

**The Inspector General of Police and ors. Vs. Encorp E-service Limited and ors.**

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**Court :** Kolkata

**Decided On :** Feb-01-2005

**Reported in :** (2005)3CALLT17(HC)

**Judge :** Asok Kumar Ganguly and ;Tapan Kumar Dutt, JJ.

**Acts :** Companies Act; ;Lotteries (Regulation) Act, 1998 - Sections 3, 4, 4(2), 5, 6, 7, 8, 9 and 10; ;Prize and Money Circulation Schemes (Banning) Act, 1978; ;Evidence Act; ;[Constitution of India](#) - Articles 14, 19(1), 21 and 300A; ;Indian Penal Code (IPC) - Sections 120B, 200, 406, 420 and 423; ;[Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 41, 156, 157, 161, 162, 165 and 173

**Appeal No. :** M.A.T. No. 99 of 2005 with C.A.N. 294 of 2005

**Appellant :** The Inspector General of Police and ors.

**Respondent :** Encorp E-service Limited and ors.

**Advocate for Def. :** Ajit Kumar Panja, ;Joymalya Bagchi, ;Sumit Ghosh, ;Deb Dutta Som and ;S. Chowdhury, Advs. in M.A.T. 99 of 2005 and ;Samaraditya Pal, ;Sudipto Sarkar, ;Joymalya Bagchi, ;Deb Dutta Som, ;Sumit Mondal an

**Advocate for Pet/Ap. :** Balai Chandra Roy, Adv. General, ;Debasish Kar Gupta, Government Pleader, ;Krishna Pada Pal, ;Amitava Chowdhury and ;Soumya Dasgupta, Advs.

**Disposition :** Appeal allowed

**Judgement :**

Asok Kumar Ganguly J.

1. Both these appeals were filed against an interim order of injunction granted by a learned Judge of the Writ Court on two writ petitions, one of which has been filed by M/s. Encorp E-services Ltd. and the other one has been filed by one Mr. T. Senthil Kumar. Both the writ petitions raise identical questions of Act and law and the prayer for interim order made in both the writ petitions were disposed of by the learned Judge by judgment and order dated 7th January, 2005. Against the said grant of interim order, which has virtually stayed the criminal investigation, the Inspector General of Police, Kolkata has filed these two appeals.

2. With the consent of the parties we are treating both the appeals along with the applications for stay as on day's list as the counsel for both the parties asked this Court to dispose of the appeals finally. As such, we are disposing of both the appeals by this common Judgment.

3. The facts in both the writ petitions are virtually identical with some minor differences. M/s. Encorp E-services Ltd. is a company incorporated under the Companies Act whereas Mr. T. Senthil Kumar is a proprietorship concern. Both the writ petitioners are marketing tickets of On-line lottery. M/s. Encorp E-services Ltd. is doing it on behalf of State of Mizoram whereas Mr. T. Senthil Kumar is doing it on behalf of

State of Meghalaya. There are various agreements between the writ petitioners and the respective State Governments and their agents which purport to allow the writ petitioners to sell the On-line lottery tickets on behalf of the State. There is not much dispute over these facts.

4. The cause of action as disclosed in both the writ petitions for approaching this Court is because of certain raids conducted by the police in the retail outlets of the agents and retailers appointed by the writ petitioners. Such raids were purportedly conducted on 19th December, 2004 and 20th December, 2004 and as a result of such raids the police seized various machines viz., the Computer Terminals through which the retailers were selling the tickets for On-line lottery. Similar complaints have been made in both the writ petitions about such raids and seizure by the police.

5. The case as made out in the writ petitions is that the Hon'ble Supreme Court has laid down in the case of State of Haryana v. Suman Enterprises, reported in : (1994)4SCC217 that if the essential features of an organised lottery conform to the requirement of Section 4 of the Lotteries (Regulation) Act, 1998 (hereinafter referred to as the said Act) then it would be outside the regulatory power of the State to prohibit the sale of tickets of such organised lottery. It has also been stated in the writ petition that the State of West Bengal runs its own lottery and therefore, it cannot prohibit the sale of lottery of another State. In support of such submission reliance was placed on a Judgment of the Supreme Court in the case of B.R. Enterprise v. State of U.P., reported in : [1999]2SCR1111 . Certain previous proceedings have also been referred to in which this Court had the occasion to consider the said Judgment in connection with certain orders passed by the State Government in 2002. This Court will revert to that aspect of the case later.

6. In the writ petitions it has been challenged that the police action in the matter of conducting of raids and seizures of the computer terminals is in violation of the said Act. Such action is also arbitrary and in violation of Articles 14, 19(1)(g) and Article 300A of the Constitution. It has also been alleged that the same is also violative of the principles of natural justice. Certain proceedings of the Kerala High Court have also been referred to along with some interim orders passed in those proceedings and also some interim orders passed by the Supreme Court. The Court will also refer to the same in the later part of the Judgment.

7. It appears that on the basis of the said writ petitions and on the basis of aforesaid challenge the learned Judge of the writ Court passed the order dated 7th January, 2005 which is under appeal. It appears from the said order, which has been disclosed before this Court by the appellants with the stay petition that no affidavits were called for by the learned Judge. But the learned Judge after granting the interim order directed the parties to file affidavits to the writ petition and the interim order was directed to continue till 20th February, 2005. Before this Court also when the stay petition was heard, no prayer was made by the learned Counsel for the writ petitioners/respondents for filing affidavits. On the other hand, the submission before this Court was that since the First Information Report has been disclosed in the stay petition and which was not available to the writ petitioners in the Court below, this Court should examine whether, the First Information Report, as disclosed before this Court, makes out any prima facie case for the police to investigate.

8. It may be recorded and it was argued by the learned Advocate-General and in our view rightly so, that in the writ petition the First Information Report was not challenged and naturally there was no challenge that the First Information Report does not disclose any case for investigation or that the First Information Report was vitiated by the malafides of either the informant or any one. But before this Court, the First Information Report was challenged as not disclosing any prima facie case for the police to investigate. Learned Counsel for the writ petitioners/respondents wanted this Court to consider such submissions even though no such case was made out in the writ petitions. Since these matters are of some importance and there was no objection by the learned Advocate-General, this Court allowed such arguments to be advanced by the learned Counsel for the writ petitioners/respondents.

9. However, on the case as made out in the writ petition, the learned Judge of the writ Court on 7th January,

2005 passed an order, which runs into several pages. The learned Judge, after recording the submissions of the respective parties, came to a finding that a strong prima facie case has been made out by the writ petitioners for grant of interim order and the learned Judge held (Page-9 of His Lordship's Judgment) that the State Government should not take any step in the matter in respect of the petitioners and if there is any violation of any provisions of the said Act, the State Government may inform the matter to the Central Government and the State Government was directed not to proceed in the matter in any manner whatsoever. The learned Judge also granted an interim order in terms of prayers (h) and (i) to the writ petition. The said prayers (h) and (i) to the writ petition are set out hereinbelow:

'(h) An order of injunction restraining the respondents and particularly the respondent police authorities to interfere any further in any manner with the lawful business of selling business of the said online computerised lottery of the State of Mizoram in the State of West Bengal carried out by the petitioners and the petitioners' agents/retailers in West Bengal;

(i) An order directing the respondents to forthwith return the computer terminals and other article already seized by the respondents from the retail outlets of the petitioners' retail agents/retailers.'

10. The said order was given by the learned Judge with the condition that the return of the seized items by the police are to be given to the writ petitioners subject to the result of the writ petitions. Even though the learned Judge granted the interim order, the learned Judge gave a direction that no single digit lottery should be permitted to operate and that no lottery shall have more than one draw in a week. The learned Judge also stated that the State shall print the logo of the State in the tickets.

11. Assailing the said judgment and order of the learned Judge, the learned Advocate General has urged that the order under appeal was passed by the learned Judge staying the investigation even though investigation has not been challenged in the writ petition. The learned Advocate General also argued that the learned Judge did not consider the provisions of Sections 7, 8 and 9 of the said Act. The learned Counsel also urged that the raids and seizure, which had taken place and which were complained of in the writ petitions, were virtually part of the criminal investigation, which had been initiated on the basis of the First Information Report, which has been disclosed by him and the learned Advocate-General further contended that the seizure has been made under Section 165 of the Code of Criminal Procedure pursuant to the First Information Report lodged. The learned Advocate General further submitted with reference to the averments made in the stay petition that after the lodging of the First Information Report, materials have been collected, statements have been recorded under Section 161 of Criminal Procedure Code showing that the norms of Section 4 of the said Act have been violated. Several cases have also been registered and On-line lottery instruments were also seized. It was also submitted that at that juncture, the interim order of stay of investigation was passed by the learned Judge and this has the effect of stifling a criminal investigation in a cognizable case. The learned Advocate-General referred to the decision of the Supreme Court in the case of H.N. Rishibudh v. State of Delhi, reported in : 1955CriLJ526 . Drawing the attention of this Court to paragraph 5 at page 201 of the report, the learned Advocate-General submitted that the Supreme Court has clearly demarcated the steps, which can be taken under the Criminal Procedure Code in connection with an investigation in a cognisable case and it was further submitted that in the instant case, the criminal investigation proceeded on those lines. Relevant passage on which reliance was placed in the Judgment of H.N. Rishibudh is set out below:

'Thus, under the Code investigation consists generally of the following steps:

(1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused), and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the

necessary steps for the same by the filing of a charge sheet under Section 173.'

12. The learned Advocate General submitted that in the instant case steps as against items 1, 2, 3 & 4 had taken place and in the midst of the investigation, has come the order of the learned Judge staying further investigation and that is why this appeal has been filed.

13. The learned Counsel appearing for the writ petitioners/respondents on the other hand, submitted that the right of the police to investigate even in a cognisable offence is not an unfettered right. The said right is conditioned by the fact that before the police can undertake an investigation, there must be an First Information Report which must disclose the commission of a cognisable offence and the facts stated in the First Information Report must make out a case with some particulars to show that the ingredients of the offence alleged are there. Learned Counsel further submitted that however, FIR cannot be scrutinised like the plaint in a civil suit but even then the ingredients of the offence must be disclosed. Various decisions have been cited on this aspect of the matter which the Court will consider later.

14. Mr. Panja, learned Counsel appearing for the writ petitioners/respondents also argued that under the said Act the State only has the power to prohibit the holding of lottery under Section 5. Apart from Section 5 the State has no other power. Regulatory power has been vested with the Central Government. The learned Counsel also referred to the Universal Declaration of Human Rights 1948 and urged that the [Constitution of India](#) which embodies some of the principles of that University Declaration protects the citizen's right to carry on business and as also the right to life and liberty. Such right, it was urged, cannot be interfered with by the police on its mere whims and caprice.

15. Mr. Samaraditya Pal, learned Counsel, who also appeared for the writ petitioners in the case of Mr. T. Senthil Kumar has referred to List-I Entry 40 and List-II of Entry 34 of the 7th Schedule to the Constitution and submitted that under the said Act the question is when one State is organising a lottery can another State, under Section 5 prohibit the running of the same. The learned Counsel submitted that it cannot be done in view of the decision of the Supreme Court in the case of M/s. B.R. Enterprise which has also been followed by this Court. Learned Counsel also submitted that in case of violation of Section 4 of the said Act the Central Government can give directions under Section 10. In other words, both Mr. Pal and Mr. Panja submitted that under the said Act the State Government's regulatory power is more or less limited to inform the Central Government the case of violation of the provisions of Section 4 in the matter of running of lottery, if any, and if such information is given the Central Government can give necessary directions. Mr. Pal also referred to various judgments of the Supreme Court in order to show what are the valid requirements of an FIR and submitted that in the instant case the FIR being wholly invalid and illegal in the eye of law, the entire investigation is without jurisdiction.

16. Before considering the cases cited by both the parties this Court proposes to first consider the arguments made on the provisions of the said Act.

17. Now looking at the provisions of the said Act, this Court finds that the said Act is a central legislation enacted by the Parliament to regulate lotteries and to provide for matters connected therewith and incidental thereto. Under the said Act Section 3 makes it clear that no State Government can organise, conduct or promote any lottery save in accordance with the provisions under Section 4. Section 4 of the said Act lays down the conditions subject to which a lottery can be organised, conducted or promoted. Section 5 gives the power to the State Government to prohibit within its territory sale of tickets of any lottery organised, conducted or promoted by any other State. Similar power of prohibition is also given to the Central Government under Section 6, if any, lottery is conducted, organised or promoted in contravention of the provisions of Section 4 or in contravention of any order or prohibition imposed by the State. The previous proceeding before this Court about which reference has been made in the writ petition was in connection with an order of prohibition issued by the State of West Bengal vide Notification dated 16th January, 2002. the learned single Judge of this Court upon considering the said Notification and also the decision of the Supreme

Court in the case of M/s. B.R. Enterprise, inter alia, came to a prima facie finding that the said Notification appears to have prohibited the lottery in a selective manner. Such prohibition is not contemplated within the provisions of Section 5 of the said Act as has been interpreted by the Supreme Court in the case of M/s. B.R. Enterprise. It is the said interim order against which the State preferred an appeal before a Division Bench of this Court and the Division Bench of this Court by an order dated 29th January, 2002 allowed the interim order to continue with certain modifications. Therefore, the State's Notification prohibiting the lottery conducted by the State of Sikkim remained stayed.

18. In the instant case the argument of the State Government is that they are not seeking to prohibit the lottery conducted by either the State of Meghalaya or by the State of Mizoram. They have not issued any notification under Section 5. But under the provisions of Section 3 read with Section 4 of the Act, the State Government has the right to ensure that the lottery which is going on follows the requirement of Section 4 since the lotteries conducted on behalf of the aforesaid two states are not being carried on in accordance with the provisions of Section 4, the FIR has been lodged by the Director of State Lotteries and the said FIR having been lodged, criminal investigation has been initiated since in the FIR it has been alleged that the lottery is being conducted in violation of Section 4 of the said Act. For better appreciation of this aspect of the case, this Court sets out hereinbelow the exact purport of the FIR lodged in this case by the Director of State Lotteries.

'To

The Commissioner of Police,

Kolkata.

Sir,

I, Shri Malay Kumar Das, Director of State Lotteries, Government of West Bengal, do hereby lodge complaint against M/s. Lotus, their Directors, Managers, Secretaries, etc., their selling agents, promoters, traders as well as the Directors of the State Lotteries of Sikkim and others for entering into criminal conspiracy and running On-line lotteries in the State of West Bengal in violation of the provisions of Sections 4 of the Lotteries (Regulation) Act, 1998.

I would, therefore, request you to treat this complaint as FIR against the aforesaid persons, companies and others under Sections 7 & 9 of the Lotteries (Regulation) Act, 1998 read with Section 120B IPC and to investigate.

Yours faithfully,

Sd/- Malay Kumar Das

Director of State Lotteries,

Govt. of West Bengal'

Dated, Kolkata,

The 20th December, 2004.

19. Another FIR, identically worded, has also been lodged by the Director of State Lotteries to the Superintendent of Police South 24-Parganas, Alipore, Kolkata. Both these FIRs have been forwarded to the respective Police stations. The one which has been set out was forwarded by the Commissioner of Police to the O.C. Hare Street Police Station for starting a case and the other one has also been forwarded to the respective police station and cases have been started.

20. This Court does not find that the aforesaid action which has been taken by the State Government is

beyond their power and authority given to it under the provisions of the said Act. Under Section 7 of the said Act, it is provided if any lottery is organised, conducted or promoted in contravention of the provisions of the said Act, the same becomes punishable with imprisonment or fine or with both. This is a clear mandate of Section 7. Section 8 makes it clear that the offence under the said Act shall be cognisable and non-bailable. Section 9 of the said Act provides the steps which are to be taken if such offence is conducted by a company. Therefore, on a conjoint reading of Sections 7, 8 & 9 of the said Act it is clear that apart from the power given to State Government under Section, 5 of the said Act, the appropriate authority of the State Government has the power to see that the provisions of the said Act are not contravened inasmuch as its contravention is a penal offence. It, therefore, logically follows that in the event of such a contravention, it is open to the appropriate authority to prevent the same manner as it would prevent the commission of any other offence. It is well known that detection and prevention of an offence created under an Act pertains to the domain of maintenance of law and order. The maintenance of law and order is certainly a State's subject and the State Government is empowered to act in that aspect. Under the provisions of the Criminal Procedure Code (hereinafter referred to as the said Code), it is provided under Section 4(2) that all offences under any other law shall be investigated, enquired into, tried or otherwise dealt with according to the same provisions viz., the provisions under the said Code subject to any enactment for the time being in force regulating the manner and place of investigation. In the instant case, no rules have been framed and no other mode of investigation has been provided under the provisions of the said Act. Therefore, the provisions of the said Code are squarely attracted in order to carry on the investigation in cases where there are violation of the provisions of the said Act and specially when any contravention of the provision of Section 4 of the said Act is an offence and any such offence under the said Act is cognisable in character. Therefore, this Court is of the opinion that the learned Judge of the writ Court was prima facie was not right in coming to the conclusion that the State Government's power stops at merely reporting the case of contravention to the provisions of the said Act. Such a conclusion is not borne out by any of the provisions of the said Act and if such an interpretation is made of the provisions of Section 3 read with Sub-Section 4 and a combined reading of Sections 7, 8 & 9 of the said Act, such a construction, in my judgment, would not be consistent with the clear words of the said Act and such a construction would render otiose a large part of the Act. It is well known that legislature does not waste words and Court cannot construe the provisions of any Act in such a way as to render them redundant.

21. Now the only question, which remains for this Court to consider, is whether on the basis of the FIR as disclosed before us in this proceeding a criminal investigation can be undertaken. On this aspect of the matter, various decisions have been cited and the learned Counsel for both the parties have relied on various common judgments. Reliance was first placed by both the learned Advocate General as also Mr. Panja and Mr. Pal on the decision of the Privy Council in the celebrated judgment of Emperor v. Khwaja Nazir Ahmed, reported in . In Nazir Ahmed the learned Judge made it clear that receipt and recording of an FIR is not a condition precedent to the setting in motion of criminal investigation though in great majority of cases criminal prosecutions are undertaken as a result of information received and recorded by way of FIR. Learned Judges found that there is no reason why the police, if in possession of knowledge otherwise, should not undertake an investigation to find out 'the truth of the matters alleged'. Learned Judges held that Section 157 of the Code points out to that direction. The said observation of the Privy Council in the case of Nazir Ahmed (supra) has been affirmed by the Three Judge Bench of the Supreme Court in the case of State of Bihar v. J.A.C. Saldhana, reported in : 1980CrlJ98 (see paragraph 25). In paragraph 25 the learned Judges of the Supreme Court also affirmed the view of the Privy Council that in India the Police has the statutory right to investigate the circumstances of an alleged cognisable crime without requiring any authority from the judicial authority. The learned Judges of the Supreme Court also affirmed the view of the Privy Council that the function of the judiciary and police are complimentary and not overlapping. The observance of individual liberty with due observance of law and order is to be obtained by leaving each other to exercise its own function. However, the learned Judges of the Privy Council in Nazir Ahmed's case have also clarified that if no cognisable offence is disclosed and still more if no offence of any kind is also disclosed, the police would have no authority to undertake any investigation.

22. Now looking at the FIR which has been lodged and which has been extracted above, can this Court come to the conclusion even prima facie that no commission of any cognizable offence has been alleged. It may be true that particulars of the offence or the ingredients of the offence have not been alleged. But for that reason can the Court hold that on the basis of the materials alleged in the FIR the police will have no 'reason to suspect' the commission of a cognizable offence? Can the Court lay down when such information is brought to the notice of the police, the police will simply fold its hand and will not undertake its duty to investigate, inter alia, on the ground that fuller particulars of the offence have not been disclosed. In other words, is it the obligation of the informant to disclose all the particulars of the offence in the FIR.

The next question which arises is - is it feasible for the informant to disclose such particulars. In our opinion the answer has to be in the negative.

23. The mandate of the Code is very clear on this aspect of the matter and Section 157 of the Code clearly says if from the information received or otherwise, an Officer-in-Charge of a Police Station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate he shall proceed to the spot to investigate. Therefore, the duty, which is cast on the police officer under Section 156, is of a peremptory nature and such duty is only subject to one rider that if the police officer has reason to suspect that there has been no commission of a cognizable offence on the basis of the materials disclosed in the FIR, then he may not investigate.

24. Now the expression 'reason to suspect' has also been construed judicially by the Supreme Court in the case of *State of Haryana v. Bhajan Lal*, reported in : 1992CriLJ527 . At paragraph 30 and page 613 of the report the learned Judges made it clear that at the stage of registration of a crime on the basis of the information disclosing a cognisable offence the concerned police officer cannot embark upon an enquiry whether the information given by the informant is reliable and genuine nor can the police officer refuse to register the case on the ground that the information is not reliable or credible. This aspect of the matter has been further discussed in paragraph 41 at page 616 of the report where the learned Judges held that it is the statutory right of a police officer to investigate the circumstances of a case relating to commission of a cognisable offence only when he has reason to suspect about such commission. The expression 'reason to suspect' has been judicially construed by the learned Judges and in paragraph 42 the learned Judges have compared the said expression with the expression 'reasonable suspicion' in Section 41(a) and (g) of the Code. The learned Judges held that plain meaning of the words 'reason to suspect' must be accepted. The learned Judges found that the expression 'reason to suspect' is very clear and the said expression 'suspect' has been defined as meaning something to exist without adequate proof and the word 'suspect' has been distinguished from the word 'belief'. In paragraph 47 the learned Judges further reiterate the said proposition by saying that the word 'suspicion' is defined as being the 'imagination of the existence of something without proof. That being the judicial interpretation of the expression 'reason to suspect' by the Supreme Court in *Bhajan Lal*, this Court is of the opinion that on the basis of the FIR, as lodged in the case, the police authorities can legitimately have reasons to suspect the commission of a cognisable offence. So by undertaking an investigation they have not committed infraction of any law.

25. Mr. Pal, learned Counsel for the writ petitioners/respondents has placed reliance on certain expressions in paragraph 49 of the judgment in *Bhajan Lal* and submitted the Judges have held that the expression 'reason to suspect' must be governed by the facts and circumstances of each case and it would mean the commission of a cognisable offence based on -the specific articulate facts mentioned in the FIR. So according to the learned Counsel, going by the said test in the instant case, no investigation is possible on the basis of the present FIR. This Court is unable to accept the said contention.

26. Allegations have been recorded in the FIR by saying that the Directors, Managers and Secretaries and the Selling Agents of the State lotteries have entered into a criminal conspiracy and are running the On-line lottery in the State of West Bengal in violation of the provisions of Section 4 of the said Act and a request was made to treat the said complaint as an FIR under Sections 7 and 9 of the said Act read with Section 120B, IPC

and to start investigation. Now the question is whether these facts are true or false cannot be decided without an investigation. The police cannot just sit idle and go on wondering and scrutinising those facts how Section 4 has been violated. If the police officer takes this attitude in that case, he will not be discharging his duties enjoined on him under the Code. Mr. Pal, the learned Counsel submitted that rule of law will suffer a jolt if police is allowed to carry on investigation on the basis of such an FIR. Rule of law has many facets and one of its most important attributes is that the police must act promptly to detect and prevent the commission of offence. If police develop cold feet in investigating crime, that itself imperils the rule of law and is detrimental to public interest in general and individual liberty in particular.

27. Reliance was also placed by the learned Counsel for the respondent on the decision of the Supreme Court in the case of *State of West Bengal v. Swapan Kumar Guha*, reported in : 1982CriLJ819 . The learned Judges of the Supreme Court considering the FIR in that case came to the conclusion that no offence was made out under Section 4 of the Prize & Money Circulation Schemes (Banning) Act, 1978. The learned Judges of course held that whether offence has been disclosed in the FIR or not depends on the facts and circumstances of each particular case (see paragraph 65, page 972 of the report). The learned Counsel for the respondents/writ petitioners has very much relied on the observation of Chief Justice Chandrachud in paragraph 10 of the Judgment where the learned Chief Justice held that the First Information Report which does not allege or disclose the essential requirement of the penal provision cannot form the foundation or constitute the starting point of a lawful investigation.

28. In the instant case we are dealing with the provisions of the said Act and Section 7 whereof has made it clear that violation of any of the provisions of the said Act is punishable and in the FIR it has been clearly alleged that Section 4 of the said Act has been violated. Therefore, even if we go by, as we must, with the formulations made by Chief Justice Chandrachud in *Swapan Kumar*, we reach the same conclusion. In *Swapan Kumar* also the principles laid down in *Nazir Ahmed* have been approved (see para 53). In paragraph 64 of the Judgment Justice Sen crystallised the legal position by saying that if the offence is disclosed, the Court will not normally interfere with the investigation of the case and will permit the investigation to be completed. But if the materials do not disclose the offence, the investigation cannot be permitted. This Court, at the risk of repetition, wants to point out that having regard to the provisions of the said Act, specially, Section 7 of the said Act, it is clear that any violation of Section 4 is an offence and in view of Section 8, it is a cognisable offence. Therefore, the FIR is a valid one.

29. It is obviously true that the power of the police to investigate is not an unfettered power. Such power is subject to at least two limitations. One is that the FIR must allege or disclose the commission of a cognisable offence and secondly on the basis of such disclosure or allegation the police authorities must entertain a reason to suspect the commission of such a cognisable offence. If these two tests are satisfied at the stage of FIR, the right of the police to investigate ought not to be interfered by the Court unless such an investigation is conducted in a manner which is manifestly mala fide. In this case, no case of mala fide either been alleged or argued on behalf of the respondents. Therefore, this case falls within the first category mentioned in paragraph 108 in *Bhajan Lal*. The said category makes it clear that if the allegations, taken on their face value and accepted in their entirety makes out a case constituting an offence, the investigation must be on. Here if we follow the said principle and accept the entire allegation in the FIR, we are of the opinion that a prima facie case of commission of a cognisable offence has been made out.

30. Mr. Pal for the assistance of the Court has referred to the dictionary meaning of the word 'make out'. He has relied on *Collins Cobuild Dictionary of Phrasal Verbs* and *Cambridge International Dictionary on English*. The word 'make out' normally means to make a case for something to argue and so on. While referring to the Dictionary meaning of the expression 'make out', we must keep in our mind that Judgments are not to be read as statutes and expressions used in the Judgment must be understood in the context in which they have been used. It is well-known, words are not passive agents nor are they 'mathematical symbols'. They have a penumbra of meaning and take their colour and shades from the context in which, they are placed. Going by this well-known canon of interpretation, this Court is of the opinion that in the facts of this case, the FIR, if

accepted, in its entirety, makes out a prima facie case of commission of a cognisable offence.

31. Mr. Pal, learned Counsel for the respondents, has also referred to various other Judgments for the purpose of appreciating the contents and contours of an FIR. He has referred to the following decisions:-

1. Sk. Ishaque and Ors. v. State of Bihar, reported in 1995 Cr LJ 2682 (Para 7)
2. Binoy Kr. Singh v. State of Bihar, reported in (1997)1 SCC 282 (Para 5)
3. State of Kerala v. Samuel, reported in : AIR1961Ker99
4. Somabhai v. State of Gujarat, reported in : 1975CriLJ1201 .

32. In all these cases, the matters came before the Court after the conclusion of criminal trial. In none of these cases, the question whether the FIR has prima facie disclosed the commission of a cognisable offence for undertaking an investigation was in issue. It is well-known that after the FIR is lodged, Investigation is completed and charge sheet is filed by the police, the trial commences with the Court framing the charges. Then after a full-scale trial, the Court either enters a Judgment of conviction or of acquittal. In all such cases, it is open to the defence to scrutinise the FIR and confront its makes with its content. In all such cases of criminal trial, the common law principle of appreciation of evidence, which have been assimilated and engrafted in our country in the Evidence Act come into operation. The innocence of the accused, another time honoured common law principle in Indian Law comes into play. Judged in the context of this principle, the Court may come to the conclusion that the FIR does not disclose the ingredients of the offence and the accused persons may be entitled to acquittal an at times they are acquitted. But those principles cannot be applied for the purpose of finding out whether the FIR which alleged the commission of cognisable offence made out a prima facie case. Therefore, with great respect to the learned Counsel those Judgments are not of much assistance to the Court for deciding the points at issue. The learned Counsel also relied on some other Judgments which are being discussed below. Those Judgments are :

1. M.M. Rajendran v. K. Ramkrishnan, reported in : (1997)6SCC85 ;
2. Alpic Finance Ltd. v. Sadashivam, reported in : 2001CriLJ1246 ;
3. T.T. Anthony v. State of Kerala and Ors., reported in (2001)1 SCC 181

33. The decision in the case of M.M. Rqjendran was on the basis of a private complaint alleging the commission of an offence under Section 200, IPC. It is well known that offence under Section 200, IPC is a non-cognisable and bailable offence. Therefore, the test to find out whether the allegations in the complaint make out a prima facie case of non-cognisable offence is different from the tests to find out whether the omission of a cognizable offence has been made out in an FIR which clearly alleges commission of such an offence. Therefore, the decision in the case of Rqjendran is not of much help to the Court.

34. The next decision in the case of Alpic Finance also arose out of a private complaint under Section 200 of the Code filed before the Metropolitan Magistrate alleging commission of offence under Section 420/406/423 read with Section 120B of IPC. The main question which was considered by the Court whether the criminal complaint was maintainable when the remedy under the civil law was available. The learned Judges held that the learned single Judge was justified in invoking the powers under Section 482 of the Code in setting aside the proceedings pending before the learned Magistrate. Those questions are not relevant here. The learned Judges held in Alpic Finance that in the facts and circumstances of that case no element of deception was discernible and the dispute is of civil nature. It may be noted that the Court entered into those considerations not at the stage of investigation but after the process was issued by the criminal Court and search had taken place.

35. In the last case of T.T. Anthony, the learned Judges were considering a completely different question. The

question which was troubling the Court was whether the second FIR on the same facts is maintainable. The Court held that the second FIR is covered by the provisions of Section 162 of Cr PC and a citizen cannot be harassed twice on the basis of second FIR in respect of the same incident. This has been stated in paragraph 27 by the learned Judges. In paragraph 27 the learned Judges held that a Just balance has to be struck between the fundamental rights of citizens under Articles 19 and 21 of the Constitution and the power of the police to investigate a cognisable offence. It is well known that in a case relating to lottery the citizens do not have any fundamental right under Article 19. This has been well settled by the Supreme Court in the case of B.R. Enterprise and no allegation of deprivation of right under Article 21 has been argued before us. In any event, the right under Article 21 is subject to the procedure established by law which would obviously include the provisions of the said Act and the provisions of the Court. No case of police excess has been argued before us. So the decision in the case of T.T. Anthony having been rendered in a different context does not throw much light on the question with which we are concerned here.

36. Lastly, an argument has been made by Mr. Bagchi, learned Counsel for the respondents/petitioners, while referring to certain proceedings before the Kerala High Court under the said Act and to some orders passed by the Hon'ble Supreme Court arising out of those proceedings. It was submitted before us that the learned Judges of Kerala High Court have taken the view that under the said Act the State Government has no power except reporting the matter to Central Government. With great respect to the learned Judges, we cannot accept the said view for the reasons discussed above.

37. We are not aware of the nature of the FIR, if any, lodged and in respect of which facts the Kerala High Court has given its finding. Therefore, we cannot ascertain the relevance of the observation of Kerala High Court in the facts of this case. In any event, interim order which has been issued by the Kerala High Court and which are also allowed to continue as an interim measure by the Hon'ble Supreme Court, not being a precedent are not binding on this Court. As such, we do not feel inclined to alter our views on the basis of the Kerala High Court proceedings.

38. For the reasons aforesaid, we allow both the appeals and set aside the order dated 7th January, 2005 passed by the learned Judge of the writ Court. We, however, make it clear that the writ petitions which are pending before the learned Judge of the writ Court may be heard and we do not say anything on the merits of the writ petitions.

Since both the appeals are allowed, no order need be passed on the applications for stay and they are also disposed of accordingly.

There will be no order as to costs.

Later:

After the judgment has been dictated in open Court, learned Counsel for the respondents/writ petitioners prays for stay of operation of the judgment and order. Since we have vacated the interim order, there is no question of grant of any stay by this Court. The prayer for stay is therefore, considered and rejected.

Let xerox certified copy of this judgment, if applied for, be made available to the learned Counsel for the parties as expeditiously as possible.

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