IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

HON'BLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION No.15847 OF 2024

Between:

Kalvakuntla Taraka Rama Rao, ……...Petitioner

vs.

The State ACB, CIU, Hyderabad and another, ……. Respondents

DATE OF COMMON ORDER PASSED**:** **07.01.2025**

SUBMITTED FOR APPROVAL.

THE HON'BLE SRI JUSTICE K.LAKSHMAN

1 Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No

2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3 Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

JUSTICE K.LAKSHMAN

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD
CORAM:
*** HON'BLE SRI JUSTICE K. LAKSHMAN**

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% Delivered on: 07-01-2025
Between:
Kalvakuntla Taraka Rama Rao, .. Petitioner
Vs.
$ The State ACB, CIU, Hyderabad
and another. .. Respondents

! For Petitioner : Mr. Siddharth Dave, Ld.Sr.Counsel
Representing. Mr.A.Prabhakar Rao,
Ld.Counsel

For Respondents : Mr. A.Sudharshan Reddy,
Ld.Adv.General representing
Mr. T.Bala Mohan Reddy,
Ld.Standing Counsel for ACB
Mr.C.V.Mohan Reddy,
Ld.Sr.Counsel
rep. Mr.Tera Rajinikanth Reddy,
Ld.Addl.Adv.General

Gist :
> Head Note :
? Cases Referred :

1. (1999) 6 SCC 667
2. 1967 SCC OnLine SC 58
3. (2021) 18 SCC 70
4. 2024 SCC OnLine SC 2995
5. 1928 SCC OnLine Bom 102
6. (2002) 1 SCC 241
7. (2008) 2 SCC 561
8. (2010) 10 SCC 547
9. (2023) 3 SCC 423
10. (2023) 15 SCC 135
11 (2024) 10 SCC 690
12. (2009) 10 SCC 660
13. (2013) 1 SCC 205
14. 1992 Supp (1) SCC 335
15. (2016) 6 SCC 310
16. (2021) 2 SCC 427

17. (2021) 19 SCC 401
18. (1999) 3 SCC 259
19. (2003) 6 SCC 175
20. (2010) 11 SCC 374
21. (2002) 10 SCC 667
22. (2024) 10 SCC 527
23. (2023) 4 SCC 338

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No. 15847 of 2024

ORDER

The present criminal petition is filed under Section 528 of the Bharatiya Nagrik Suraksha Sanhita (hereinafter 'BNSS') seeking to quash the criminal proceedings arising out of Crime No. 12/RCO-CIU-ACB/2024 dated 19.12.2024 registered by Respondent No. 1 (hereinafter 'ACB') under Sections 409 r/w 120B of the Indian Penal Code (hereinafter 'IPC') and Sections 13(1)(a) r/w 13(2) of the Prevention of Corruption Act, 1988 (hereinafter 'PCA').

2. Heard Mr. Siddharth Dave, learned Senior Advocate representing Mr. A. Prabhakar Rao, learned advocate appearing for the Petitioner. Also, heard Mr. A. Sudarshan Reddy, learned Advocate General representing Mr. T. Bala Mohan Reddy, learned Standing Counsel for the ACB i.e., Respondent No. 1 and Mr. C.V. Mohan Reddy, learned Senior Advocate representing Mr. Tera Rajinikanth Reddy, learned Additional Advocate General appearing for Respondent No. 2.

FACTS OF THE CASE:

3. The impugned criminal proceedings i.e., Crime No. 12/RCO-CIU-ACB/2024 (hereinafter 'FIR') was registered based on the complaint lodged by Respondent No. 2 (hereinafter 'complainant'). It is relevant to note that the complainant herein is the current Principal Secretary to the Government of Telangana, Municipal Administration & Urban Development (hereinafter 'MA & UD') department.

4. As per the complaint, the allegations leveled against the petitioner herein are as follows:-

The Petitioner herein was the erstwhile Minister of the MA & UD department and on his initiative, the Government of Telangana decided to host a car racing event titled 'FIA Formula E Championship' in Hyderabad city. Initially, a tripartite agreement dated 25.10.2022 was entered into between M/s Formula E Operations Ltd. (hereinafter 'FEO'), the MA & UD department, Government of Telangana and M/s Ace Nxt Gen Private Ltd. (hereinafter 'ACE'). As per the terms of the said tripartite agreement, it was agreed that ACE would be the promoter of the event and would be obligated to make payments to FEO as per Schedule IV of the agreement. The MA & UD department was to act as a host and provide all the civic

amenities. Further, the said tripartite agreement contemplated conducting four events in Hyderabad i.e., one event each in Seasons 9, 10, 11 and 12. The total fee agreed for Seasons 9 and 10 was £ 90,00,000/- ((ninety lakh Great British pounds, hereinafter referred to 'GBP'only).

5. Season 9 of the said car race was conducted successfully. However, as per the complaint and the Office Note dated 14.12.2023 referred to in the complaint, ACE backed out as the promoter and the name of Hyderabad did not feature in the list of cities hosting an event in Season 10. Therefore, it is alleged that the Petitioner herein had discussions with the officials of FEO to get the Government of Telangana to act as a promoter/host and conduct an event for Season 10 in Hyderabad. In furtherance of these talks, allegedly, the Petitioner herein 'telephonically' directed the Hyderabad Metropolitan Development Authority (hereinafter 'HMDA') to act as a promoter and host the event. As per the complaint, the Metropolitan Commissioner, HMDA had put a file before the Petitioner herein on 27.09.2023 seeking approval of the draft agreement in which HMDA was shown as the promoter, administrative sanction for payment of £90,00,000/- (ninety lakh GBP) in addition to Rs. 50,00,00,000/-

(rupees fifty crores only) was also sought along with the permission to pay the first installment of £22,50,000/- (twenty-two lakhs GBP). It is alleged that the Petitioner herein approved the said file.

6. As the Petitioner approved the file, HMDA remitted the first installment of £ 22,50,000/- (twenty-two lakhs fifty thousand GBP) on 03.10.2023 and a second installment of £ 22,50,000/- (twenty-two lakhs fifty thousand GBP) on 11.10.2023 through Indian Overseas Bank, Himayat Nagar Branch. After the above-said payments were made, FEO addressed an email dated 27.10.2023 terminating the initial tripartite agreement dated 25.10.2022. In the said email, ACE was also informed that FEO and the MA & UD department will enter into a new agreement to host and conduct Seasons 10 to 12.

7. Accordingly, a new agreement dated 30.10.2023 was entered into between FEO and MA & UD department. The agreement was to conduct race events in Hyderabad city for Seasons 10 to 12. It is pertinent to note that HMDA was not a party to the said agreement. In this regard, it is alleged that the Model Code of Conduct was in operation owing to the State assembly elections. Therefore, the agreement dated 30.10.2023 could not have been entered into.

8. It is further alleged that HMDA was made to pay the huge sums of money even before the agreement dated 30.10.2023 was entered into. Likewise, HMDA was made to make the said payments, however, it was not made a party to the agreement dated 30.10.2023. The foreign remittances caused HMDA an additional tax burden of Rs. 8,06,75,404/- (rupees eight crores six lakh seventy-five thousand four hundred and four only). Further, the total amounts remitted to FEO came down to Rs. 54,88,87,043/- (rupees fifty-four crores eighty-eight lakhs eighty-seven thousand and forty-three only). HMDA cannot spend more than Rs. 10,00,00,000/- (rupees ten crore only) without obtaining administrative sanction from the Government and the finance department. However, the Petitioner, abusing his authority and without obtaining the necessary sanctions, directed HMDA to make such payments.

9. It is also alleged that the agreement dated 30.10.2023 makes a financial commitment of Rs. 600,00,00,000/- (rupees six hundred crores only) along with additional recurring expenditure for the next three years. This according to the complaint is in violation of Secretariat Business Rules, the Telangana State Finance Code and Article 299 of the Constitution of India. Allegedly, the tripartite

agreement dated 25.10.2022 and the new agreement dated 30.10.2023 were entered into without any sanction from the Governor authorizing the then Special Chief Secretary to enter into such agreements.

10. After the assembly elections, a new Government came to be formed in the State of Telangana and they were served with an arbitration notice by FEO alleging breach of the agreement dated 30.10.2023. Apparently, it is then, that the new Government noticed the irregularities and the alleged loss caused to the State exchequer.

11. It is further alleged that the Petitioner herein and the other accused i.e., Mr. Arvind Kumar, the then Special Chief Secretary, MA & UD department and Mr. B.L.N. Reddy, the then Chief Engineer, HMDA have conspired to cause loss to the State and a consequential gain to third parties.

12. With the said allegations, 2nd respondent requested 1st respondent to take action against the petitioner and other accused.

13. Based on the abovementioned complaint of 2nd respondent, 1st respondent registered the impugned FIR against the petitioner herein and other accused for the aforesaid offences punishable under Sections 409 r/w 120B of the IPC and Sections 13(1)(a) r/w 13(2) of the PCA.

CONTENTIONS OF THE PETITIONER

14. The Petitioner contended that none of the ingredients of the alleged offences are made out. In relation to Section 409 of the IPC, it was specifically argued that, there is no 'entrustment' of 'public money' in an elected legislator like the Petitioner. Therefore, the complaint lacks the primary ingredient of criminal breach of trust. In this regard, reliance was placed on the decision in **Common Cause v. Union of India**[1], **State of Gujarat v. JaswantlalNathalal**[2], **N. Raghavender v. State of Andhra Pradesh**[3] and **HDFC Bank v. State of Bihar**[4].

15. It was also contended that there are no allegations of dishonest intention and misappropriation as required under Section 409 of the IPC. The Petitioner relied on **Lala RaojiMahale v. Emperor**[5], **S.W. Palnitkar v. State of Bihar**[6], **Onkar Nath Mishra v. State (NCT of Delhi)**[7], **Asoke Basak v. State of Maharashtra**[8], **Deepak Gabha v. State of U.P.**[9], **Usha Chakraborty v. State of**

[1](1999) 6 SCC 667
[2]1967 SCC OnLine SC 58
[3](2021) 18 SCC 70
[4]2024 SCC OnLine SC 2995
[5]1928 SCC OnLine Bom 102
[6](2002) 1 SCC 241
[7](2008) 2 SCC 561
[8](2010) 10 SCC 547
[9](2023) 3 SCC 423

West Bengal[10] and **Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh**[11].

16. It was contended that the allegations, even if accepted, at best constitute irregular exercise of power de hors the dishonest intention. The same cannot constitute an offence. The Petitioner relied on **Sudhir Shanti Lal Mehta v. Central Bureau of Investigation**[12] and **C.K. Jaffer Sharief v. State**[13].

17. According to the Petitioner, the uncontroverted allegations in the impugned FIR do not constitute any of the alleged offences. Further, the FIR is politically motivated, malicious and constitutes abuse of process. In such cases, the trite law is to quash such an FIR. Reliance was placed on **State of Haryana v. Bhajan Lal**[14], **Ramesh Rajagopal v. Devi Polymers Pvt. Ltd.**[15], **Arnab Manoranjan Goswami v. State of Maharashtra**[16] and **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra**[17].

18. Further, the Petitioner contends that the allegation that third parties received benefits cannot be accepted as none of them have

[10](2023) 15 SCC 135
[11](2024) 10 SCC 690
[12](2009) 10 SCC 660
[13](2013) 1 SCC 205
[14]1992 Supp (1) SCC 335
[15] (2016) 6 SCC 310
[16](2021) 2 SCC 427
[17](2021) 19 SCC 401

been named in the FIR. Further, the Government has failed to take any action seeking recovery of the alleged losses.

19. No preliminary inquiry was conducted before lodging the FIR.

CONTENTIONS OF THE RESPONDENTS

20. According to the Respondents, the FIR is still at the stage of investigation and the same cannot be interfered with at this stage. Further, the powers under 528 of the BNSS have to be exercised rarely and not to scuttle a legitimate investigation. Reliance was placed on Neeharika Infrastructure (supra).

21. Also, it was contended by the Respondents that the FIR need not disclose all the ingredients of the alleged offences and that an FIR is not an encyclopedia. Reliance was placed on **Rajesh Bajaj v. State NCT of Delhi**[18] and **Superintendent of Police, CBI v. Tapan Kumar Singh**[19].

22. The Respondents reiterated the allegations in the complaint. They contended that the Petitioner herein conspired with the other accused to cause huge losses to the State exchequer which resulted in gains to third parties. Further, argued that the actions of the Petitioner

[18](1999) 3 SCC 259
[19](2003) 6 SCC 175

were contrary to the Business Rules and were without the sanction of the State Cabinet and against Article 299 of the Constitution of India. Relying on **M.R.F. Ltd. v. Manohar Parrikar**[20], it was contended that the compliance of Business Rules and Article 299 is mandatory and any decision contrary to the same is non-est.

23. Sri Siddharth Dave, learned Senior Counsel appearing for the petitioner and Sri A.Sudharshan Reddy, learned Advocate General representing Sri T.Bala Mohan Reddy, learned Standing Counsel for the 1st respondent and Sri C.V.Mohan Reddy, learned Senior Counsel representing Mr. Tera Rajinikanth Reddy, learned Additional Advocate General made their submissions extensively.

FINDINGS OF THE COURT

24. From the facts of the case, it is clear that the allegations against the Petitioner pertain to dishonest abuse of powers, acting contrary to the applicable procedures and business rules, misappropriating HMDA's money, causing loss to the State exchequer and causing gain to third parties. The alleged offences against the Petitioner are Section 409 of the IPC and Sections 13(1)(a) & 13(2) of the PCA.

[20](2010) 11 SCC 374

25. Before discussing whether the impugned FIR deserves to be quashed, it is pertinent to mention that the power to quash an FIR under Section 528 of the BNSS (which corresponds with the earlier Section 482 of the Code of Criminal Procedure) is limited and should be exercised rarely and only in cases where continuation of the investigation would result in abuse of process or miscarriage of justice. It is equally well settled that the investigating powers of the State cannot be usurped and this Court cannot scuttle investigation. Further, this Court cannot go into the correctness of the allegations and conduct a mini-trial while exercising its inherent power under Section 528 of BNSS.

26. In this regard, the following paragraphs of **Bhajan Lal (supra)** may be referred to:

> **102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list

of myriad kinds of cases wherein such power should be exercised.

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

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

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

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

> **103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.**

27. The decision in **Bhajan Lal (supra)** has been consistently applied and was reiterated in **Neeharika Infrastructure (supra)**. The relevant paragraph is extracted below:-

> **13.** From the aforesaid decisions of this Court, right from the decision of the Privy Council in *Khwaja Nazir Ahmad* [*King Emperor* v. *Khwaja Nazir Ahmad*, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18] , the following principles of law emerge:
>
> **13.1.** Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.
>
> **13.2.** Courts would not thwart any investigation into the cognizable offences.
>
> **13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.**
>
> **13.4.** The power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

> **13.13.** The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.
>
> **13.14.** However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in *R.P. Kapur* [*R.P. Kapur* v. *State of Punjab*, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and *Bhajan Lal* [*State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.
>
> **13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.**

28. Keeping the above law in mind, it is to be noted that the main thrust of the Petitioner's case is that Section 409 of the IPC is not made out against him. For the sake of convenience, Section 409 of the IPC is extracted below:

> **409. Criminal breach of trust by public servant, or by banker, merchant or agent**.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

29. According to Mr. Siddharth Dave, learned Senior Counsel, the essential ingredients of criminal breach of trust are entrustment of property or entrustment of dominion of property, dishonest intention and misappropriation of the said property. He contended that Ministers dealing with State largesse / public funds do not act as 'trustees' and that there is no 'entrustment' of public money in elected legislators. Therefore, according to him, a Minister like the present Petitioner cannot be charged with criminal breach of trust. He relies on the following paragraphs of the decision in **Common Cause (supra)**:

> **159.** **These observations indicate that the Court was of the opinion that a person on being elected by the people and on becoming a Minister holds a sacred trust on behalf of the people. This, we may venture to say, is a philosophical concept and reflects the image of virtue in its highest conceivable perfection. This philosophy cannot be employed for determination of the offence of "criminal breach of trust" which is defined in the Penal Code, 1860. Whether the offence of "criminal breach of trust" has been committed by a person has to be determined strictly on the basis of the definition of that offen**ce set out in the Penal Code to which we would advert a little later.
>
> **160.** The Court also appears to have invoked the "Doctrine of Public Trust" which is a doctrine of environmental law under which the natural resources such as air, water, forest, lakes, rivers and wildlife are public properties "entrusted" to the Government for their safe and proper use and proper protection. Public Trust Law recognises that some types of natural resources are held in

trust by the Government for the benefit of the public. The "Doctrine of Public Trust" has been evolved so as to prevent unfair dealing with or dissipation of all natural resources. This doctrine is an ancient and somewhat obscure creation of Roman and British law which has been discovered recently by environmental lawyers in search of a theory broadly applicable to environmental litigation.

161. This doctrine was considered by this Court in its judgment in *M.C. Mehta* v. *Kamal Nath* [(1997) 1 SCC 388] to which one of us (S. Saghir Ahmad, J.) was a party. Justice Kuldip Singh, who authored the erudite judgment and has also otherwise contributed immensely to the development of environmental law, relying upon ancient Roman "Doctrine of Public Trust", as also the work of Joseph L. Sax, Professor of Law, University of Michigan and other foreign decisions, wrote out that all natural resources are held in "trust" by the Government. **The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. But this doctrine cannot be invoked in fixing the criminal liability and the whole matter will have to be decided on the principles of criminal jurisprudence, one of which is that the criminal liability has to be strictly construed and offence can be said to have been committed only when all the ingredients of that offence as defined in the statute are found to have been satisfied.**

162. The matter may be examined from another angle.

163. Election to the State Legislature or the House of the People are held under the Constitution on the basis of adult suffrage. On being elected as a Member of Parliament, the petitioner was inducted as Minister of State. The Department of Petroleum and Natural Gas was allocated to him. Under the allocation of business rules, made by the President of India, the distribution of petroleum products, inter alia, came to be allocated to the petitioner. This allocation of business under the Constitution is done for smooth and better administration and for more convenient transaction of

business of the Government of India. In this way, neither a "trust", as ordinarily understood or as defined under the Trust Act, was created in favour of the petitioner nor did he become a "trustee" in that sense.

164. In *Tito* v. *Waddell (No. 2)* [(1977) 3 All ER 129] the question of the Crown's status as a trustee was considered and it was laid down:

"I propose to turn at once to the position of the Crown as trustee, leaving on one side any question of what is meant by the Crown for this purpose; and I must also consider what is meant by 'trust'. The word is in common use in the English language, and whatever may be the position in this Court, it must be recognised that the word is often used in a sense different from that of an equitable obligation enforceable as such by the courts. Many a man may be in a position of trust without being a trustee in the equitable sense; and terms such as 'brains trust', 'anti-trust', and 'trust territories', though commonly used, are not understood as relating to a trust as enforced in a court of equity. At the same time, it can hardly be disputed that a trust may be created without using the word 'trust'. In every case one has to look to see whether in the circumstances of the case, and on the true construction of what was said and written, a sufficient intention to create a true trust has been manifested.

When it is alleged that the Crown is a trustee, an element which is of special importance consists of the governmental powers and obligations of the Crown; for these readily provide an explanation which is an alternative to a trust. If money or other property is vested in the Crown and is used for the benefit of others, one explanation can be that the Crown holds on a true trust for those others. Another explanation can be that, without holding the property on a true trust, the Crown is nevertheless administering that property in the exercise of the Crown's governmental functions. This latter possible explanation, which does not exist in the case of an ordinary individual, makes it necessary to scrutinise with greater care the words and circumstances which are alleged to impose a trust."

165. Many earlier decisions were relied upon and with reference to an earlier decision reported in *Kinloch*v. *Secy.*

of State for India [(1880) 15 Ch D 1] it was observed as under:

"In the Court of Appeal, this decision was unanimously reversed. The court held that no trust, 'in the sense of a trust enforceable and cognizable in a court of law', has been created, despite the use of the word 'trust' in the Royal Warrant: see per James, L.J. Furthermore, the Secretary of State for India in Council, though by statute made capable of suing and being sued in that name, had not been made a body corporate.**All that had been done had been to provide that the Secretary of State for the time being should be the agent of the Crown for the distribution of the property.** James, L.J. regarded the consequences of holding that there was a trust enforceable in the courts as 'so monstrous that persons would probably be startled at the idea'. **He referred to matters such as the right of every beneficiary to sue for the administration of the trust and have the accounts taken, and 'imposing upon the officer of State all the obligations which in this country are imposed upon a person who chooses to accept a trust'**. He also emphasised the words at the end of the Royal Warrant as showing clearly that questions were to be determined, not by the courts, but by the Secretary of State, with an ultimate appeal to the Treasury, as advising the Queen. Baggallay and Bramwell, L.JJ. delivered concurring judgments, with the latter emphasising the 'monstrous inconvenience' and 'enormous expense of litigation' if there were a trust enforceable by the courts, so that 'one would be reluctant, even if the words were much stronger than they are, to hold that there is a trust'.

The House of Lords (*Kinloch* v. *Secy. of State for India*) [(1882) 7 App Cas 619 : 47 LT 133 (HL)] unanimously affirmed the Court of Appeal. In the leading speech, Lord Selborne, L.C. attached some weight to the words in the Royal Warrant being 'the Secretary of State for India in Council', and 'for the time being', instead of his being described by his personal name, as indicating that he was not intended to be a trustee in the ordinary sense, but was intended to act as a high officer of State. After discussing the Order in Council, Lord Selborne, L.C. quoted the part of

the Royal Warrant which contained the words 'in trust for the use of', and said:

'Now the words "in trust for" are quite consistent with, and indeed are the proper manner of expressing, every species of trust — a trust not only as regards those matters which are the proper subjects for an equitable jurisdiction to administer, but as respects higher matters, such as might take place between the Crown and public officers discharging, under the directions of the Crown, duties or functions belonging to the prerogative and to the authority of the Crown. In the lower sense they are matters within the jurisdiction of, and to be administered by, the ordinary courts of equity; in the higher sense they are not. What their sense is here, is the question to be determined, looking at the whole instrument and at its nature and effect.' "

(emphasis of this Court)

166. Applying the principles laid down above, the petitioner does not, on becoming the Minister of State for Petroleum and Natural Gas, assume the role of a "trustee" in the real sense nor does a "trust" come into existence in respect of the government properties.

167. This brings us to the definition of the offence of "Criminal Breach of Trust" as defined in Section 405 of the Penal Code, 1860 which, minus the Explanation, provides as under:

"405. *Criminal breach of trust*.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

168. A trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. **There has, therefore, to be a property belonging to someone which is entrusted to the person**

accused of the offence under Section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner. This is what has been laid in *State of Gujarat* v. *JaswantlalNathalal* [AIR 1968 SC 700 : (1968) 2 SCR 408] . In *Rashmi Kumar* v. *Mahesh Kumar Bhada* [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] the essential ingredients for establishing the offence of criminal breach of trust, as defined in Section 405, have been spelt out as follows: (SCC pp. 406-07, para 13)

"(*i*) entrusting any person with property or with any dominion over property; (*ii*) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust."

169. In this case, the earlier decision in *Pratibha Rani* v. *Suraj Kumar* [(1985) 2 SCC 370 : 1985 SCC (Cri) 180] was affirmed. The case essentially related to the entrustment of "Stridhan", but nevertheless, it is important in the sense that the ingredients of the offence are set out and discussed. In *ChelloorMankkal Narayan Ittiravi Nambudiri* v. *State of Travancore-Cochin* [(1952) 2 SCC 392 : AIR 1953 SC 478 : 1954 Cri LJ 102] it was laid down that every breach of trust in the absence of mens rea or dishonest intention cannot legally justify a criminal prosecution.

170. The expressions "entrusted with property" and "with any dominion over property" used in Section 405 came to be considered by this Court in *CBI* v. *DuncansAgro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045 : AIR 1996 SC 2452] and the view earlier expressed was reiterated. It was held that the expression "entrusted" has wide and different implication in different contexts and the expression "trust" has been used to denote various kinds of relationships like trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee.

171. **Mr K. Parasaran contended that "power to allot petrol pumps", and that too under discretionary quota, cannot be treated as "property" within the meaning of Section 405 of the Penal Code, 1860. It is pointed out by him that the Minister merely makes an order of allotment. Subsequently, the Indian Oil Corporation or the Bharat Petroleum Corporation enters into a dealership agreement with that person and the business is regulated by the agreement between the allottee and the Corporation (Indian Oil Corporation or Bharat Petroleum Corporation). It is also pointed out that in pursuance of the agreement, the allottee invests money, constructs the building and sets up the petrol pump. Mere exercise of "power to allot", it is rightly contended, cannot, therefore, be treated as "property" within the meaning of Section 405, capable of being misutilised or misappropriated.**

172. **The word "property", used in Section 409 IPC means the property which can be entrusted or over which dominion may be exercised. This Court in *R.K. Dalmia* v. *Delhi Admn*. [AIR 1962 SC 1821 : (1963) 1 SCR 253] held that the word "property", used in Section 405 IPC, has to be interpreted in a wider sense as it is not restricted by any qualification under Section 405. It was held that whether an offence defined in that section could be said to have been committed would depend not on the interpretation of the word "property" but on the fact whether that particular kind of property could be subject to the acts covered by that section. That is to say, the word "property" would cover that kind of property with respect to which the offence contemplated in that section could be committed.**

173. Having regard to the facts of the case discussed above and the ingredients of the offence constituting criminal breach of trust, as defined in Section 405, or the offence as set out in Section 409 IPC, we are of the opinion that there was no case made out against the petitioner for any case being registered against him on the basis of the judgment passed by this Court nor was there any occasion to direct an investigation by CBI in that case.

30. This Court cannot agree with the argument advanced by Mr. Dave and his reliance on **Common Cause (supra)**. The Hon'ble Supreme Court's reasoning in the said decision was that a minister appointed to distribute government property acts as an agent of the government. Such a minister acts in furtherance of a duty imposed on him to ensure smooth functioning and better administration. Therefore, there is no trust created in him to deal with public money.

31. Likewise, the English decisions relied upon by the Apex Court show that 'monstrous inconvenience' and 'enormous expense of litigation' were the reasons to hold that general public cannot sue the government for breach of trust. Another relevant fact in the said case was that the Court therein dealt with a case where the accused-minister therein misused the 'power to allot petrol pumps' under a discretionary quota. On examination of the facts of the said case, the Apex Court held that 'power to allot petrol pumps' cannot constitute property that can be misappropriated.

32. The decision in **Common Cause** (supra) is inapplicable to the facts of the present case. The Petitioner herein is alleged to abuse his authority to misappropriate HMDA's money. Therefore, it cannot

be said that the Petitioner was using public money of which there can be no entrustment. HMDA is a body corporate which can own property, enter into contracts, sue and be sued. The allegations in the FIR clearly state that it was HMDA's money which was misused. It is not in dispute that HMDA is under the control of MA & UD Department. The petitioner, being the Minister of MA & UD Department, has control over the HMDA, he has approved note before signing of the agreement. Therefore, prima facie, the funds belongs to HMDA were entrusted with the petitioner.

33. Also, in the present case, it is not a general member of the public who has filed a complaint alleging criminal breach of trust against the petitioner and other accused. He is a responsible officer of the Government who alleges that HMDA's money was misappropriated by the Petitioner in conspiracy with the other accused. Therefore, this Court cannot accept the contention that there was no 'entrustment'. The other allegations pertaining to dishonest intention and misappropriation are matter of investigation.

34. At this stage, it is apt to point out that the correctness of C**ommon Cause** (supra) was doubted by a Three Judge Bench of

Hon'ble Supreme Court in **Sheila Kaul v. Shiv Sagar Tiwari**[21]**.** However, in the said case, the Court left the correctness of the same to be decided by a Constitution Bench in an appropriate case. The relevant paragraph of the said judgment is extracted below:-

> 2. **On examining the impugned reviewed judgment reported in Common Cause (1999) 6 SCC 667: 1999 SCC (Crl) 1196), we, *prima facie*, do not agree with several conclusions on law, but since that judgment has been rendered by a Three Judge Bench, we cannot go into the question except referring the matter to a Constitution Bench.** But, having regard to the peculiar facts and circumstances of Smt. Kaul, who is stated to be old and ailing and the gross hardship of the case, we think it appropriate to quash the damages part of the impugned judgment which was awarded against Smt. Kaul. **We make it clear that the correctness of the reviewed judgment of this Court in Common Cause (1999) 6 SCC 667; 1999 SCC (Crl) 1196) can appropriately be considered in an appropriate case by a Constitution Bench**. We further make it clear that the direction to launch criminal prosecution on the basis of investigation by CBI is not being altered in any manner and if any criminal proceeding has already been instituted, that must take its own course on the material produced. This petition stands disposed accordingly.

35. The other offence alleged against the Petitioner is Section 13(1)(a) of the PCA. The same is extracted below:

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[21] (2002) 10 SCC 667

> **13. Criminal misconduct by a public servant**.— (1) A public servant is said to commit the offence of criminal misconduct,—
>
> (*a*) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
>
> (*b*) if he intentionally enriches himself illicitly during the period of his office.
>
> *Explanation 1*.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.
>
> *Explanation 2*.—The expression "known sources of income" means income received from any lawful sources.
>
> (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

36. As can be seen from the above provision, Section 13 of the PCA deals with criminal misconduct by a public servant. The essential ingredients of criminal misconduct are fraudulent or dishonest misappropriation or converting the property to one's own use. Further, such property needs to be entrusted to the public servant or such property should be in the public servant's control. From the facts, it is*prima facie* clear that HMDA's funds were under the control of the Petitioner. Whether the Petitioner dishonestly misappropriated the

same or not is a factual aspect to be investigated. Therefore, a *prima facie* case is made out against the Petitioner.

37. At this stage, this Court would like to advert to another reason why the allegations in the impugned FIR need to be investigated. Even if the contentions of the Petitioner are accepted and this Court reaches a conclusion that neither Section 409 of the IPC nor Section 13(1)(a) of the PCA are made out, the impugned FIR cannot be quashed. It is relevant to note that the FIR need not disclose any specific offence. The FIR should indicate that *prima facie* an allegation of commission of an offence exists and such an allegation requires an investigation. In other words, the uncontroverted allegations in the FIR should make out a *prima facie* case warranting an investigation. Further, allegations in the FIR may constitute offences which are not mentioned in the FIR. Where ingredients of the alleged offences are not satisfied, but the allegations constitute other offences, this Court cannot quash an FIR. For instance, in a given case the FIR may mention Section 405 of the IPC as the alleged offence. However, the allegations may not satisfy the requirements of Section 405, but may very well make out a *prima facie* case of Section 420 of the IPC or any other offence. In such cases, the Court cannot quash

the FIR. The Court under Section 528 of the BNSS is not required to see which particular offence is made out, it has to see whether the gravamen of allegations disclose commission of an offence. In this regard, the following paragraphs of **Somjeet Mallick v. State of Jharkhand**[22] are relevant:

> **15.** **Before we proceed to test the correctness of the impugned order, we must bear in mind that at the stage of deciding whether a criminal proceeding or FIR, as the case may be, is to be quashed at the threshold or not, the allegations in the FIR or the police report or the complaint, including the materials collected during investigation or inquiry, as the case may be, are to be taken at their face value so as to determine whether a prima facie case for investigation or proceeding against the accused, as the case may be, is made out**. The correctness of the allegations is not to be tested at this stage.
>
> **16.** To commit an offence, unless the penal statute provides otherwise, mens rea is one of the essential ingredients. Existence of mens rea is a question of fact which may be inferred from the act in question as well as the surrounding circumstances and conduct of the accused. As a sequitur, when a party alleges that the accused, despite taking possession of the truck on hire, has failed to pay hire charges for months together, while making false promises for its payment, a prima facie case, reflective of dishonest intention on the part of the accused, is made out which may require investigation. In such circumstances, if the FIR is quashed at the very inception, it would be nothing short of an act which thwarts a legitimate investigation.
>
> **17.** **It is trite law that FIR is not an encyclopaedia of all imputations. Therefore, to test whether an FIR**

[22](2024) 10 SCC 527

> **discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the court is not required to ascertain as to which specific offence has been committed.**
>
> **18. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the court, the court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.**
>
> **19.** No doubt, a petition to quash the FIR does not become infructuous on submission of a police report under Section 173(2)CrPC, but when a police report has been submitted, particularly when there is no stay on the investigation, the court must apply its mind to the materials submitted in support of the police report before taking a call whether the FIR and consequential proceedings should be quashed or not. More so, when the FIR alleges an act which is reflective of a dishonest conduct of the accused.

38. In the present case, the allegations indicate that the Petitioner herein without any approval from the State Cabinet or the finance department directed the HMDA to pay huge sums of money to a foreign company. Whether the Petitioner directed the said payments with a dishonest intention to cause gain to himself or third parties is required to be investigated. The allegations when read together make

out a *prima facie* case of wrong doing and misappropriation of funds of the HMDA. The same are enough to warrant an investigation.

39. Further, investigating agencies need to be given enough opportunity to investigate the allegations.

40. In **State v. M. Maridoss**[23], the Supreme Court dealt with a case where a petition to quash an FIR was filed on the very next day of the registration of FIR. The Court held that the High Court therein erred in quashing the FIR without giving opportunity to the investigating agency. The relevant paragraphs are extracted below:

> **10. It is also required to be noticed that in the present case without giving any reasonable time to the investigating agency to investigate the allegations in the FIR, the High Court has, in haste, quashed the criminal proceedings. The FIR came to be lodged on 9-12-2021, immediately, on the very next date, the quashing petition was filed and within a period of four days i.e. 14-12-2021, the impugned judgment and order [*M. Maridoss* v. *State*, 2021 SCC OnLine Mad 13703] has been passed and the criminal proceedings are quashed.**
>
> **11. As per the settled position of law, it is the right conferred upon the investigating agency to conduct the investigation and reasonable time should be given to the investigating agency to conduct the investigation unless it is found that the allegations in the FIR do not disclose any cognizable offence at all or the complaint is barred by any law.**
>
> **12.** Under the circumstances also, the impugned judgment and order [*M. Maridoss* v. *State*, 2021 SCC OnLine Mad 13703] passed by the High Court quashing

[23](2023) 4 SCC 338

> and setting aside the criminal proceedings deserves to be quashed and set aside.

41. In the present case too, the Complaint was lodged on 18.12.2024 and the FIR was registered on 19.12.2024. Immediately and on the very next day i.e., on 20.12.2024, the Petitioner herein filed the present criminal petition. The investigating agency should have a reasonable opportunity to investigate and collect evidence. Therefore, this Court cannot haste and thwart the investigation in the present case.

42. Once this Court holds that a *prima facie* case is made out, the other allegations pertaining to malice, absence of dishonest intention and misappropriation, failure to arraign the alleged third-party beneficiaries, etc. becomes a subject matter of investigation.

43. Needless to say, that the observations made in the order are only to decide the present petition.

44. In view of the aforesaid discussion, the present criminal petition is liable to be dismissed and is accordingly dismissed. The interim order dated 20.12.2024 stands vacated.

As a sequel, the miscellaneous applications, if any, pending in the present Criminal Petition, shall stand closed.

K. LAKSHMAN, J

Date:07.01.2025

Note: Issue CC today.

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