



Reserved on : 10.03.2026
Pronounced on : 25.03.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.12927 OF 2025

BETWEEN:

MR. AASHAY HARLALKA
S/O MR.SUNIL KUMAR HARLALKA,
AGED ABOUT 32 YEARS,
ACCORDING TO THE IMPUGNED FIR
RESIDING AT
4-G 50, NEW HOUSING BOARD,
SHASTRI NAGAR, BHILWARA,
RAJASTHAN – 311 001.

... PETITIONER

(BY SRI SURAJ SAMPATH, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
REPRESENTED BY THE
WHITEFIELD CEN CRIME POLICE STATION,
REPRESENTED BY THE S.P.P.,
HIGH COURT BUILDING,
AMBEDKAR VEEDI,
BENGALURU – 560 001.

2 . MR. SAURABH BHOLA,
S/O MR.RAVINDER KUMAR BHOLA,
AGED ABOUT 33 YEARS,
RESIDING AT FLAT NO. 3065,
PRESTIGE PARK VIEW,
HOPE FARM JUNCTION, WHITEFIELD,
BENGALURU – 560 066.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;
SRI ANGAD KAMATH, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS, 2023 PRAYING TO QUASH THE IMPUGNED FIR DATED 29.03.2025 BEARING CRIME NO.176/2025 VIDE ANNEXURE B REGISTERED BY THE 1ST RESPONDENT (WHITEFIELD CEN CRIME POLICE STATION) FOR THE ALLEGED OFFENCE P/U/S 65 AND 66 OF INFORMATION TECHNOLOGY ACT, 2000 AND SEC.316 AND 318(4) OF BNS 2023, AGAINST THE PETITIONER, WHO HAS BEEN ARRAYED AS THE SOLE ACCUSED THEREIN, CURRENTLY PENDING ON THE FILE OF THE HON'BLE 47TH ADDL. CJM BENGALURU (TRANSFERED FROM THE HON'BLE 45TH ACJM BENGALURU).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.03.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/sole accused is before the Court calling in question registration of a crime in Crime No.176 of 2025 registered for offences punishable under Sections 316 and 318(4) of the BNS and Sections 65 and 66 of the Information Technology Act, 2000 (hereinafter referred to as 'the Act' for short).

2. Heard Sri Suraj Sampath, learned counsel appearing for the petitioner, Sri B.N.Jagadeesha, learned Additional State Public Prosecutor for respondent No.1 and Sri Angad Kamath, learned counsel appearing for respondent No.2.

3. Facts adumbrated are as follows: -

3.1. A Company, M/s Plutus Research Private Limited (hereinafter referred to as 'the Company' for short) is engaged in the domain of quantitative trading, wherein it leverages advanced mathematical models, statistical techniques and data driven

strategies to develop proprietary trading algorithms. The petitioner claims that he is one of the founding members, Directors, Promoters and share-holders in the Company, which is registered under the Companies Act, 2013 and registered before the Registrar of Companies, Gujarat having its corporate office at Bengaluru. Two other Directors along with the petitioner are founder Directors and equal shareholders, one of whom is the 2nd respondent/complainant. The petitioner further avers in the petition that in collaboration with the other two Directors he had jointly conceived and established the Company with a shared vision and mutual understanding, as all three of them were close friends at one point in time. The founding members, as noted hereinabove, are said to have contributed for formation and initial development of the Company and have equal share holding.

3.2. In the year 2018, it appears, that all the three Directors enter into identical employment agreements and were appointed/continued as Directors of the Company for remuneration. There were no formal working hours for these Directors is what is averred in the petition. In and around the month of June, 2024

disputes arose between the founder directors of the Company owing to various conflicts and disagreements among them. The other two Directors, one of whom is the complainant, are said to have tried to remove the petitioner from the control and management of the Company. Therefore, the petitioner projects himself to be a whistle blower giving out misdoings of the Company to the respective Authorities where he began to complain to the Registrar of Companies, SEBI and other regulatory organizations. When things stood thus, a complaint came to be registered by the 2nd respondent, one of the founder Directors, alleging several acts of the petitioner to have become ingredients of cheating and criminal breach of trust. Investigation ensued pursuant to the registration of complaint on 29-03-2025 in Crime No.176 of 2025. The moment the crime is registered and investigation ensued, the petitioner knocks at the doors of this Court in the subject petition.

4. A coordinate Bench of this Court grants an interim order of stay. The interim order granted by the coordinate Bench on 10-09-2025 reads as follows:

"The petitioner, who is a Director and shareholder of the company, has been charged with offences punishable under Sections 316 and 318 of the Bharatiya Nyaya Sanhita, 2023, and Sections 65 and 66 of the Information Technology Act, 2000, allegedly in contravention of the law laid down by the Hon'ble Supreme Court in Delhi Race Club (1940) Ltd. & Others v. State of Uttar Pradesh & Another [(2024) 10 SCC 690]. At the instance of certain other Directors, a crime has been registered for the aforesaid offences.

This Court finds it necessary to examine the very maintainability of the criminal proceedings, having regard to the fact that the dispute appears to pertain to shares of a company and the confidential data of which the petitioner is an equal shareholder. The matter, therefore, requires consideration.

Accordingly, further proceedings and investigation in Crime No.176/2025, registered by respondent No.1 – Whitefield CEN Crime Police Station, and pending on the file of the XLVII Additional Chief Judicial Magistrate, Bengaluru, are stayed until the next date of hearing.

The learned High Court Government Pleader is directed to accept notice on behalf of respondent No.1.

Issue emergent notice to respondent No.2.

Office is directed to rectify the name of the petitioner's counsel as Suraj Sampath."

The said interim order is in subsistence even today and the 2nd respondent/complainant has preferred an application seeking vacation of the interim order. Therefore, the matter is heard on the application seeking vacation of the interim order finally, with the consent of parties.

SUBMISSIONS:**PETITIONER:**

5. The learned counsel appearing for the petitioner Sri Suraj Sampath would vehemently contend that the petitioner is one of the founder Directors of the Company. He is now alleged of stealing data or bringing disrepute to the Company through the said acts of stealing data. He would submit that a father cannot be alleged of kidnapping his own children. When he is an equal shareholder and founder Director of the Company, it cannot be said that he has stolen the data. The data belongs to him, like it belongs to other two partners. Therefore, the very allegation against the petitioner is unfounded. If on such an allegation investigation is permitted to continue, it would become an abuse of the process of law. Plethora of documents are filed by way of memo of documents and objections to the application seeking vacation of interim order. All of them should be taken note of and the crime should be obliterated, is the submission of the learned counsel for the petitioner. He would also contend that registration of crime for offences punishable under Sections 406 and 420 of the IPC as

obtaining under Sections 316 and 318(4) of the BNS cannot go hand in hand in the light of the judgment of the Apex Court in the case of **DELHI RACE CLUB(1940) LIMITED v. STATE OF UTTAR PRADESH**¹.

RESPONDENT NO.2/COMPLAINANT:

6. Per contra, the learned counsel Sri Angad Kamath appearing for the 2nd respondent/complainant would vehemently refute the submissions to contend that interference by this Court under Section 482 of the CrPC/528 of the BNSS at the crime stage is extremely limited, unless the petitioner is able to demonstrate prima facie, that what is alleged would not meet the ingredients of the crime at all. The learned counsel submits that the petitioner is speaking of ownership of the data. No shareholder can claim himself to be the owner of the data. Owner of the data is the Company. If tomorrow the other two Directors would indulge in stealing data, they would be equally responsible or make themselves open to penal consequences, as data is not the property

¹ (2024) 10 SCC 690

of the shareholder of any Company, but it is the Company's property. The learned counsel would contend that the act of the petitioner amounts to insider theft and grave breach of fiduciary duty. It is not a civil project, as is projected by the petitioner. The petitioner claims to be a whistle blower only to protect his skin of further investigation into the matter. These are cyber crimes and the Court would not lend its hand to quash the proceedings at this nascent stage.

PETITIONER - REJOINDER:

7. The learned counsel for the petitioner would join issue to contend that the allegation of loss, economic stoppage or business damage are all bald allegations. The Company has not suffered any loss. He would again reiterate that a dispute which is either financial or purely civil in nature is dressed with a colour of crime and is said to be investigated into. He also reiterates that Sections 316 and 318(4) of the BNS cannot exist together in the light of the judgment in **DELHI RACE CLUB's** case.

STATE:

8. The learned Additional State Public Prosecutor Sri B.N. Jagadeesha would toe the lines of the learned counsel for the complainant in contending that the crime is registered and investigation has ensued. The petitioner has approached this Court and on the strength of the judgment in the case of **DELHI RACE CLUB** has obtained an interim order. The matter must be investigated into and this Court need not entertain the petition at the stage of crime.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the following issues arise for my consideration:

(i) Whether a complaint alleging theft of data against a Director and Share holder of a Company is maintainable in law? and

(ii) Whether the factual matrix necessitates a full fledged investigation or warrants obliteration of the alleged crime at the threshold?

ISSUE NO.1:

(i) Whether a complaint alleging theft of data against a Director and Share holder of a Company is maintainable in law?

10. The factual narrative as unfolded, traces the genesis of the Company, the respective roles of the petitioner and the other Directors, one of whom is the complainant and the sequence of events culminating in the registration of the complaint. These foundational facts are not in serious dispute and form part of the record. The controversy, however, springs from the allegations contained in the complaint, which in the considered view of this Court, merits a closer scrutiny. It is therefore, apposite, to extract and examine the complaint in some detail. The complaint reads as follows:

"28th March 2025

To,
Station House Officer,

Whitefield Police Station
Bangalore.

Sub: **Complaint for registration of FIR and investigation into commission of multiple offences by Mr. Aashay Harlalka**

Respected Sir,

The undersigned, Saurabh Bhola, aged 33 years, son of Mr. Ravinder Kumar Bhola, is a Director of Plutus Research Private Limited ("**Company**"). Copy of the Master Data of the Company the undersigned is enclosed for ready reference at **Document 1**.

The Company is registered under the Companies Act, 2013 having its registered offices at B-601 & 611, Paragraph Khajanchi Business Center, Mondeal Heights, Near Novotel Hotel, SG Highway, Ahmedabad, Gujarat 380015 and its corporate offices at Awfis Gold, 12th Floor, Crescent 3, Prestige Shantiniketan, Whitefield-560048 within the territorial jurisdiction of this Police Station.

As a Director and Authorised Signatory of the Company, I hereby seek to bring to your notice the following evidence of commission of offences in connection with the assets of the Company, by Mr. Aashay Harlalka, son of Mr. Sunil Harlalka, residing at 4114, Sobha Habitech Apartments, Channasandra Main Road, Near Hope Farm Junction, Whitefield, Bangalore, Karnataka - 560 066, and permanent address at 4-G-50, New Housing Board, Shastri Nagar, Bhilwara, Rajasthan-311001, having his PAN No. ALOPH4292A and Aadhar No. 664734443758.

In this regard, your goodself will kindly note:

1. I would like to bring to your kind notice instances of data theft, unauthorized deletion of the Company's proprietary software codes and critical data, causing operational and financial harm to the Company, by Mr. Aashay Harlalka, a former employee who was terminated from the Company on 24.03.2025 due to these actions.

Mr. Harlalka became a shareholder and director of the Company on 26.03.2018. Separately Mr. Harlalka was also appointed to the position of Director by way of an Employment Agreement dated 01.10.2018. His employment was terminated on 24.03.2025. a copy of the Employment Agreement and termination email are enclosed for your ready reference at **Document 2**.

2. In the course of his employment with the Company, Mr. Harlalka worked under the Employee Code: PLUTUS/EMP/0003. Additionally, Mr. Harlalka was also authorised to use Employee Code: PQR/EMP/003 in the discharge of work for Ploutos Quant Research Capital Pvt. Ltd., a subsidiary of the Company. Mr. Harlalka received salary both from the Company as well as its subsidiary.
3. The Company is engaged in the business of quant trading in which the company makes proprietary algorithms to trade in Indian stock markets. The trading activities of the Company are split across three verticals i.e. High-Frequency Trading ("**HFT**"), Medium-Frequency Trading ("**MFT**"), and Infra. HFT vertical constitutes developing algorithms to predict stock price movements in a short duration of time. MFT vertical constitutes developing algorithms to trade in derivatives by holding positions for longer duration which includes overnight positions as well. Infra vertical constitutes development, maintenance and research on trading connectivity to the exchange. Mr. Harlalka was responsible for the operations of MFT. He operated from the corporate office of the Company.
4. The trading activities within the Company (across all verticals) are governed by specific parameters embedded in the company's codes, with any modifications to these parameters being automatically logged in the system (bash_history, tradelogs, etc). These logs record the nature of the changes made and the identity of the individual effecting such changes.

We write sophisticated algorithms which are based on the concepts of financial engineering and mathematics, machine learning and market analysis. These algorithms have a variety of parameters which can be tuned to

optimize the performance and profitability of the strategies. Such algorithms are back-tested over historical data (days, weeks, months and years) based on the nature of strategies. These algorithms, then if profitable, are used to trade in Indian Stock Markets on servers located in the Exchange premises. An algorithm that was quite profitable would make a huge loss if the parameters that it was tuned to in our simulations/backtesting to the optimized level is changed to a subdued value causing it to behave in an undesired manner - impacting profits and reducing the volumes considerably thereby. We log every trade that we do in every segment of the stock market to keep a track on the performance (profitability and volumes).

5. The codes are software programs, the right, title and ownership of which is vested in the Company. The codes and their log records are maintained by the Company on Atlassian Bitbucket (Application hosting CodeBase Repositories), Company's servers, which are guarded and monitored by the Firewalls through the Company's secured VPN connections.
6. Mr. Harlalka had access to the codes of the Company on Atlassian Bitbucket application with loginid: "aashay" and email id: "aashay.harlalka@plutus-research.com" Mr. Harlalka was responsible for the codes of the Company for MFT trading. The codes pertaining to HFT and Infra are distinct and unrelated to the codes of MFT. As per the Company's protocol, Mr. Harlalka was not entitled to access the codes pertaining to the HFT and Infra verticals, without the approval of Mr. Saurabh Bhole and Mr. Shivakumar Reddy Chinthala, who were for the supervisors for the HFT and Infra verticals respectively.
7. **On 05.08.2024, it was discovered that Mr. Harlalka had been intentionally and unauthorizedly altering the parameters of trading models, causing significant financial loss to the Company.. To conceal his actions, Mr. Harlalka also intentionally and deliberately deleted all the system logs from multiple servers for the period prior to 26.07.2024 (several months of data) on 02.08.2024. The**

trading parameters and system logs are proprietary and confidential to the Company. These unauthorized and fraudulent activities continued until they were uncovered on 05.08.2024. Upon being confronted, he apologized and assured that he would rectify his actions. Consequently, in late August 2024, he reversed some of the unauthorized changes; however, by then, the Company had already suffered substantial damage.

Evidence of these activities by Mr. Harlalka is borne out from the documents and information at Document 3.

8. Despite Mr. Harlalka being permitted to access the codes of the MFT vertical as part of his responsibilities, and only from the Company's permitted computer servers, he has been logging into the same and copying the codes for the Infra and HFT trading systems, which are managed by the undersigned and the other director of the Company, Mr. Shivakumar Reddy Chinthala during 01.08.2024 to 04.03.2025. Trading strategies in HFT built over the Infra have contributed to a significant part of the revenues in the course of the present financial year itself.

We discovered on 28.02.2025 that in the past month he had been logging into the Company's private network on several days post-midnight, which are not the traditional trading hours of the Company and those are typically the times when the Company's other employees and traders are not logged into the Company's private network. As there is no trading activity during such hours, there was no legitimate reason for him to access the network at those times. His work pattern was suspicious, as he consistently avoided working during actual trading hours (between 9 am to 3:30 pm) during which employees are in office. We sent multiple emails (enclosed herewith as Document 4) instructing him to adhere to working hours, but he willfully ignored them.

This behavior coincided with unauthorized copying and downloading of the Company codebase not under his purview. The records suggest that Mr. Harlalka not only accessed and copied these codes, but the same were saved onto computer systems, an action which was not approved by the Company. The codes of Infra, HFT and MFT trading strategies maintained by the Company on its code repository, as well as its internal network, are the property of the Company. Mr. Harlalka accessed the Company's codebase repositories, copied and downloaded the same to his laptop, without the permission of the Company and with a dishonest intention, as is borne out from the stealth and timing of access. Retention of the codes on a device, other than the one approved by the Company which is outside of the Company's highly secured VPN network, shows that Mr. Harlalka has sought to steal and misappropriate the codes of the Company. This intention is further evidenced by a fact that we discovered on 26.03.2025, Mr. Harlalka had also downloaded the codes on 04.03.2024, a day before proposing the dissolution of the Company, in response to an email sent by the undersigned, which sought to address his actions and inactions regarding his work and conduct to which he had remained unresponsive. We discovered this on 26.03.2025.

VPN Logs indicating his log in timings are enclosed at Document 5. Evidence of copying of the codes for the Infra and HFT trading strategies, and downloading of the same into devices outside of the Company's servers are enclosed at Document 6. Evidence of downloading the codes on 04.03.2024 are enclosed at Document 7.

9. On 21.03.2024, the Company discovered that Mr. Harlalka had deliberately deleted critical and confidential codes, an important IP of the Company, for the MFT trading strategies (SGSVStrat), both from Bitbucket (i.e. the platform hosting the Company's code repository), as

well as from the servers in the Company's internal network. This proprietary code, which had existed since 13.03.2022, was exclusively handled by Mr. Aashay for revenue generation. Evidence proving Mr. Harlalka's deletion of the codes are enclosed at **Document 8**.

Subsequently, on 21.03.2024, the same day we discovered that Mr. Harlalka had deleted our code, we contacted Bitbucket via email, requesting a copy of the deletion history. A copy of our email dated 21.03.2024 to Bitbucket is attached as **Document 9**. In further investigation with the Bitbucket support on 27.03.2024, it came to the notice that he has deleted the audit logs of the Bitbucket application as well for multiple dates starting from 27.07.2024 to 19.03.2024 to hide his unauthorised activity on the Bitbucket application to access the unauthorised repositories. It coincides with the same date on which he has done log deletions on the trade server of the dates before that. It also has been observed that he deleted multiple repositories on 15.07.2024.

As an employee and Director of the Company, Mr. Harlalka had been entrusted with the password to access the code repository and internal network of the Company. In such capacity, Mr. Harlalka acted as an agent of the Company. However, Mr. Harlalka has misused the trust reposed in him by the Company, by copying the codes for his personal use, while deleting the same from the server of the Company, causing the Company to lose business and revenue that led to the termination of his employment on 24.03.2025.

The details of Mr. Harlalka as available with the Company are as under. Copies of his PAN, Aadhar and Employee ID are enclosed as **Document 10**.

Mr. Aashay Harlalka,
4114, Sobha Habitech Apartments,
Channasandra Main Road,
Near Hope Farm Junction,
Whitefield, Bangalore,
Karnataka-560 066.

Email: aashay.harlalka@gmail.com
Phone No.: 8861874720, 9784011683

Also at: 4-G-50, New Housing Board,
Shastri Nagar, Bhilwara,
Rajasthan-311001
Email ID: aashay.harlalka@gmail.com

Phone No: 8861874250, 9784011683

In the above circumstances, the Company is constrained to bring the aforesaid facts to the notice of the jurisdictional police.

It is humbly prayed that this complaint be taken on record and a FIR be lodged against Mr. Aashay Harlalka, and the matter be thoroughly investigated and he be restrained from intimidating or influencing the Company's employees and also be directed to return the codes and logs illegally copied and taken by him from the Company's servers and repositories. The Company undertakes to extend any cooperation that the investigating team of the police may deem fit.

Sincerely

Sd/-
Saurabh Bhola
(DIRECTOR)"

(Emphasis added)

The complaint articulated with considerable particularity imputes grave allegations against the petitioner. It is alleged, that though interested with the access to the codes relating to Medium Frequency Trading (MFD), the petitioner surreptitiously extended his reach into the domains of High Frequency Trading (HFT) and Infrastructure verticles, areas

beyond his authorized limit. These codes it is asserted are distinct, confidential, compartmentalized within the Company's operational architecture. The petitioner's alleged intrusion into the domains, without requisite approval, is said to have breached both protocol and trust.

11. The complaint further narrates that on 05-08-2024, it came to light that the petitioner had deliberately and unauthorisedly altered critical parameters of trading models, thereby inflicting financial detriment upon the Company. What aggravates the gravity of the allegation is, the assertion that in the in an attempt to efface traces of such conduct, the petitioner systematically deleted system logs across multiple servers. These logs being repositories of operational history, constitute proprietary and confidential data of the Company. The complaint also recounts additional instances of deletion of critical code, intellectual property, integral to the Company's revenue generation, both from the code repository and internal servers. On the strength of these

allegations, the complaint culminates in the registration of crime in Crime No. 176 of 2025.

12. The principal defence advanced on behalf of the petitioner is untenable. The data in question by virtue of his position being the director and shareholder of the Company belongs to him and therefore, an allegation of theft is flawed, as it is akin to a father being accused of kidnapping his own child. The submission, though imaginative, does not withstand legal scrutiny and is liable to be rejected at the threshold. **Once a Company is incorporated under the Companies Act, it acquires a distinct juristic personality, separate and independent of its shareholders and directors. The property of the Company, whether tangible or intangible, vests in the Company alone. The number of shareholders or directors, whether few or many, would not dilute this foundational principle. To accept the proposition that each shareholder may lay claim to the Company's assets would lead to juridical chaos, eroding the very edifice of corporate personality. In the present case,**

the petitioner and the complainant are equal shareholders, yet, such parity does not translate into proprietary entitlement over the company's assets. The contention that the petitioner, by virtue of his shareholding, does possess ownership over the entirety of the Company's data is therefore wholly misconceived.

13. The position of law, in this regard, is no longer *res integra*. The Constitution bench of the Apex Court as early as in the year 1954, in the case of **BACHA F.GUZZDAR v. COMMISSIONER OF INCOME-TAX** elucidated the nature of the shareholders interest. **The Apex Court holds that a shareholder acquires merely a right to participate in the profits of the Company and does not, by any shareholding, obtain proprietary interests in the assets of the Company. The Company, as a juristic entity, stands distinct from its shareholders and it alone is the owner of the property.** The Constitution Bench holds as follows:

" "

8. In fact and truth dividend is derived from the investment made in the shares of the company and the foundation of it rests on the contractual relations between the company and the shareholder. Dividend is not derived by a shareholder by his direct relationship with the land. There can be no doubt that the initial source which has produced the revenue is land used for agricultural purposes but to give to the words "revenue derived from land" the unrestricted meaning, apart from its direct association or relation with the land, would be quite unwarranted. For example, the proposition that a creditor advancing money on interest to an agriculturist and receiving interest out of the produce of the lands in the hands of the agriculturist can claim exemption of tax upon the ground that it is agricultural income within the meaning of Section 4, sub-section (3)(viii), is hardly statable. The policy of the Act as gathered from the various sub-clauses of Section 2(1) appears to be to exempt agricultural income from the purview of the Income Tax Act. The object appears to be not to subject to tax either the actual tiller of the soil or any other person getting land cultivated by others for deriving benefit therefrom, but to say that the benefit intended to be conferred upon this class of persons should extend to those into whosoever hands that revenue falls, however remote the receiver of such revenue may be, is hardly warranted.

9. It was argued by Mr Kolah on the strength of an observation made by Lord Anderson in *IRC v. Forrest* [*IRC v. Forrest*, (1924) 8 TC 704 at p. 710] that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them.

10. The interest of a shareholder vis-à-vis the company was explained in *Charanjit Lal Chowdhury v. Union of India* [*Charanjit Lal Chowdhury v. Union of India*, 1950 SCC 833 at p. 862 : 1950 SCR 869 at p. 904] . That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the articles of association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders.

11. Reliance is placed on behalf of the appellant on a passage in *Buckley's Companies Act*, 12th Edn., p. 894, where the etymological meaning of "dividend" is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the articles of association, that the profits or any portion thereof should be distributed by way of dividends

among the shareholders. He has undoubtedly a further right to participate in *the assets of the company which would be left over after winding up* but not in the assets as a whole as Lord Anderson puts it.

12. The High Court expressed the view that until a dividend is declared there is no right in a shareholder to participate in the profits and according to them the declaration of dividend by the company is the effective source of the dividend which is subject to tax. This statement of the law we are unable to accept. Indeed the learned Attorney General conceded that he was not prepared to subscribe to that proposition. The declaration of dividend is certainly not the source of the profit. The right to participation in the profits exists independently of any declaration by the company with the only difference that the enjoyment of profits is postponed until dividends are declared.

13. It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders. In *Halsbury's Laws of England*, Vol. 6 (3rd Edn.), p. 234, the law regarding the attributes of shares is thus stated:

"488. *Attributes of shares.*—A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the nature of real estate."

The Apex Court holds that a shareholder acquires a right to participate in the profits of the Company, but does not acquire any

interest in the assets of the Company. The clarity of the elucidation brooks no ambiguity. **In the contemporary digital age, the assets of a Company are not confined to physical or movable property. They extend, in significant measure to data, code and intellectual propriety. Such digital assets, no less than physical ones, are owned exclusively by the Company. The petitioner therefore cannot seek refuge in his status as a shareholder to negate the allegations of misappropriation. This is *sans* countenance and is therefore repelled.**

ISSUE NO.2:

(ii) Whether the factual matrix necessitates a full fledged investigation or warrants obliteration of the alleged crime at the threshold?

14. The second limb of submission pertains to applicability of offences to Sections 406 and 420 of the IPC / 316 and 318(4) of the BNS. It is urged that these provisions cannot co-exist. Reliance is placed on the decision of the Apex Court in DELHI RACE CLUB. There can be no qualm with the principle enunciated therein.

However, the factual context in that decision is materially distinguishable. It arose from a private complaint before the Magistrate, not from an FIR under investigation by the police. In the case at hand, the complaint has set the criminal law in motion through registration of FIR and matter is at the stage of investigation. The offences invoked are based on allegations disclosed in the complaint. Whether both offences will ultimately sustain or whether one may give way to the other, upon culmination of investigation, is a matter to be determined at a later stage. At this juncture, it would be premature and indeed inappropriate, for this Court to interdict investigation on the ground of alleged overlap in offences.

15. As observed hereinabove, the complaint is registered before the jurisdictional Police. The jurisdictional Police has chosen the offences based upon the facts in the complaint. The matter is still at the stage of investigation. It would be a circumstance where the Police while filing the final report and if they file a charge sheet, both the offences under Sections 316/406 and 318(4)/420 may not be present. Therefore, it is too early for this Court to step in and

quash the proceedings, on the score that the police have registered the crime for both Sections 316/406 and 318(4)/420. For the folly of the Police in registering both the crimes i.e., for offences punishable under Sections 316/406 and 318(4)/420, if this Court would quash the proceedings, the victim will be left remediless. Therefore, in such cases, the investigation in the least, is a must.

16. The final submission of the petitioner is that this Court should undertake an exhaustive examination of voluminous documents running close to hundreds of pages **which only underscores the complexity of the factual disputes involved. Such an exercise falls squarely within the domain of the investigating agency. To embark upon an enquiry, at this stage, would amount to converting these proceedings into a trial, which is impermissible. Where the case is enmeshed with serious disputed question of fact, the Court in exercise of its jurisdiction ought not to assume the role of Investigating Authority, except in exceptional cases,** as held by the Apex Court in plethora of cases. **The invitation to sift**

through extensive material and to render findings thereon is therefore found unacceptable.

17. It is apposite to refer to the judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**², wherein it has been held as follows:

" "

9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded,

²(2021) 9 SCC 35

evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation.

Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in *Dineshbhai Chandubhai Patel* [*Dineshbhai Chandubhai Patel v. State of Gujarat*, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

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

has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

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

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

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

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

complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."

18. The Apex Court in the case of **STATE OF MADHYA PRADESH v. KUNWAR SINGH**³, has held as follows:

"....

8. Having heard the submissions of the learned counsel appearing on behalf of the appellant and the respondent, we are of the view that the High Court has transgressed the limits of its jurisdiction under Section 482 of CrPC by enquiring into the merits of the allegations at the present stage. The fact that the respondent was a signatory to the cheques is not in dispute. This, in fact, has been adverted to in the judgment of the High Court. The High Court has also noted that a person who is required to approve a financial proposal is duty bound to observe due care and responsibility. There are specific allegations in regard to the irregularities which have been committed in the course of the work of the

³2021 SCC OnLine SC 3668

'Janani Mobility Express' under the National Rural Health Mission. **At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme. A final report has been submitted under Section 173 of CrPC, after investigation.**

19. The Apex Court in the case of **SOMJEET MALLICK v. STATE OF JHARKHAND**⁴, has held as follows:

"....

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**

⁴ (2024) 10 SCC 527

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 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.”

(Emphasis supplied at each instance)

20. In the light of the judgments of the Apex Court, the investigation cannot be stifled on the score that the matter is purely civil in nature and the complainant ought to have approached the civil Court. The issue is not purely civil in nature, it has all the hues and forms of cyber crime and not a run on the mill allegation. It is the allegation of downloading, copying, deletion of source code, proprietary data and confidential digital assets. All these are hues and forms of cyber crime and cyber crime investigations are highly technical and complex involving forensic reconstitution of data. Therefore, the projection of triviality of the offence by the petitioner, contending that it is purely civil in nature, cannot be acceded to, at this juncture. Investigation must ensue and to enable it, the petition must necessarily meet its dismissal.

21. The petition stands **dismissed** accordingly.

In the light of dismissal of the petition, pending applications if any, stand disposed, as a consequence.

SD/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:MJ