
(2016) 11 RAJ CK 0055

In the Rajasthan High Court

Case No : Criminal Misc. (Pet.) (Crlmp) No. 613 of 2014

Tribhuvan Raj Bhandari

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, Section 179, Section 181, Section 482

Citation : (2017) CriLJ 852

Hon'ble Judges : Mr. P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. S.K. Vyas, A.A.G. with Mr. V.S. Rajpurohit, P.P, for the Respondent/State; Mr. Tribhuvan Raj Bhandari, Advocate, for the Petitioner Present in Person.

Final Decision : Disposed Off

Judgement

Mr. P.K. Lohra, J. - Complainant-petitioner has laid this misc. petition under Section 482 Cr.P.C. seeking necessary directions against investigating agency to conduct fair and impartial investigation into FIR No.580/2013, registered at Police Station Mahamandir, Jodhpur. Alternatively, it is prayed that investigation may be transferred to CBI.

2. In a nutshell, the facts of the case are that, on 09.10.2013, petitioner-complainant filed a criminal complaint before Additional Chief Judicial Magistrate No.3, Jodhpur (for short, "learned trial Court") against twenty-nine persons without disclosing identity of anyone of them. In the complaint, Dr. A.C. Muthiya, Chairman of M/s. First Leasing Company of India Ltd. (for short, "Company"), was arrayed as accused No.1 besides other accused persons. The apposite facts averred in the complaint are as follows:

3. It is averred in the complaint that the Company is a public limited company, incorporated under the Companies Act, enjoying status of Non-Banking Financial Institution (NBFI) under Section 45-IA of the Reserve Bank of India Act, 1934. A

Memorandum of Association (MOA) of the Company, dilating the basic aims and objects of the Company by its promoters, essentially highlighting its leasing and hire purchase business, which includes machinery, equipments, motor-vehicles, houses, cinema theatres, livestock, ships, aeroplanes etc. so also their resale and other ancillary business thereto. That apart, the MOA also projected the aims and objects of the Company for production of electric energy, transmission, sale, supply, distribution and other ancillary projects. A fact is also incorporated in the MOA that shares of the Company are enlisted with Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) and any investor can purchase and sale shares of Company in open market. Being enlisted company with BSE and NSE, it has sufficiently demonstrated general reputation of the Company in public at large. The complainant has also furnished details about eleven Directors including the Chairman in the complaint and also made an attempt to refer Section 217 of the Companies Act for showing their obligations as Directors of the Company. That apart, the individuals named in the complaint with their respective status in the Company and their legal obligations are also incorporated in the complaint. While adverting to culpability of the accused-persons, it is specifically averred in the complaint that those in helm of affairs of the Company and its auditors projected its lucrative financial status vis-a-vis other companies by citing its gross total NPA level as 2% at above 7% (Banks and NBFCs) and vis-a-vis Company's gross NPA at 0.5%. With this booming financial status, it is also averred in the complaint that Company has availed credit facility from 14 banks to the tune of Rs. 1200 crores. The complaint further unfolds that those in helm of affairs of the Company, by projecting embellished version of its financial status, accumulated a huge amount to the tune of Rs. 1500 crores from different sources; viz., public and right issue of shares, loan instruments (debentures) etc. In order to attract and induce the investors, the persons in helm of affairs of the Company, also indicated the value of the shares over and above its intrinsic value periodically. The requisite figures from year 1974 to 2010 are also mentioned in the complaint in ascending orders. The complainant has specifically pleaded that all the figures showing share value of the Company in ascending order were manipulated and maneuvered by the Directors of the Company and, those who are in helm of affairs of the Company while camouflaging the actual value of share which was far below. As per version of the complainant, entire record including Balance-sheets, Profit & Loss Accounts, reports of Board of Directors, flow of funds, declaration of dividends, ratings and track record were tampered with and manipulated for showing pseudo progress and enhancement in its capital. This sort of situation allured the investors to make maximum investment in the Company for deriving future profits.

4. The complainant has specifically pleaded in his complaint that he started investment in the Company from year 2011 through his Demat Account No.12013700-00292894 of his Jodhpur residential address and in the interregnum period from 2011 to 2013, he purchased shares of the Company

worth Rs. 1.75 crores approximately. With a view to show his allegations against the accused persons, named in the complaint, and their criminal delinquency, it is submitted that entire investment in purchase of shares of the Company was made by him entirely on the basis of Balance-sheet, Profit & Loss Account, financial status and credit ratings published in newspapers, magazines and displayed through electronic and digital media. As such, according to the complaint, the petitioner was induced by accused-persons for making such huge investment in purchase of shares.

5. It is narrated with clarity and precision in the complaint that on 21st of August, 2013 Reserve Bank of India started inspection of the accounts of the Company and pursuant thereto notice under Section 45N of the Act was issued to it. During inspection carried out by the Reserve Bank of India from 26th August 2013 to 1st of September 2013, RBI made endeavour to inspect Balance-sheets, ledger accounts and other books of the Company and thereupon issued stern directions to the Managing Director of the Company on 4th of September, 2013 on following terms :-

"the data dumps of loan/lease assests scrutinized as a part of the inspection indicates an overstatement of assets as well as earnings?."

6. A further direction was issued to the Managing Director to recast Balance-sheet and Profit & Loss Account of the Company for the year ending on 31st of March, 2013 and next quarter ending on 30th of June, 2013. In response to the directions of RBI, Balance-sheet and Profit & Loss Account of the Company were re-casted showing substantial diminution under the head "Stock on Hire" inasmuch as earlier assets under this head were shown as 1588.35 crores and after recasting the value of assets was reduced to Rs. 30.5219 crores only. This sort of situation, as per complainant, clearly and unequivocally indicates that Balance-sheet has shown worth of the assets under the head "Stock on Hire" 52% higher than the actual worth of the assets. On the strength of these figures, the petitioner has castigated the accused-persons for practising fraud with investors and charged them for syphoning public money with ill-motive. Similar example is also quoted with respect to the figures shown in Balance-sheet for "Net Lease Investment" as well as "Loan & Advances" and "Intangible Assets", which are also substantially reduced after recasting of Balance-sheets and Profit & Loss Accounts of the Company pursuant to directions issued by RBI.

7. Besides that, complaint also discloses that the Company has disclosed value of its assets approximately Rs. 1676 crores, more than the actual value of the assets as certified by the Reserve Bank of India.

8. Attributing role of the accused persons in this serious bungling, petitioner has pleaded in the complaint that it is a clear case of fraud and financial scam by the accused persons for their wrongful gains by causing wrongful loss to the investors including the petitioner.

9. The petitioner has also charged the accused-persons for the offence of

criminal breach of trust for syphoning property of investors. The petitioner has also exposed other misdeeds of the accused-persons to show their criminal delinquency by stating in the complaint that Company's profits are falsely shown towards higher side by distributing dividends @ 35% per annum instead of 18% to the investors. This entire manipulation and maneuvering was carried out by the accused-persons in a calculated manner keeping themselves behind the curtains to grab huge amount to the tune of Rs. 1500 crores.

10. Referring to Section 217 (2AA) of the Companies Act, the petitioner has also averred in the complaint that issuing requisite certificate by the Board of Directors of Company about accounting standards is sufficient to prove their active involvement in commission of offence under various Sections of Indian Penal Code. The complaint also indicates that, in this entire fraud, besides the Directors other office bearers of the Company were also involved, and therefore, they are also liable to be prosecuted.

11. The complainant, in order to substantiate the allegations, has also reproduced the text of order dated 13th of September, 2013 issued by Reserve Bank of India, addressed to the Managing Director of the Company, which reads as under:-

"The Inspection Revealed that the company has been over several years falsifying its books of accounts and other financial statements, thereby portraying a positive net worth. The Company has negative Net Owned Fund (NOF) and has been incurring losses year on year. The company has also been violating the reserve bank's regulations and reporting false information in its regulatory returns."

12. Pursuant to aforesaid order of the Reserve Bank of India, the Company was also restrained from alienating its properties (assets) and was further directed not to enter into future business transactions, owning any responsibility, declaring dividend and its distribution.

13. With all these allegations, the complainant has further reiterated that all the Directors of the Company and the accused persons, who were in helm of affairs of the Company including internal and external/Statutory and Tax Auditors, who are accused No.17 to 21, have acted dishonestly, which clearly tantamount to serious criminal offences. Similar allegations are also made against Credit Rating Agencies accused No.22 to 28. In totality, the complainant on the strength of all these admitted facts has depicted active role and participation of Chairman and Directors of the Company in paralyzing internal control system which sufficiently demonstrate their criminal delinquency. A relevant fact of challenging the action initiated by Reserve Bank of India against the Company, impugned by accused No.2 Managing Director of the Company before Madras High Court, which proved abortive, is also pleaded in the petition. For clarifying this fact, it is pleaded in the complaint that Managing Director of the Company preferred a writ petition against the action of Reserve Bank of India before Madras High Court, which was

registered as Writ Petition No.25961 of 2013 but later on the said petition was dismissed as withdrawn. That apart, in the latter part of the complaint, the allegations are further reiterated by the complaint to prove nexus of all the incumbents who are named as accused for committing serious criminal offences.

14. The complaint of the petitioner is entertained by the learned trial Court and while resorting to sub-section (3) of Section 156 Cr.P.C., the learned trial Court ordered to SHO, Police Station, Mahamandir for investigation into the matter. Pursuant thereto, on 11th of November, 2013, FIR No.280 of 2013 for offences punishable under Sections 420, 406, 467, 468, 471, 477A, 120-B IPC and Sections 68, 217, 292A, 628 of the Companies Act, 1956 was registered.

15. In order to ventilate his afflictions against investigating agency, it is alleged in the petition by petitioner that since lodging of FIR no apposite fair investigation has taken place till date. It is averred that accused persons are highly influential persons having strong political and other connections, who with width of their might are thwarting the entire investigation. Petitioner has specifically pleaded that the accused persons are adopting one or other iniquitous tactics and means are trying to hamper and throttle just, fair and dispassionate action in the matter. In substance, the petitioner has ventilated his grievances against investigating agency for its soft paddling and tardy action to unearth truth in respect of multi-crore financial scam. Highlighting the misdeeds of accused persons in syphoning of the funds of general public and investors throughout India, the petitioner has pleaded that criminal delinquency of the accused persons for the aforesaid offences requires fair and impartial investigation with promptitude by issuing necessary directions in the matter.

16. In the written submissions, respondent, while skipping all the facts pleaded in the petition, has averred that during investigation statements of complainant were recorded and the documents submitted by him were also taken on record. Respondent has also stated in the written submissions that a notice under Section 91 Cr.P.C. was sent to the accused persons through E-mail as well as registered post for soliciting their response and pursuant thereto one Company, viz., Carrier Rating, submitted its reply on 29th of November 2013. A fact regarding issuance of letter dated 08.03.2014 by investigating agency to the Director SEBI is also incorporated in the reply. In the letter addressed to SEBI, informations are sought regarding details of cases if any registered against the delinquent company and actions taken by SEBI in this behalf.

17. The written submissions by the State were followed by additional submission. In Additional Submissions, the State, while deviating from its earlier stand, has projected a different version. As per Additional Submissions, after commencing investigation, it was revealed to the investigating agency that offence has not been committed within the jurisdictional limit of Jodhpur and therefore, the investigating agency taking shelter of territorial jurisdiction of the agency has submitted negative final report in the matter before the learned trial Court on 30th of January 2016.

18. Mr. Tribhuvan Raj Bhandari, petitioner appearing in person, submits that objection of the investigating agency about territorial jurisdiction in the matter is per se an afterthought and therefore necessary directions are required to be issued to the investigating agency for further investigation in the matter. Mr. Bhandari would contend that the State in its earlier submissions has not raised any objection about jurisdiction but topsy turvy to the same in additional submissions has raised this objection which clearly indicates that the entire matter has been hushed up in a slipshod manner for the reasons best known to investigating agency. It is strenuously urged that submission of negative final report on the anvil of jurisdiction by the investigating agency is in clear negation of sub-section (4) of Section 181 Cr.P.C. and therefore the necessary reliefs craved for are liable to be granted to the petitioner. Petitioner has vehemently argued that conducting fair and impartial investigation is mandated by Section 156(3) Cr.P.C. and investigating agency is not expected to throttle the investigation at its whims and fancies on jejune ground of jurisdiction. Lastly, humble petitioner has urged that mere submission of final report in the matter would not divest exercising inherent jurisdiction to pass appropriate order for securing ends of justice.

19. To substantiate his arguments, petitioner has placed reliance on following legal precedents:

- * Rasiklal Dalpatram Thakkar v. State of Gujarat & Ors. [(2010) 1 SCC 1]
- * State of Punjab v. Central Bureau of Investigation & Ors. [(2011) 9 SCC 182]
- * V.K. Sasikala v. State represented by Superintendent of Police [(2012) 9 SCC 771]
- * Amitbhai Anilchandra Shah v. Central Bureau of Investigation & Anr. [(2013) 6 SCC 348].
- * Subrata Chatteraj v. Union of India & Ors. [(2014) 8 SCC 768].
- * Dharampal v. State of Haryana [2016 Cr.L.R. (SC) 321]
- * Lee Kun Hee & Ors. v. State of U.P. & Ors. [2012] 4 SCR 287.
- * Punjab & Haryana High Court Bar Association v. State of Punjab & Ors. [(1994) 1 SCC 616].

20. Per contra, learned Addl. Advocate General with learned Public Prosecutor Mr. V.S. Rajpurohit submits that in view of submission of final report in the matter before learned trial Court, no directions are required to be issued in the matter and the petition has gone infructuous. Learned Addl. Advocate General would urge that the investigating agency has thoroughly examined complaint of the petitioner during investigation under sub-section (3) of Section 156 Cr.P.C. and has found that no offence as such has been committed within its jurisdiction, which entailed submission of negative final report in the matter, is sufficient to non-suit the petitioner. Lastly, learned Addl. Advocate General has urged that as

per sub-section (4) of Section 181 Cr.P.C. the investigating officer is having no jurisdiction to investigate in the matter and in absence of commission of any cognisable offence within territorial jurisdiction no interference in the matter is warranted.

21. I have given my thoughtful consideration to the rival contentions and examined the materials available on record threadbare.

22. In the backdrop of peculiar facts and circumstances of the instant case, it is apposite to appreciate the tribulations of the petitioner with a pragmatic approach. The endeavour of the petitioner, by laying this petition, is to seek necessary directions against investigating officer for conducting fair and impartial investigation in the matter. Undeniably, the criminal justice system of the Country is based on bulwark of a fair and impartial investigation. A solemn duty is cast on the police to prevent and detect crime and to bring the accused to justice. If there is any lapse on the part of police in discharge of its duty, or it comes to the fore that approach of the police is lackadaisical or partisan, Court is empowered to issue directions by exercising inherent jurisdiction.

23. The facts, pleaded in the complaint, which was sent for investigation by the learned trial Court under sub-section (3) of Section 156 Cr.P.C., are glaring in order to expose criminal delinquency of the accused persons for serious cognisable offences. An objective explication of the alleged misdeeds of the accused persons has, prima facie, persuaded the Court to believe that accused persons have hitherto manipulated and maneuvered the Balance-sheets, Profit & Loss Accounts, financial status and credit ratings of the Company for syphoning funds of general public and investors throughout the Country. Projection of false and fabricated figures in Balance-sheets and Profit & Loss Accounts, with a view to allure investors, is a clear case of fraud and financial scam of high amplitude. Directions issued by RBI to the Managing Director of the Company, to recast Balance-sheets and Profit & Loss Accounts of the Company and taking certain coercive measures against it, are ex-facie indicative of the fact that all the accused persons were in connivance to promote their personal interests at the cost of huge investments made by investors.

24. Apparently, it is a case of causing wrongful loss to the investors for wrongful gains of the incumbents, who were in helm of affairs of the Company. A multi-crore alleged financial scam showing criminal delinquency of the accused persons in the complaint is sought to be unearthed by the petitioner complainant, a shareholder of the company through his complaint.

25. While it is true that a Company registered under the Companies Act is a legal person, separate and distinct from its individual members, its property is not the property of the shareholders. A shareholder has merely interest in the company, arising under its Article of Association, measured by a sum of money for the purpose of liability and by a share in the profit. As such, a shareholder may not be entitled to complain about infringement of rights of the Company but this

right of a shareholder in the event of substantial reduction in the value of his investment in shares, seizure of his right to receive dividend from investment, can obviously furnish him ground to initiate action against those who are responsible in dwindling the financial status of the Company or the Managing Director, Directors and other office bearers who are in helm of affairs of the Company.

26. Now adverting to the instant case, wherein the petitioner, a shareholder, has attributed criminal delinquency against Managing Director, Directors and other incumbents of the Company, who were in helm of affairs of the Company, unquestionably, his right to criminally prosecute the erring individuals, is duly recognised in our criminal jurisprudence.

27. In the backdrop of these facts, when the petitioner realized that investigation pursuant to his complaint, which culminated into FIR, is progressing at snail's pace, anticipating unforeseeable situation, laid this petition before this Court.

28. On 12th of March 2014, Court was pleased to issue notice and the learned Public Prosecutor accepted the notice on same day but prayed to defer the matter for filing reply. Subsequently, reply was filed by the State and after submission of reply when the matter again came up on board on 27th of August, 2015, the Court after hearing rival submissions issued directions in presence of Commissioner of Police, Jodhpur and passed following order:

"In pursuance of direction issued by this Court, the Commissioner of Police, Jodhpur is present in person and submits that proper investigation will be conducted within reasonable time and report will be submitted to this Court.

The Commissioner of Police is seeking four months" time to complete the investigation because thorough investigation is required upon the FIR filed by the complainant.

In view of above, four months" time is hereby granted to the Commissioner of Police to finalise the investigation and produce the outcome before this Court.

List the matter on 05.01.2016."

29. It appears that despite seeking four months" time by the investigating agency, investigation was not completed in the matter and therefore on 18th January 2016, the Court, after perusing the case diary, passed following order:

"On 27.08.2015, a direction was issued upon request made by Commissioner of Police, Jodhpur to complete the investigation because investigation was pending for long time.

Today, the Investigating officer present in person submits that some more time may be granted to complete the investigation.

After perusing the case diary and assurance given by the investigating officer, I deem it appropriate to list this matter on 10.03.2016 and it is expected from the

investigating officer that on that date, the investigation will be completed and outcome will be produced before this Court. It is also expected that thorough investigation will be conducted by the investigating officer so as to reach to the conclusion for the allegation levelled by the complainant in the FIR.

List the matter on 10.03.2016."

30. Thereafter, learned Public Prosecutor sought time to file additional submissions in the matter, which were submitted on 27th of September 2016. In the interregnum, on 21st of July, 2016 learned Addl. Advocate General informed the Court that investigating officer has already submitted final report before the concerned Court.

31. The submission of final report in the matter precisely on the ground of jurisdiction obviously gave a big jolt and blow to the petitioner in achieving his cherished mission/goal. This changed scenario and its possible ramification on the entire matter has brought plea of the respondent that petition has gone infructuous. Indisputably, this sort of situation, which has come to the fore during pendency of the petition, has acquired significance and cannot be underplayed. However, keeping in view the fact that instant petition is pending before this Court since 2014 and indulgence has been granted by the Court, the grounds for submission of negative final report by the investigating agency merits judicial scrutiny by this Court. It may be observed here that the negative final report is essentially founded on jurisdiction not touching the alleged criminal delinquency of the accused persons named in the complaint, and therefore, I feel persuaded to examine the matter in light of legal precedents on which the petitioner has placed heavy reliance.

32. In *Rasiklal Dalpatram Thakkar* (supra), Supreme Court, upon harmonious construction of Section 156(3) and Section 181(4) Cr.P.C., pleased to observe that a Magistrate can issue direction for investigation under Section 156(3). On jurisdiction of territorial limit, for inquiry or trial under Section 181(4), the Court held:

"25. As far as the reference made to subsection (4) of Section 181 is concerned, the same appears to be misconceived having regard to the contents thereof which reads as follows:

"181. Place of trial in case of certain offences.-(1)-(3) * * *

(4) Any offence of criminal misappropriation or of criminal breach of trust may be enquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

Sub-section (4) only indicates that an inquiry or trial of an offence of criminal misappropriation or criminal breach of trust can be conducted by a court within whose jurisdiction the offence had been committed or any part of the property

forming the subject-matter of the offence is received or retained or was required to be returned or accounted for by the accused person. The said provisions do not account for a stage contemplated on account of an order made under Section 156(3) CrPC.

26. In the instant case, the stage contemplated under Section 181(4) CrPC has not yet been reached. Prior to taking cognizance on the complaint filed by the Bank, the learned Chief Metropolitan Magistrate, Ahmedabad had directed an inquiry under Section 156(3) CrPC and as it appears, a final report was submitted by the investigating agency entrusted with the investigation stating that since the alleged transactions had taken place within the territorial limits of the city of Mumbai, no cause of action had arisen in the State of Gujarat and therefore, the investigation should be transferred to the police agency in Mumbai. There seems to be little doubt that the Economic Offences Wing, State CID (Crime), which had been entrusted with the investigation, had upon initial inquiries recommended that the investigation be transferred to the police agency of Mumbai."

33. In *State of Punjab (supra)*, Supreme Court, while adverting to the inherent powers of High Court under Section 482 Cr.P.C., held that in exercise of such powers, Court can order fresh investigation or reinvestigation under Section 173(8) Cr.P.C. even after filing of challan or charge-sheet by the police for securing ends of justice.

"20. Sub-section (1) of Section 173 CrPC provides that every investigation by the police shall be completed without unnecessary delay and sub-section (2) of Section 173 provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Under subsection (2) of Section 173, a police report (charge-sheet or challan) is filed by the police after the investigation is complete.

21. Sub-section (8) of Section 173 states that nothing in the section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge-sheet or challan has been filed by the police under sub-section (2) of Section 173, the police can undertake further investigation but not fresh investigation or reinvestigation in respect of an offence under sub-section (8) of Section 173 CrPC.

22. Section 482 CrPC, however, states that nothing in CrPC shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under CrPC or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Thus, the provisions of CrPC do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order of the court or to prevent the abuse of any process of the court or otherwise to secure the ends

of justice. The language of subsection (8) of Section 173 CrPC, therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 CrPC for fresh investigation or reinvestigation if the High Court is satisfied that such fresh investigation or reinvestigation is necessary to secure the ends of justice.

23. We find support for this conclusion in the following observations of this Court in *Mithabhai Pashabhai Patel v. State of Gujarat* (AIR 2009 SC (Supp) 1658) cited by Mr. Dhavan: (SCC p. 337, paras 13 & 15)

"13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar* (AIR 2008 SC 3102) opined as under: (SCC p. 415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation.

* * *

15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The precognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

24. It is clear from the aforesaid observations of this Court that the investigating agency or the court subordinate to the High Court exercising powers under CrPC have to exercise the powers within the four corners of CrPC and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge-sheet has been filed under sub-section (2) of Section 173 CrPC and such further investigation will not mean fresh investigation or reinvestigation. But these limitations in sub-section (8) of Section 173 CrPC in a case where charge-sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 CrPC for securing the ends of justice."

34. In *V.K. Sasikala* (supra), Supreme Court has although concluded that Courts

have minimum role for interference during investigation but duly acknowledged power of a Court under Section 172(2) and observed that the plenary power conferred on the High Courts by Article 226 of the Constitution are adequate safeguards to ensure conduct of a fair investigation. The Court held:

"The parameters governing the process of investigation of a criminal charge, the duties of the investigating agency and the role of the courts after the process of investigation is over and a report thereof is submitted to the court is exhaustively laid down in the different Chapters of the Code of Criminal Procedure, 1973 (CrPC). Though the power of the investigating agency is large and expansive and the courts have a minimum role in this regard there are inbuilt provisions in the Code to ensure that investigation of a criminal offence is conducted keeping in mind the rights of an accused to a fair process of investigation. The mandatory duty cast on the investigating agency to maintain a case diary of every investigation on a day-to-day basis and the power of the court under Section 172(2) and the plenary power conferred in the High Courts by Article 226 of the Constitution are adequate safeguards to ensure the conduct of a fair investigation."

35. In *Amitbhai Anilchandra Shah (supra)*, the Supreme Court on Administration of Criminal Justice, while acknowledging right of an accused for fair and speedy trial has duly recognised such right of the victim. The Court held:

58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognisable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognisable offences. As a consequence, in our view this is a fit case for quashing the second FIR to meet the ends of justice.

58.10. The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same.

36. In *Subrata Chatteraj (supra)*, Supreme Court has taken note of some facts indicating towards promises made by the chit fund company to its investors, almost akin to the present case, and observed:

11. An interim forensic audit report submitted to SEBI by Sarath & Associate, Chartered Accountants on 27-2-2014 sums up in the following words, the background in which the schemes are floated and the public defrauded:

"The company M/s. Saradha Realty India Ltd. was involved in financial fraud involving in an attempt to deliberately mislead the general public by announcing dubious money multiplier schemes. It has also indulged in misleading the financial status of the group companies by incorrect disclosures in the financial statements in an attempt to deceive financial statement users and regulatory authorities.

The investors lured to extraordinary returns is typically attributed to something that sounds impressive but is intentionally vague, such as hedge fund in land, resorts, tours and travel plans, high yield investment programmes.

Typical to the Ponzi schemes the investors who are economically very poor have invested relatively small amounts such as Rs. 100 and wait to see if the promised returns are paid. After one month the investor received maturity amounts, so the investor truly believes she has earned the promised return. What the investor doesn't realise is that Rs. 100 was a RETURN OF THE INVESTMENT AND NOT A RETURN ON THE INVESTMENT. In other words, the Rs. 100 return came from the Rs. 100 principal initially invested or from a newly-recruited investor, rather than from any profits generated by the investment opportunity. After a second month yields another Rs. 100 payment, the investor is "hooked" and typically will invest larger amounts in the scheme and will enthusiastically inform friends and family members about this "fantastic" investment opportunity.

Since these early investors have actually received the promised returns, their promotion of the investment comes across as genuine and instils an almost irresistible urge in friends and family members to invest as well.

If pressed by sceptical investors for more detail, the promoters typically evade answering the question and instead talk about how recently recruited investors have been receiving the promised returns.

Since little of the victims' funds are actually invested into a legitimate profit-generating activity, the scheme continued for only as long as the cash inflows to existing investors. However, as the number of investors grown rapidly, the pool of new investors unavoidably shrinks. At one point, the cash flow situation collapsed resulting in four possible outcomes: (1) the investment promoters disappear, taking remaining investment money with them; (2) the scheme collapsed of its own weight, and the promoters have problems paying out the promised returns and, as the word spread, more people start asking for their money creating a run-on-the-bank situation; (3) the investment promoters turn themselves in and confess."

12. The Report suggests that the investors were promised very high returns by way of interest rate ranging from 10% to 18%. The said returns promised to the depositors were, according to the Report, too good to be true. The Report also suggests that a very large number of "agents base" was created by the companies to extend the reach of these companies. For Saradha Realty India Ltd. itself as many as 2,21,000 agents were working, who were paid an unreasonably

high brokerage of 30% of the instrument which became the driving force for the agents to go that extra mile to collect as much as possible. The Report indicates that investments that matured for payment were paid out of the cash collected from new members which was opposed to the normal business norms in which returns ought to be paid out of profits earned in the business. Besides, the cash collections were neither accurately shown in the books of accounts, nor did the bank accounts reveal the details of such cash collections.

13. The Report states that the company had no real intention of doing any legitimate business activity and the money collected from the public was spread over 160 companies and spent away or syphoned off. No major revenue was seen to be generated by any group company. The companies had opened too many bank accounts for round tripping transactions for the monies collected by them. Apart from as many as 218 branches spread over several States including West Bengal, Odisha, Bihar, Assam and other States the companies had as many as 347 bank accounts in 15 banks in the name of the Group Companies. The bank accounts were opened at the location of branches enabling deposit of the cash into accounts. The daily cash collected less expenses, was deposited at branch account and the money pooled and transferred to other accounts as per CMD's instructions and utilised to issue the cheques.

14. The Report also points out violation of the Securities and the Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961. It also points out fraudulent certification, noncompliance with accounting standards, material misstatement of facts and gross negligence on the part of the statutory auditors."

37. Thereafter, the Supreme Court proceeded to summarize the principles concerning power of the Court to direct CBI to take up investigation and held:

"35. The factual narrative given in the foregoing paragraphs clearly establishes the following:

35.1. That financial scam nicknamed chit fund scam that has hit the States of West Bengal, Tripura, Assam and Odisha involves collection of nearly Rs. 10,000 crores (approx.) from the general public, especially the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam.

35.2. That investigation so far conducted suggests that the collection of money from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high returns/promised to the depositors.

35.3. That more than 25 lakh claims have so far been received by the Commissions of Enquiries set up in the States of Odisha and West Bengal which is indicative of the magnitude of scam in terms of number of citizens that have been defrauded by the Ponzi companies.

35.4. That the companies which indulge in Ponzi schemes have their tentacles in different States giving the scam inter-State ramifications. That such huge collections could have international money laundering dimensions cannot be ruled out and needs to be effectively investigated.

35.5. That investigation so far conducted reveals involvement of several political and other influential personalities wielding considerable clout and influence.

35.6. That the role of regulators like SEBI, authorities under the Companies Act and Reserve Bank of India is also under investigation by the State Police Agency which may have to be taken to its logical conclusion by an effective and independent investigation.

36. The question is whether the above features call for transfer of the on-going investigation from the State Police to CBI. Our answer is in the affirmative. Each one of the aspects set out above in our view calls for investigation by an independent agency like the Central Bureau of Investigation (CBI). That is because apart from the sensitivity of the issues involved, especially inter-State ramifications of the scam under investigation, transfer of cases from the State Police have been ordered by this Court also with a view to ensure credibility of such investigation in the public perception. Transfers have been ordered by this Court even in cases where the family members of the victim killed in a firing incident had expressed apprehensions about the fairness of the investigation and prayed for entrusting the matter to a credible and effective agency like CBI.

37. Investigation by the State Police in a scam that involves thousands of crores collected from the public allegedly because of the patronage of people occupying high positions in the system will hardly carry conviction especially when even the regulators who were expected to prevent or check such a scam appear to have turned a blind eye to what was going on. The State Police Agency has done well in making seizures, in registering cases, in completing investigations in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not whether the State Police has faltered. The question is whether what is done by the State Police is sufficient to inspire confidence of those who are aggrieved.

38. While we do not consider it necessary to go into the question whether the State Police have done all that it ought to have done, we need to point out that money trail has not yet been traced. The collections made from the public far exceed the visible investment that the investigating agencies have till now identified. So also the larger conspiracy angle in the States of Assam, Odisha and West Bengal although under investigation has not made much headway partly because of the inter-State ramifications, which the investigating agencies need to examine but are handicapped in examining.

39. M/s. Vaidyanathan and Gopal Subramaniam, learned counsel for the States of West Bengal and Odisha respectively argued that CBI itself has in a great measure lost its credibility and is no longer as effective and independent as it

may have been in the past. Similar sentiments were expressed by Mr. P.V. Shetty appearing on behalf of some of the investors and some other intervenors, who followed suit to pursue a similar line of argument.

40. There is, in our opinion, no basis of the apprehension expressed by the State Governments. It is true that a lot can be said about the independence of CBI as a premier investigating agency but so long as there is nothing substantial affecting its credibility it remains a premier investigating agency. Those not satisfied with the performance of the State Police more often than not demand investigation by CBI for it inspires their confidence. We cannot, therefore, decline transfer of the cases only because of certain stray observations or misplaced apprehensions expressed by those connected with the scam or those likely to be affected by the investigation."

38. In *Dharampal (supra)* Supreme Court has reiterated the principle that even after commencement of trial Constitutional Courts can direct for further investigation or re-investigation by some other agency by resorting to Section 173(8) Cr.P.C. The Court held:

"20. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor."

39. In *Lee Kun Hee & Ors (supra)*, Supreme Court has examined Section 179 and 181(4) Cr.P.C. in conjunction with Section 182 Cr.P.C. more particularly in relation to offence of cheating through communications/letters/messages and concluded that the Court within whose jurisdiction the said communications/letters/messages were sent (or were received), would be competent to inquire into and try the same. The Court held:

"In view of the aforesaid deliberations it is not legitimate for the appellants to contend that the actions attributed by JCE Consultancy to the accused have no connectivity to territorial jurisdiction in India. Section 179 of the Code of Criminal Procedure vests jurisdiction for inquiry and trial in a court, within whose jurisdiction anything has been done with reference to an alleged crime, and also, where the consequence of the criminal action ensues. Section 181(4) of the Code of Criminal Procedure leaves no room for any doubt, that culpability is relatable even to the place at which consideration is required to be returned or accounted for. Finally, Section 182 of the Code of Criminal Procedure postulates that for offences of which cheating is a component, if the alleged act of deception is

shown to have been committed through communications/letters/messages, the court within whose jurisdiction the said communications/letters/messages were sent (or were received), would be competent to inquire into and try the same. Thus viewed, it is not justified for the appellants to contend that the allegations levelled by the complainant against the accused, specially in respect of the five appellants herein, are not relatable to territorial jurisdiction in India under the provisions of the Code of Criminal Procedure."

40. In Punjab & Haryana High Court Bar Association (supra), Supreme Court, upon consideration of some glaring facts, wherein an advocate was allegedly abducted and murdered with his wife and child, set aside the order passed by the High Court dismissing the PIL and directed for handing over investigation to independent agency even after submission of charge-sheet. The Court held:

9. We are conscious that the investigation having been completed by the police and charge-sheet submitted to the court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and to instill confidence in the public mind it is necessary, in our view, to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI).

10. We, therefore, direct the CBI to take up the investigation of the case FIR No. 10 dated October 8, 1993 under Sections 364/302/201 IPC and 3/4/5 TADA (P) Act, Police Station Rupnagar, District Ropar with immediate effect. We further direct the Senior Superintendent of Police, Ropar and the Station House Officer, Police Station Rupnagar to assist the CBI in conducting the investigation. The CBI shall exercise all the powers available to it under the Criminal Procedure Code and any other provision of law. The State of Punjab through its Home Secretary is further directed to provide all assistance to the CBI in this respect.

11. We direct the Director, CBI to depute a responsible officer to hold the investigation as directed by us. This may be done within one week from the receipt of this order. The CBI shall complete the investigation within three months from the date of receipt of this order by the Director and submit its report in accordance with law. The proceedings before the Additional District and Sessions Judge, Ropar, shall remain stayed till March 31, 1994. The appeal is, thus, disposed of.

41. The legal position which has emerged out, from the above referred authoritative judicial pronouncements, clearly and unequivocally indicate that jurisdiction of a Court to make inquiry or trial of a case requires threadbare examination as per Section 179 and Section 181 Cr.P.C. Sub-section (4) of Section 181 Cr.P.C. envisages with clarity and precision that any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused persons. The

glaring facts of the case are an eye opener and therefore it is rather difficult to permit investigating agency to close the case on the ground of jurisdiction. A vital fact about the status of the petitioner as shareholder receiving dividend or other communications/letters/messages at Jodhpur, within the jurisdiction of learned trial Court, are some of the important aspects which require judicial scrutiny. 42. Be that as it may, the fact remains that final report/conclusions have been submitted by the investigating agency before the learned trial Court, this Court not being abreast with the reasons assigned by the investigating agency for showing its inability to investigate the matter, deem it just and appropriate to dispose of the petition with following directions:

1. The learned trial Court is directed to consider the protest petition (if any, laid on behalf of the petitioner), against the negative final report, submitted by the investigating agency, objectively strictly in accordance with law.
2. It is further directed that the learned trial Court is required to examine the negative final report solely based on jurisdiction in accordance with Section 181(4) Cr.P.C. after considering materials collected by the investigating agency and reasons assigned for refraining to investigate the matter on the ground of jurisdiction.
3. The issue relating to jurisdiction is required to be decided by the learned trial Court in the light of law propounded by the Supreme Court in the authoritative pronouncements in *Rasiklal Dalpatram Thakkar* (supra) and *Lee Kun Hee & Ors* (supra) in the backdrop of facts and circumstances of the instant case.
4. The petitioner shall be at liberty to lay appropriate application before learned trial Court for summoning of any document or for further investigation in the matter strictly in adherence of law.
5. The learned trial Court is expected to consider the protest petition dispassionately uninfluenced by the observations made supra, strictly in accordance with law.