband goods – arms, ammunition and drugs - are not crossing the borders.

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

12. The afore-narrated facts are not in dispute and are therefore, not reiterated. The Company was in-charge of manufacture of RFID e-seals and tampering alert was in the control of the Company in which the 2nd petitioner is the Director. It

becomes germane to notice the Circulars issued by Government of India in the Department of Revenue of the Central Board of Excise and Customs with regard to the export procedure and sealing of containerized cargo from time to time. The Circular of 01-07-2017 with regard to sealing of containers reads as follows:

> ***"9(vii) The exporter shall seal the container with the tamper proof electronic seal of standard specification. The electronic seal should have a unique number which should be declared in the Shipping Bill. Before sealing the container, the exporter shall feed the data such as name of the exporter, IEC code, GSTIN number, description of the goods, tax invoice number, name of the authorized signatory (for affixing the e-seal) and Shipping Bill number in the electronic seal. Thereafter, the container shall be sealed with the same electronic seal before leaving the premises.***
>
> *viii. The exporter intending to clear export goods on self clearance (without employing a Customs Broker) shall file the Shipping Bill under digital signature.*
>
> ***ix. All consignments in self-sealed containers shall be subject to risk based criteria and intelligence, if any, for examination/inspection at the port of export. At the port/ICD as the case may be, the customs officer would verify the integrity of the electronic seals to check for tampering if any, enroute. The Risk Management System (RMS) is being suitably revamped to improvise the interdiction/examination norms. However, random or intelligence based selection of such containers for examination/scanning would continue.***
>
> *10. Board has decided that the above revised procedure regarding sealing of containers shall be effective from 1.09.2017. A future date has been prescribed since the returns under GST have been permitted to be filed by 10.09.2017 and also with the purpose*

*to give enough time to the stakeholders to adapt to the new procedures. Therefore, as a measure of facilitation, the existing practice of sealing of the container with a bottle seal under Central Excise supervision or otherwise would continue. The extant circulars shall stand modified on 1-09-2017 to the extent the earlier procedure is contrary to the revised instructions given in this circular.*

*11. Suitable public notices may be issued in this regard. Difficulty faced, if any, may be brought to the notice of the Board."*

*(Emphasis supplied)*

Electronic sealing was implemented on 28-08-2017 for containers by exporters under self-sealing procedure prescribed. Clauses of the circular which are germane are extracted hereunder for the purpose of quick reference and they read as under:

*"4. <u>Application, Record Keeping and Data Retrieval System:</u>*

*(a) It is clarified that the information sought from the exporter in para-9 (vii) of the circular 26/2017 – Customs shall now be read as –*

- *IEC (Importer Exporter Code)*
- *Shipping Bill Number*
- *Shipping Bill Date*
- *e-seal number*
- *Date of sealing*
- *Time of sealing*
- *Destination Customs Station for export.*
- *Container Number.*
- *Trailer – Truck Number.*

*It is further clarified that the information need not be mounted "<u>in the electronic seal"</u> but tagged to the seal using a 'web/mobile application' to be provided by the vendor of the RFID seals. Data once uploaded by the exporter should not be capable of being overwritten or edited.*

***(b) All vendors will be required to transmit information in para (a) above to RMD and the respective destination ports/ICDs of export declared by the exporter. The arrangements for transmission of data may be worked out in consultation with the RMD and nodal Customs Officer at each ICD/Port.***

***(c) Al vendors shall be required to make arrangements for reading/scanning of RFID one–time-Bolt seals at the Customs Ports/ICDs at their own cost, whether through handheld readers or fixed readers.***

*(d) The integrity of the RFID seal would be verified by the Customs Officer at the port/ICD by using the reader-scanners which are connected to Data Retrieval System of the vendor.*

*(e) Since all ICDs/ports where containerized cargo is handled would require reader scanners, Principal Commissioners or Commissioners exercising administrative control over such ports/ICDs shall notify the details of the nodal officers for te smooth operation of this system.*

*(f) The transaction history of the self-sealing should be visible to the exporters for their reference.*

*(g) The vendor shall also undertake to integrate the information stored on the data retrieval server with ICEGATE at his own cost on a date and manner to be specified by the Directorate General of Systems, New Delhi.*

***5. <u>The new self-sealing procedure shall come into effect from 1-10-2017</u>. Till then the existing procedure shall continue. All field formations are advised to immediately notify an officer of the rank of Superintendent to act as the nodal officer for the self-sealing procedure. He shall be responsible for coordination of the arrangements for installation of reader-scanners, whether fixed or hand-held."***

*(Emphasis supplied)*

Further, a circular comes to be issued only with regard to RFID tamper proof, one-time-bolt containers seals and the clauses that are germane in the said circular dated 20-09-2017 are as follows:

> *"3. In order to ensure that electronic seals deployed are of a reliable quality, the Board has adopted international standards laid down under ISO 17712:2013 for high security seals and prescribed that vendors intending to offer RFID seals should furnish certifications required under the ISO standard (para-3 of Circular No.36/2017 dated 28-08-2017 refers).*
>
> *3.1. To ensure uniformity in acceptance of the certificates submitted by vendors, required under ISO 17712:2013, it has been decided that all vendors proposing to offer RFID Tamper Proof One-Time Bold Container Seals to exporters for self-sealing, must submit self-attested certificates from seal manufacturers to the Director (Customs) CBEC, North Block, New Delhi before commending sales. Where the certification is found to comply with the requirements of the ISO standard, the names of such vendors shall be put up on the Board's website (www.cbee.gov.in) for ease of reference of the trade and field formations, as soon as they are received.*
>
> *3.2. The vendors shall also produce a contract or communication between the vendor and manufacturer, to serve as a link document and undertake that the seals for which ISO certifications are submitted are the same seals pressed into service.*
>
> *3.3.Any time a vendor changes his manufacturer-supplier, he shall provide the documentation referred in para-3 of circular 36/2017 Customs to the CBEC, before offering the seals for sale.*
>
> *3.4. Certifications have also been sought regarding the type/specification of the web-hosted application. While each vendor may develop and design their own web-enabled application, the data elements prescribed under para-4 (a) of Circular 36/2017-Customs have to be incorporated. For the purposes of consistency in process of communication with the customs station and the RMD, each vendor shall provide information as specified in para-4(b) of Circular 36/2917-Customs to the department* ***by email in excel***

***format or any other format that may be specified by any field formation or RMD****. This would permit ease of consolidation of multiple feeds at the customs station and data integration. All field formations are devised to communicate the designation based email addresses to the vendors, once the list of placed on the website as mentioned at para 3.1 above.*

***3.5. As a measure of data integrity and security of sealing, vendors are also required to ensure that the Tag Identification (TID) number is captured in their data base and the IEC code of the exporter is linked to the same at the time of sale of the seals. Upon reading at the Port/ICD, the software application shall ensure that the seal's identity is checked with its TID. Beyond this prescribed minimum feature, vendors will remain free to build upon any other features of RFID system for enhancing security/functionalities."***

*(Emphasis supplied)*

On 23-10-2018 the Competent Authority flagged certain concerns with regard to the electronic seals used on export containers. Those concerns were communicated to the companies one of whom was the 1st petitioner/Company. The concerns were as follows:

*"2. On the basis of the above mentioned letter, the JNCH, Nhava Sheva has undertaken the testing/ examination of e-seal of following two vendors who are procuring the RFID e-seals from M/s Leghorn Group, Italy:*

*i. M/s IB Track Solutions Pvt.Ltd.,Bengaluru.*
*ii. M/s Great Eastern Id Tech Pvt.Ltd.,Gurgaon, Haryana.*

***3. The examination revealed that in case of M/s IB Track Solutions Pvt.Ltd., Bengaluru RFID reader can read the e-seal data (export data tagged with e-seal) without***

***locking the male and female parts of the e-seal. Similarly, in case of M/s Great Eastern ID Tech Pvt. Ltd., Gurgaon, Haryana, it was informed by their Business Development Manager that their company's e-seal can also be read without locking the male and female parts of the e-seal. Additional Director General, DRI, Mumbai has also corroborated the findings of the JNCH, Nhava Sheva.***

***4. The reports of JNCH, Nhava Sheva and ADG, DRI have been critically examined. The RFID e-seals provided/ supplied by M/s Leghorn Group, Italy have been found to have not complied with the security requirements. This being a serious security issue, it has been decided that the use of the RFID e-seals procured from the M/s Leghorn Group, Italy is not permitted till further orders. In addition to the above mentioned two vendors, M/s Leghorn Group, Italy is also supplying RFID e-seals to M/s Perfect RFID Technologies Ltd.***

***5. In view of the above, you are directed not to sell RFID e-seals procured from M/s Leghorn Group, Italy to the exporters till further orders and recall the sold but not used RFID e-seals immediately from the exporters to whom it has been sold."***

*(Emphasis supplied)*

The communication was clear that the DRI has critically examined RFID e-seals supplied by M/s Leghorn Group, Italy and they have been found to be compromising in security requirements and was a serious issue and therefore, stopped all seals made by M/s Leghorn Group. Later, the crime come to be registered and a search is made in the office of the Company and at the time the seals are seized and were sent to their examination where it was found that

since March 2018 the testing commenced and approximately 832 seals of the Company were faulty. The tamper status of the seals was covered up as the tamper alarm had been switched off.

13. Statements of the 2nd petitioner/accused No.2 and one Sri.Arjun Gorur were recorded by the Investigating Officer. The statements recorded by the Investigating Officer of the DRI of the 2nd petitioner assume significance. In the statement recorded what are clearly discerned are found in questions 15 to 24 and they read as follows:

> ***"Q.15: How & why did you switch off Tamper alert Notifications without any directions from any Department or any legal directions?***
>
> ***Ans.15: We had switched off the Tamper alert Notifications on our own by making changes in the back end software since these e-seals were sub-standard and were not as per the prescribed stipulations. As detailed in the said e-mail correspondence, we were aware that there were various cases pointed out by the Customs Department where broken seals are being read as Non Tampered. We could not keep hiding from the issue being caused by the seals procured by us. The switching off of Tamper alert Notifications from 4th June, 2018 was a temporary measure till the issues are addressed by M/s Leghorn, but unfortunately, we were still getting such seals and till date no alternative operations have been finalized, as clearly mentioned in the said email.***

***Q.16:*** ***When the Tamper alert Notifications is off, can you identify the e-seals which are tampered with? Can the Customs Department identify the tampered e-seals when the alert Notifications off?***

***Ans.16****: We can identify the e-seals which are tampered with even though the Tamper alert Notifications are switched off from the back end. But the Customs Department cannot identify this because the Tamper alert Notifications is off.*

***Q.17****: Please peruse the Print outs of Emails taken from your dump of Email id (sudhendra@ibtrack.net) taken during the Mahazar dated 24-10-2018 sent from abhilash@ibtrack.net to sudhendra@ibtrack.net & venu@ibtrack.net regarding Tamper Report and offer your comments on the same?*

***Ans.17****: I have perused the print out of above referred emails and affixed my dated signature on them as a proof of having perused the same. In this regard, I would like to inform that the email contain daily/periodic report of number of e-seals tampered.*

***Q.18****: Please refer to your reply to Q.12 above. You have stated that the percentage of tampered seals is about 10% during the period September, 2018. This fact was known to you. Does the Customs Department know about this fact? Have you informed the Customs Department or anyone else about such switching off of Tamper alert Notifications or about such tampered e-seals not coming to the knowhow of the Customs?*

***Ans.18:*** ***The Customs Department does not know about this fact since we had switched off the Tamper alert Notifications. Further, we had not informed the Customs Department or anyone else in the Government or anyone else, about such switching off of Tamper alert Notifications or about such tampered e-seals not coming to the knowhow of the Customs.***

***Q.19:*** *From the above, it appears that consignments with e-seals, shown as not tampered have been exported out of India, but the e-seals were actually tampered as per your records, during this period. Please confirm.*

***Ans.19:*** ***The e-seals were tampered as per our records but they were shown as not tampered as per Customs records, and such consignments have been exported out of India during the period from June 2018 to October, 2018.***

***Q.20:*** ***Who took the decision of switching off of the Tamper alert Notifications on your known?***

***Ans.20:*** ***Our entire Board of Directors are aware of this decision and it was a decision by the Board.***

***Q.21****: Is there any written communication between you and the Customs Department or any other Department about such turning off of the Tamper alert Notifications?*

***Ans.21****: No, there is no written communication between us and the Customs Department or any other Department about such turning off.*

***Q.22:*** *It is possible to show that the tampered e-seals were also non-tampered, by manipulating the reader, your software or the server?*

***Ans.22****: Yes by manipulating the reader or the software, we can show that even tampered e-seals are not tampered. Server only stores these data and any manipulation of the server will not help this purpose.*

***Q.23****: Please submit the complete details of the e-seals tampered as per your data but not so as per Customs, because of such Switching off of Tamper alert Notifications, along with the details of the containers, part of exports, details of consignments, the customers and suppliers of the said consignments.*

***Ans.23:*** *I do not have these details readily available with us but I understand to submit the details to you by 2.11.2018.*

***Q.24:*** *Do you have anything more to say?*

***Ans.24:*** ***I hereby admit that M/s IB Track Solutions Pvt. Ltd. has intentionally turned off the Tamper Notifications that will generally be sent to the Customs and the Exporters on detection of tampering of e-seals by the readers at ports as there were technical issues with the e-seals procured by us from Leghorn Group and supplied to various customers. This was done considering the business interest of M/s IB Track Solutions Pvt. Ltd."***

*(Emphasis added)*

To question No.15 of the Investigating Officer, the admission is, the Company had switched off the tamper alert notifications on its own by making changes in the back end software since e-seals were sub-standard and were not as per the prescribed stipulations. Yet again, to question No.20 answering the question with regard to who took the decision of switching off tamper alert notifications, the answer is that the entire Board of Directors are aware of the said decision and it was a decision by the Board. Again at question No.24, the answer of the 2nd petitioner is that he admits that the Company had intentionally turned off the tamper notifications which will generally be sent to the Customs and the Exporters on detection of tampering of e-seals. This was done considering the

business interest of the Company. With these admissions in the statement rendered by the 2nd petitioner, the contention of the learned counsel appearing for the petitioners that the 2nd petitioner has got nothing to do with the issue pales into insignificance. If all the members of the Board - Directors, Managing Director and every other member - were aware of the deliberate switching off tampering signals, it cannot be said that the Company alone is responsible. The Directors or the Managing Director, as the case would be, were also responsible for their acts and the entire Board was aware of what has happened.

14. Such containers passing muster without getting scanned through the customs can result in a catastrophic effect to the security of the nation. Security could be economic, defence or even narcotic. What passes through the container if not detected can definitely pose a serious threat to any of these to the nation. The answers given by the 2nd petitioner would shock the conscience of the Court, at what he says that "**they did it in their business interest**". Such business houses generating vested interest of business cannot be permitted to '**sacrifice the interest of the nation**', as the security of the nation and its interest, economic or

otherwise, is paramount in comparison to any vested interest of any business house in the nation. Any fact of security of the nation should not be permitted to be compromised '**come what may**'.

15. The petitioners are alleged of compromising security of the container which contains what ought to be known to the Department, if not known and would passes muster, even if it is a narcotic drug, the menace of the threat looms large in that sector or that facet. Therefore, finding no merit in the contention that nothing has happened for the last 3 years and a co-ordinate Bench obliterating the proceedings against accused No.3 are of no assistance to the learned counsel appearing for the petitioners. The issue in the *lis* is shrouded with admissions and certain seriously disputed questions of fact, which will have to be thrashed out only in a full blown proceeding. It is rather surprising as to why the DRI has not proceeded further and filed its final report is a serious matter of the kind. It is for the DRI to conclude the investigation, if not already concluded and take the proceeding to its logical end. Reference being made to the judgment of the Apex Court in the

case of ***KAPTAN SINGH v. STATE OF UTTAR PRADESH***[1] becomes apposite. The Apex Court holds as follows:

> ***"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 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC 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 IPC and even the learned Magistrate also took the cognizance.*** *From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] 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 CrPC 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 a 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 Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai*

[1] ***(2021) 9 SCC 35***

*Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] 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 exercise the powers like an appellate court. It is further observed and held that 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.***

*9.2. In Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC. Similar view has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.*

*9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in*

*quashing the criminal proceedings in exercise of powers under Section 482 CrPC.*

*10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.*

*11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC*

*with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.*

***12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.***

*13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.*

*14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise*

*of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."*

*(Emphasis supplied)*

16. In the light of the facts obtaining in the case at hand and the judgment of the Apex Court *(supra)*, I do not find any merit to interfere or interdict the investigation, against the petitioners, as any interference would amount to putting a premium on the acts of the petitioners, for having compromised the security of the nation, which act *sans* countenance.

17. In the result, the Criminal Petition lacking merit, is dismissed.

Consequently, I.A.No.1/2022 also stands dismissed.

**Sd/-**
**JUDGE**

bkp/CT:MJ