REPORTABLE

2025 INSC 1282

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.11336 OF 2022]

SADIQ B. HANCHINMANI ...APPELLANT

VERSUS

THE STATE OF KARNATAKA & ORS. ...RESPONDENTS

R1: THE STATE OF KARNATAKA

R2: CHNDRUMAL

R3: SANJAY

R4: NANDKUMAR

R5: VIJAY

WITH

CRIMINAL APPEAL NO. OF 2025

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2025]

[@DIARY NO.39619 OF 2022]

SADIQ B. HANCHINMANI ...APPELLANT

VERSUS

THE STATE OF KARNATAKA & ORS. ...RESPONDENTS

R1: THE STATE OF KARNATAKA

R2: MRS. VEENA

R3: MADHAV

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Delay condoned.

2. Leave granted in both petitions.

3. The instant criminal appeals, at the instance of the complainant, seek to assail the Final Judgments and Orders dated 18.11.2021 in CRLP No.100651/2018 [**2021:KHC-D:90**] (hereinafter referred to as the 'Second Impugned Order') and dated 24.07.2019 in CRLP No.100549/2018 [**2019:KHC-D:5908**] (hereinafter referred to as the 'First Impugned Order') passed by two learned Single Judges of the High Court of Karnataka, Bench at Dharwad (hereinafter referred to as the 'High Court'), whereby the High Court allowed the accused-private respondents' petitions under Section 482[1] of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), consequently quashing the Order dated 18.01.2018 passed by the learned Judicial Magistrate First Class-III Court, Belagavi (hereinafter referred to as the

[1] '***482. Saving of inherent powers of High Court.***—*Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*'

'JMFC'), insofar as it related to the respective accused-private respondents.

BRIEF FACTS:

4. The appellant-complainant lodged a private complaint *viz*. PCR No.1/2018 before the JMFC against the private respondents under Sections 120B, 201, 419, 471, 468 and 420 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

5. The appellant-complainant had filed a suit being O.S. No.43/2009 before the learned II Additional Senior Civil Judge, Belagavi, seeking a declaration that he is the owner in possession of the suit property as per oral gift by his father and also to declare the Sale Deed dated 03.02.2009 executed by his father Bashirahmad in favour of accused no.1 as illegal, void and not binding on him. It is relevant to note that Bashirahmad remained *ex-parte* since he did not contest the suit. The matter was heard and the suit came to be dismissed on 28.03.2013. Consequently, the appellant preferred an appeal being R.F.A. No.4095/2013 before the High Court. An interim application under Order

XLI Rule 5[2] read with Section 151[3] of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') was filed seeking stay of the operation of the Judgment and Decree dated 28.03.2013. *Vide* Order dated 03.06.2013, the High Court passed an interim order to maintain *status quo* regarding title and possession of the suit property, which was extended during the pendency of the appeal, but was subsequently vacated.

6. During the pendency of the afore-noted appeal, the appellant came to know that on 18.06.2015, Veena, (accused no.1) though in the F.I.R. her name is mentioned as Meena and her husband, along with others, broke open the lock put to the suit property without permission

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[2] '***5. Stay by Appellate Court.***—*(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.*

Explanation.—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by Court which passed the decree.—Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree.'

[3] '***151. Saving of inherent powers of Court****.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.*'

and trespassed into the same and started renovation/construction in the suit property. The appellant issued a Notice calling upon them to stop the renovation/construction work. The renovation/construction work was stopped. The appellant later came to know that, on 18.10.2015, accused nos.1 and 2 and others again broke open the lock put to the property and re-started the work. The appellant then filed an application under Order XXXIX Rule 2-A[4] read with Section 151 of the CPC, being I.A.No.1/2015 in R.F.A. No.4095/2013, seeking initiation of contempt proceedings against accused nos.1 and 4. Accused no.1 filed a reply to I.A.No.1 of 2015 and produced a document embossed as an E-Stamp Paper dated 20.05.2013, styled as a Rent Agreement and some rent receipts. The said Rent Agreement was executed by accused no.1 in favour of accused no.2.

7. The appellant filed an application before the Inspector General of Registration and Commissioner of Stamps, Bengaluru, Department of Stamps and Registration, Government of Karnataka, for getting a certified copy of the document, which was produced by the

[4] '***2-A. Consequence of disobedience or breach of injunction.***—*(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, of the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.*
(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.'

contemnor/accused no.1 before the Court in the first appeal, styled as a Rent Agreement. The appellant came to know that the said E-Stamp Paper was fake, as he obtained certified copy(ies) of the Stamp Paper bearing same serial number, which did not tally with the Stamp Paper that was produced before the High Court.

8. The Rent Agreement was executed by accused no.1 in favour of accused no.2, and the appellant alleges that it was *ante*-dated to show that it came into existence prior to the date of the *status quo* Order passed by the High Court.

9. It is contended that all the accused, in collusion with one another, created and produced the forged, fabricated and manufactured document to obtain a favourable order and to obtain the possession of the suit property and have also concocted the rent receipts to justify their possession over the property. A complaint was also lodged with Khade Bazar Police Station, Belagavi to enquire about the forgery and concoction of the document. Still, no steps were taken by the police on the said complaint.

10. The appellant later filed a private complaint before the JMFC. The JMFC *vide* Order dated 18.01.2018 felt that the matter was to be

referred for investigation under Section 156(3)[5] of the Code. The JMFC referred the case for investigation to the Khade Bazar Police Station. Accordingly, a First Information Report was registered against accused nos.1 to 7 as Crime No.12/2018 (hereinafter referred to as the 'FIR') for offences punishable under Sections 120B, 201, 419, 471, 468 and 420 of the IPC, and investigation was undertaken. The learned JMFC in the Order dated 18.01.2018 recorded '*The complainant has complied with the directions issued by the Hon'ble Supreme Court in* ***Priyanka Shrivastava vs. State of UP in (2015) 6 SCC 287.***' **(sic)**

11. The High Court, in the First Impugned Order, observed as under, *inter alia*:

> '***10.*** *… Without mentioning anything the learned Magistrate has passed the order for further investigation though no law contemplated the learned Magistrate to go for further investigation. If at all any further investigation has to be made that will be only after if any final report is filed by the investigating agency and if there are any deficiencies and if any request is made by the police under Section 173(8) Cr.P.C, then under such circumstances the Court can exercise. But when the private complaint has been filed and directly the court has passed for further investigation without any justifiable reasons in that light, the said order itself appears to be not justifiable*

[5] '***156.Police officer's power to investigate cognizable case***.—
(1)…
(2)…
(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.'

since the court has not applied its mind and it is not sustainable in the eye of law.'

(emphasis supplied)

12. The High Court, in the Second Impugned Order, recorded, *inter alia*, as below:

'***24.*** *… Even though, respondent No.2 filed a suit before the civil court seeking declaration of his right over the property claiming to be the owner of the property on the basis of the oral gift deed and that the registered sale deed executed by his father in favour of accused No.1 is not binding on him, admittedly, the said suit filed in O.S.No.43/2009 came to be dismissed and it is held that registered sale deed is executed by the father of respondent No.2 conveying the title over the property in favour of accused Nos.1, and respondent No.2 is not entitled for the declaration as sought for. Challenging the said judgment and decree, RFA No.4095/2013 is filed before this court, which is still pending for consideration. Even though status-quo order was passed in respect of the title and possession of the property, it is made clear by this court that it is only to protect the title and possession of accused No.1, who is held to be in possession over the schedule property. Even though the said finding given by the trial court is under challenge before this court, the fact remains that there are no prima facie materials to contend that the possession of the property was handed over in favour of respondent No.2 by his father at any time. …*

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27. *It is also pertinent to note that accused No.2 and 5 to 7 who are petitioners herein, are not parties either in O.S.No.43/2009 or in RFA No.4095/2013 before this court. Under such circumstances, respondent No.2 should have made clear about the role played by these petitioners in concocting the document as contented by him and producing the same before the court to take advantage of the same in the first information.*'

(emphasis supplied)

THE APPELLANT'S SUBMISSIONS:

13. The primary contention of the appellant is that the Rent Agreement produced by Chandrumal M. Parchani-respondent in collusion with other respondents on an E-Stamp Paper is fake.

14. The learned counsel for the appellant vehemently submitted that even the Inspector General of Registration and Commissioner of Stamps, addressed a letter to the Registrar, High Court of Karnataka, stating that on perusal of the reports submitted by the Area Manager (E-Stamping) and the authorized signatory of the Karnataka State Souharda Federal Co-operative Ltd., Bengaluru, *prima facie*, the E-Stamp purchased by Chandrumal M. Parchani-respondent and used for the Rent Agreement is a fake E-Stamp.

15. The learned counsel further stated that the District Registrar, Belagavi, has directed that a police complaint be filed against Chandrumal M. Parchani-respondent, the purchaser of the E-Stamp Paper and Sri Gajanana Multipurpose Souharda Sahakari Niyamit, Danegalli, Shahapur, Belagavi which sold the fake E-Stamp Paper and a

separate complaint has been filed *qua* the said Sri Gajanana Multipurpose Souharda Sahakari Niyamit.

16. The learned counsel emphasised that when the appellant filed an application before the Inspector General of Registration and Commissioner of Stamps, Department of Stamps and Registration, Government of Karnataka, for obtaining a Certified Copy of the document, which was produced before the High Court styled as a Rent Agreement, the appellant came to know that the said E-Stamp Paper was fake, as he obtained cerified copy(ies) of Stamp Paper bearing a same serial number, which did not tally with the Stamp Paper that was produced before the High Court.

17. Learned counsel urged that it is conspicuous from the facts of the case that all the private respondents, in both appeals, in collusion with each other, concocted, forged, fabricated and manufactured the document and produced the same before the High Court with *mala fide* intention to obtain a favourable order and gain possession of the suit property. It was advanced that the private respondents played fraud upon the Court and also caused obstacles in the stream of the justice delivery system.

18. In addition, learned counsel canvassed that the possibility of a conspiracy hatched by the accused cannot be ruled out since there is *prima facie* material that substantiates the appellant's claim that the E-Stamp Paper is a forged document.

19. It is further submitted that the appellant wrote a letter to various authorities, including the learned Chief Justice of the High Court. In turn, the Secretary to the learned Chief Justice, *vide* Letter dated 14.09.2017, instructed to follow-up with the investigation on the complaint filed against the purchaser of the fake E-Stamp Paper and the Sri Gajanana Multipurpose Souharda Sahakari Niyamit, the issuer of the fake E-Stamp Paper.

20. Learned counsel contended that the High Court overlooked ***Neeharika Infrastructure Pvt. Ltd. v State of Maharashtra*, (2021) 19 SCC 401**, holding that criminal proceedings should not be thwarted at the initial stage and the police should be allowed to investigate into the matter and to submit a Final Report, when there are *prima facie* materials against the accused.

21. Learned counsel pointed towards the conduct of Veena-respondent. It is stated that she has deliberately and intentionally

concealed facts regarding the filing of **Special Leave Petitions (Civil) No.1667-1668/2016** titled '***Meena M. Dongare v Sadiq S/O Bashirahmad Hanchanmani***' against the Order dated 07.12.2015 in IA No.1/2023 passed by the High Court. The same was taken up on 01.02.2016, but withdrawn on the first date of listing as under:

> '*Learned senior counsel appearing for the petitioner seeks permission to withdraw the Special Leave Petitions with liberty to approach the High Court.*
> *In view thereof, the Special Leave Petitions are dismissed as withdrawn with liberty to approach the High Court by filing appropriate application for appropriate relief.*'

22. Learned counsel for the appellant submits that the High Court, through the Impugned Orders, has turned a blind eye to the fake E-Stamp Paper, despite discrepancies such as party names and the amount of stamp duty.

23. The learned counsel wrapped up submissions by pointing out that the investigation at the relevant point was at a nascent stage, and the persons involved were on anticipatory bail, and no harm would have been caused if the investigation was allowed to be completed.

24. Learned counsel submitted that the disputed document was first produced before the High Court in R.F.A. No.4095 of 2013, and only

then did the existence of such document come to the knowledge of the appellant. After obtaining a copy of the said document from the department concerned and also after obtaining reports from the Karnataka State Souharda Federal Co-Operative Ltd., Bengaluru, it is evident that it was accused no.2 who had forged the E-Stamp Paper and the document styled as a Lease/Rent Agreement before the High Court. As such, an in-depth investigation was required. It was prayed to allow the appeals.

SUBMISSIONS BY RESPONDENT NO.1-THE STATE OF KARNATAKA:

25. The counsel for the State reiterated some submissions made by the appellant but clarified and supplemented the same *infra*.

26. It is submitted by the learned counsel for the State that the main ground urged by respondents no.2 to 5 (accused nos.2, 5, 6 and 7) in Criminal Appeal No. of 2025 @ SLP(Crl.) No.11336 of 2022 as reflected in the Second Impugned Order before the High Court was that earlier, accused nos.1 and 3, against whom criminal proceedings were initiated, had approached the High Court by filing CRLP No.100549/2018 seeking the quashing of proceedings initiated against them. The High

Court, therein, concluded that the JMFC, without application of judicial mind, had referred the matter for investigation. Therefore, Criminal Petition No.100549/2018 was allowed and proceedings against respondents no. 2 and 3 (accused nos.1 and 3) in Criminal Appeal No. . of 2025 @ SLP(Crl.) No. of 2025 @ Diary No.39619 of 2022 were quashed *vide* the First Impugned Order.

27. Learned counsel argued that accused nos.2, 5, 6 and 7 claimed parity as they contended that they were also on similar footing. But allegations against accused nos.1 and 3 are different from those against accused nos.2, 5, 6 and 7. Therefore, parity should not be extended to them.

28. Learned counsel submitted that applying the same principles, the Second Impugned Order followed, but the learned Single Judges ought to have remanded the matter as the JMFC's Order dated 18.01.2018 referring the matter for investigation to the police was a curable defect,

hit by Section 460[6] of the Code, as it would fall under irregularities which do not vitiate proceedings.

29. Learned counsel submitted that the Second Impugned Order opined that the appellant had not made clear the role played by the accused nos.2, 5, 6 and 7 in concocting and forging the document and concluded that their role, against anybody, including the Court, was unclear, but based on the documents on record, it was evident that the forged E-stamp Paper was purchased by accused no.2. Prayer was made to pass appropriate Order/Judgment, factoring in the submissions noted *supra*.

SUBMISSIONS BY THE PRIVATE RESPONDENTS:

30. It is pertinent to note that learned counsel for the accused-private respondents entered appearance but the private respondents did not file

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[6] '***460. Irregularities which do not vitiate proceedings.***—*If any Magistrate not empowered by law to do any of the following things, namely:—*
(a) to issue a search-warrant under Section 94;
(b) to order, under Section 155, the police to investigate an offence;
(c) to hold an inquest under Section 176;
(d) to issue process under Section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;
(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190;
(f) to make over a case under sub-section (2) of Section 192;
(g) to tender a pardon under Section 306;
(h) to recall a case and try it himself under Section 410; or
(i) to sell property under Section 458 or Section 459,
erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.'

any Counter-Affidavit. Learned counsel supported the Impugned Orders and urged that no good ground was made out to upset the views taken therein.

31. Learned counsel submitted that *vide* Order dated 28.03.2016 in I.A. No.3/2016, the High Court vacated the *status quo* Order dated 03.06.2013, *qua* the suit property and the keys of premises were handed over to accused no.1 during the pendency of R.F.A. No.4095/2013.

32. It was also submitted that the appellant harboured ulterior motive against the private respondents, which is why he had chosen to register the private complaint i.e., PCR No.1/2018.

33. Learned counsel argued that as R.F.A. No.4095/2013, concerning the suit property, was decided ultimately in favour of the private respondents concerned, therefore, no criminal liability could be hoisted on them.

ANALYSIS, REASONING AND CONCLUSION:

34. The questions for consideration may be summed up as: (i) whether the direction for investigation to the police issued by the JMFC under

Section 156(3) of the Code, which was quashed by the Impugned Orders, is justified based on the facts and circumstances of the cases, and; (ii) whether the JMFC had sufficient material before it so as to justify the course of action of referring the matter for investigation to the police invoking power under Section 156(3) of the Code, resulting in the institution of the FIR.

35. The relevant and undisputed facts are that in R.F.A. No.4095/2013 before the High Court, an interim application under Order XLI Rule 5 read with Section 151 of the CPC was filed seeking stay of the operation of the Judgment and Decree dated 28.03.2013. *Vide* Order dated 03.06.2013, the High Court passed an interim order to maintain *status quo* regarding title and possession of the suit property, which was extended during the pendency of the appeal, but was subsequently vacated. During the pendency of R.F.A. No.4095/2013, the appellant came to know that on 18.06.2015, accused no.1 and her husband, along with others, had broken open the lock put to the suit property without permission and trespassed into the same and started renovation/construction in the suit property. The appellant issued a Notice calling upon them to stop the renovation/construction work. The renovation/construction work was stopped. The appellant later came to know that, on 18.10.2015, accused nos.1 and 2 and others again broke

open the lock put to the property and re-started the work. Thereafter, the appellant filed an application under Order XXXIX Rule 2-A read with Section 151 of the CPC i.e. I.A.No.1/2015 in R.F.A. No.4095/2013, seeking initiation of contempt proceedings against accused nos.1 and 4. Accused no.1 filed a reply to I.A.No.1 of 2015 and produced a document embossed as an E-Stamp Paper dated 20.05.2013, styled as a Rent Agreement and some rent receipts. This Rent Agreement was executed by accused no.1 in favour of accused no.2. The defence taken in the reply to I.A.No.1 of 2015 was that prior to the passing of the *status quo* order on 03.06.2013, the suit property had already been let out to accused no.2 on 20.05.2013 on rent basis, with a copy of the Rent Agreement also annexed therewith. Further, rent receipts for a monthly rental of Rs.3,000/- (Rupees Three Thousand) were also enclosed. We may pause here since this will be a turning point in the present cases. The Rent Agreement by accused no.1 in favour of accused no.2 is said to have been executed on 20.05.2013. However, the Rent Agreement which was produced shows it was executed on E-Stamp Paper bearing no.IN-KA82473995873571L dated 20.05.2013. This document upon verification by the appellant, under the Right to Information Act, 2005 from the Inspector General of Registration and Commissioner of Stamps, Bengaluru, Department of Stamps and Registration, Government of Karnataka reveals that the said E-Stamp Paper Number

with the same date of registration related to a Sale Agreement between one J.D. Duradundi and one S.B. Janagouda. Thus, it is clear that the Rent Agreement produced before the High Court was shown on the E-Stamp Paper was used by the aforesaid persons for a Sale Agreement, unconnected to accused nos.1 and 2 or to any Rent Agreement.

36. The accused no.1 has also stated that the tenant i.e., accused no.2 might have renovated and cleaned the suit property on 18.10.2015. This is where the Court finds the truth coming out. In the copy of the Rent/Lease Agreement which has been brought on record before the High Court by accused no.1 herself, it is clearly stipulated that accused no.2 will not change the nature of the premises and should not carry out any repairs to the said premises without the written consent of accused no.1. It is not the case of accused no.1 that accused no.2 had sought any permission. *Arguendo*, assuming that accused no.2 might have made some renovations, the same by itself would not serve to absolve accused no.1 of the responsibility cast by the Order dated 03.06.2013 to maintain *status quo*; further, if she was aware that accused no.2 was violating the terms of the Rent/Lease Agreement, inaction on her part to take appropriate action or steps against/in respect of accused no.2 would make her responsible for any violation of the Order dated 03.06.2013, which she concedes might have been done by accused

no.2 on 18.10.2015, i.e., during the period of subsistence of the Order dated 03.06.2013, as the *status quo* came to be vacated only on 28.03.2016. Examined, additionally, from another lens, even if an injunction order is subsequently set aside, consequences for breach/violation of the same when it subsisted, could still befall upon the violator, as held in ***Samee Khan v Bindu Khan*, (1998) 7 SCC 59**.[7]

37. At this juncture, it would be apposite to refer to the position of law enunciated in ***Madhao v State of Maharashtra*, (2013) 5 SCC 615**, wherein it was held that:

> '***18.*** *When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).*'
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> (emphasis supplied)

[7] This position of law was recently reiterated in ***Lavanya C v Vittal Gurudas Pai*, 2025 SCC OnLine SC 499**, where one of us (P. Mithal, J.) was part of the *coram*.

38. In the background of the factual position, the JMFC's Order dated 18.01.2018 cannot be faulted. Enough material is available to justify a full-fledged investigation by the police. The JMFC, to our mind, had rightly referred the matter for investigation to the police since a *prima facie* case stood made out against the accused, in view of the material that was available with the JMFC. In ***Ramdev Food Products Private Limited v State of Gujarat*, (2015) 6 SCC 439**, three learned Judges of this Court opined:

> '***13.*** *We may first deal with the question as to whether the Magistrate ought to have proceeded under Section 156(3) or was justified in proceeding under Section 202(1) and what are the parameters for exercise of power under the two provisions.*
> xxx
> ***22.*** *Thus, we answer the first question by holding that:*
> ***22.1.*** *The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.*
> ***22.2.*** *The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524] may fall under Section 202.*

> ***22.3.*** *Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.*
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> xxx
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> ***38.*** *In Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252: 1976 SCC (Cri) 380], National Bank of Oman v. Barakara Abdul Aziz [(2013) 2 SCC 488: (2013) 2 SCC (Cri) 731], Madhao v. State of Maharashtra [(2013) 5 SCC 615: (2013) 4 SCC (Cri) 141], Rameshbhai Pandurao Hedau v. State of Gujarat [(2010) 4 SCC 185: (2010) 2 SCC (Cri) 801], the scheme of Sections 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning with Section 156 and ending with report or charge-sheet under Section 173. On the other hand, Section 202 applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.*'
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> (emphasis supplied)

39. ***Ramdev*** (*supra*) was noticed in ***Cardinal Mar George Alencherry v State of Kerala*****, (2023) 18 SCC 730**. The High Court, especially *vide* the First Impugned Order, seems to have been unduly swayed by the usage of the term '*further*' by the JMFC. The relevant extract from the First Impugned Order has already been quoted hereinabove. It would be in the fitness of things to note the JMFC's Order dated 18.01.2018:

> '*…*
>
> *On perusal of the private complaint, it is noticed that the aforesaid case needs to be further investigated by*

> *the police. Hence, this Court feels that the aforesaid case needs to be referred under Sec.156(3) of Cr.P.C. Hence, the above matter is referred to Khade Bazar P.S. for investigation under Sec.156(3) of Cr.P.C.*
> …'
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> (emphasis supplied)

40. The afore-extract leaves no room of doubt that the JMFC had referred the matter to police under Section 156(3) of the Code, and the usage of '*further*' was not in the context of Section 173(8) of the Code, which fine distinction the First Impugned Order has glossed over. The case(s) at hand, in our considered view, demonstrate material showing the commission of cognizable offence(s), on the face of it, which would merit police investigation. Therefore, interdiction of the Impugned Orders is necessitated.

41. This Court in a composition of three learned Judges observed in ***Neeharika Infrastructure (P) Ltd.*** (*supra*) as follows:

> '***16.*** *In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurise the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency has a statutory obligation/right/duty to enquire into the cognizable*

offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.'

42. It was further highlighted:

'***33.15.*** *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 CrPC, only has to consider whether the allegations in the FIR disclose the commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.*'

(emphasis supplied)

43. Thus, on an overall circumspection of the facts and circumstances of the case, the material on record and the submissions made by learned counsel for the parties, the First and Second Impugned Orders dated 24.07.2019 and 18.11.2021 are set aside. FIR Crime No.12 of

2018, Khade Bazar Police Station stands restored. The police is directed to investigate the case expeditiously in accordance with law. It goes without saying that the private parties shall be at liberty to produce material to indicate their defence(s)/position during the police investigation as also before the Court concerned, in accordance with law, at the appropriate stage.

44. Before parting, it is made clear that the observations made in this Judgment are only for the purposes of considering the issue(s) before us and shall neither prejudice nor aid the parties in any proceedings pending *inter-se*. The appeals stand allowed as indicated above. Pending applications stand closed. In the circumstances, however, we propose no order as to costs.

…….....J.
[PANKAJ MITHAL]

…….....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
NOVEMBER 04, 2025