

IN THE HIGH COURT OF KARNATAKA AT BENGALURUDATED THIS THE 18TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.11482 OF 2020 (GM-RES)**BETWEEN**

INDIA AWAKE FOR TRANSPARENCY
SHRISHTI CRESCENDO,
24 DESIKA ROAD, MYLAPORE,
CHENNAI 600004.

...PETITIONER

(By Sri. SUBRAMANIAN R, ADVOCATE)

Bar & Bench (www.barandbench.com)

AND:

1. MR. AZIM HASHAM PREMJI
SURVEY NO.75,133,135/1,136/1
NO.574 DODDAKANNELLI VILLAGE
SARJAPUR ROAD BENGALURU-560035
2. MR. AZIM HASHAM PREMJI
SURVEY NO.75,133,135/1,136/1,
NO.574 DODDAKANNELLI VILLAGE,
SARJAPUR ROAD BENGALURU 560035
3. MRS. YASEEM AZIM PREMJI
SURVEY NO 574 DODDAKANNELLI VILLAGE
SARJAPUR ROAD, BENGALURU-560035
4. MR. PAGALTHIVARTHI SRINIVASAN
NO.524 16TH CROSS,
INDIRA NAGAR II STAGE
BENGALURU-560038

5. M/S PRAZIM INVESTMENT AND TRADING COMPANY PVT LTD
NO.134 NEXT TO WIPRO CORPORATE OFFICE
DODDAKANNELLI, SARJAPUR ROAD
BENGALURU-560035
6. M/S TARISH INVESTMENT AND TRADING COMPANY PVT LTD
NO.134 NEXT TO WIPRO CORPORATE OFFICE
DODDAKANNELLI, SARJAPUR ROAD
BENGALURU-560035
7. M/S HASHAM INVESTMENT AND TRADING COMPANY PVT LTD
NO.134 NEXT TO WIPRO CORPORATE OFFICE
DODDAKANNELLI, SARJAPUR ROAD
BENGALURU-560035

... RESPONDENTS

(BY SRI.R.V.S. NAIK, SENIOR COUNSEL FOR SRI.SURYANARAYANA, ADV. FOR R1-RBI; SRI.S.GANESH, SR. COUNSEL FOR SRI.SANDEEP HULIGOL, ADV. FOR R2 TO R7)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C. PRAYING TO ISSUE A WRIT OF CERTIORAI OR MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, SETTING ASIDE THE ORDER DATED 28.07.2020 OF THE 41ST ADDL. CMM, BENGALURU DISMISSING THE PETITIONER PRIVATE COMPLAINT No.7111/2020 ON ITS FILE AND CONSEQUENTLY DIRECT THE 1ST RESPONDENT TO REGISTER THE OFFENCE SET OUT IN THE INFORMATION DATED 28.01.2020 OF THE PETITIONER IN RESPECT OF THE OFFENCES OF THE 2ND TO 7TH RESPONDENTS AND FURTHER DIRECT 1ST RESPONDENT TO ACT ON THE SAME AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING AND HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.12.2020 THIS DAY, **THROUGH VIDEO CONFERENCE**, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a) *Issue a writ of certiorari or order of certiorari or mandamus or any other appropriate writ, order or direction, setting aside the order dated 28.07.2020 of the Ld 41st Additional Chief Metropolitan Magistrate Bengaluru dismissing the Petitioner Private Complaint Number 7111 of 2020 on its file and consequently direct the 1st respondent to register the offence set out in the information dated 28.01.2020 of the Petitioner in respect of the offence of the 2nd to 7th Respondents and further direct the 1st Respondent to act on the same as per law so that the said offences are expeditiously prosecuted before the competent Court as per law;*
- b) *and in the alternative issue a writ of mandamus directing the 1st Respondent to register the offence set out in the information dated 28.01.2020 of the Petitioner in respect of the offences of the 2nd to 7th Respondents and further direct the 1st Respondent to act on the same as per law so that the said offences are expeditiously prosecuted before the competent Court as per law;*
- c) *Issue such other writs, pass such other orders and grant such other reliefs as deemed fit in the circumstances of the case in the interest of justice and equity.*

2. **FACTS:**

2.1. The petitioner claims to be a not for profit company registered under Section 8 of the Companies Act 2013 ('Act of 2013' for short) with the object of working in the areas of governance and in transparency.

2.2. It is contended that the petition arises in respect of the order dated 28.07.2020 passed by the 41st ACMM, Bangalore dismissing the private complaint No.7111/2020 filed by the petitioner seeking directions under Section 156(3) of the Cr.P.C. to the respondent No.1- Reserve Bank of India (RBI) to register the information of alleged cognizable offences committed under the Reserve Bank of India Act ('RBI' Act) by respondent No.2 to 7 herein. It is further contended that dehors the private complaint, the respondent No.1 is bound to be directed by a writ of mandamus by this Court

to prosecute the offences against respondents No.2 to 7 in respect of the allegations set out in the petition.

2.3. It is alleged that the RBI Act was amended with effect from 9.1.1997 to strengthen the role of RBI in supervising Non Banking Finance companies (NBFC). Section 45IA of the RBI Act made it mandatory for all the NBFC to obtain registration from RBI in the event of the business being conducted without such registration, such an entity could be prosecuted under Section 58B(4A).

2.4. It is alleged that respondents No.2 to 3 being directors of various companies were carrying on non-banking financial business in the said companies without registration and as such had committed offences under Section 45IA of the RBI Act and as such they were to be prosecuted.

2.5. It is stated that it is in regard to this that a private complaint in PCR No.711/2020 had been filed by the petitioner against respondent No.1-RBI seeking for a direction to the RBI to initiate proceedings against the respondents No.2 to 7 herein for offences under Section 45IA r/w 58B(4A) of the RBI Act.

2.6. After hearing the said matter, the Magistrate by way of his detailed order dated 28.7.2020 dismissed the said PCR No.711/2020 holding that what has been sought for in the complaint is only a direction to the RBI to take cognizance and investigate into the matter. The court held that the representation earlier submitted by the petitioner was still pending with the Governor of the RBI for consideration. The status of said representation was not known. In the absence thereof, the Court was

of the opinion that no direction can be issued to the Governor of the RBI.

2.7. It is stated that for this reason the petitioner is before this Court seeking for the aforesaid reliefs setting aside the order dated 28.7.2020, restore the private complaint No.711/2020 on the file and direct respondent No.1-RBI to register complaint against respondents No.2 to 7 for offences under Section 45IA r/w 58B(4A) and conduct investigation thereto.

3. Upon filing of the above petition, notice was issued to the respondents, who entered appearance. Though the respondents have not filed any objections to the petition, both the set of respondents raised certain preliminary issues and have requested this Court to consider the said issues which according to them would disentitle the petitioner from filing of the above petition and/or

seeking for the reliefs stated therein leading upto the dismissal of the petition.

4. Sri.R.Subramanian, learned counsel having expressed his consent for hearing the said preliminary issues, the same are taken up.

5. Sri. S Ganesh, learned Senior counsel instructed by Sri.Sandeep Huligo! appearing for respondents No.2 to 7 submitted that:

5.1. The above writ petition is not tenable, that the issue raised in the private complaint has already been decided by the Delhi High Court in W.P.No.4905/2017.

5.2. The petitioner having filed PIL before this Court and having withdrawn the same unconditionally without reserving any liberty the present writ petition is not maintainable and as such, the writ petition is to be dismissed.

5.3. In support of the above contentions Sri. S. Ganesh, learned Senior counsel would submit that the petitioner had filed Writ Petition before the Hon'ble Delhi High Court in W.P.(C) No.4905/2017 wherein the petitioner has sought for a mandamus directing the Union of India, Department of Financial Services, Ministry of Corporate Affairs, as also RBI who have been arraigned as respondents No.1, 2 and 3 respectively to take action as required under law in respect of the complaints dated 1.11.2016, 14.3.2017 and 28.4.2017 filed by the petitioner and intimate the result thereof to the petitioner, to initially conduct a preliminary enquiry and thereafter a detailed investigation in respect of the complaints filed by the petitioner etc.,.

5.4. The complaints dated 1.11.2016, 14.3.2017 and 28.4.2017 contain allegations made

against respondents No.2 to 7 for violation of Section 45IA of the RBI Act, in para 19, 35 and 37 of the said Writ Petition filed before the Hon'ble Delhi High Court, it is contended as under:

*"19. The petitioner states that the 2nd Respondent meekly acquiesced with actions of the 3 NBFC's and the Acquirer and proceeded to consider the same without in any manner enforcing compliance with the directions issued. The Petitioner states that the acts of the 3 NBFC's and the Acquirer in violating the directions of the 2nd Respondent were serious offences punishable under Sec 58B(5aa) of the RBI Act and is punishable with 3 years imprisonment and the 2nd Respondent chose not only not to make any complaint for the offence but did not even seek compliance of the directions and acted as though the directions were not at all applicable to the 3 NBFC's and the Acquirer. True copy of letter of 3rd Respondent dated 18.09.2014 to Registrar of Companies Bengaluru evidencing that 3rd Respondent was considering the merger proposal forwarded to it by the said Registrar of Companies Bengaluru is annexed herewith and marked as **Annexure P4**.*

35. The Petitioner states that as there was no response to the representation dated 01.11.2016 to the 3rd Respondent and in view of the apprehension that the same was being not acted upon as one of the Directors of the 3 NBFC's and Acquirer had been on the Central Board of the 3rd Respondent for many years till 2013 when many of the violations occurred

*the Petitioner made a complaint dated 28.04.2017 on the same with the 1st Respondent as well. True copy of the Petitioner's complaint dated 28.04.2017 to 1st Respondent seeking action on the complaint filed with 3rd Respondent to revoke the merger is annexed herewith and marked as **Annexure-P16.***

*37. The Petitioner states that it was further shocked to find that in respect of the 3 subsidiaries of the NBFC's, which were illegally acting as NBFC's without registration with full knowledge of the 3rd Respondent, the 3rd Respondent instead of shutting them down and prosecuting the companies and its officers had instructed them to not make fresh investments and as such by such instruction legitimised the existing NBFC business being carried on in violation of law without registration. The Petitioner states that the 3rd Respondent is merely bound to implement the law and has no right under the law to waive the same or relax the same and as such the instruction to the said companies to continue NBFC business without making fresh investments is a gross illegality effected evidently to favour the said companies. True copies of the Directors and Audit Reports of the 3 companies for 2014-15 setting out the direction of 3rd Respondent is annexed herewith and marked as **Annexure-P17."***

5.5. He therefore submitted that the relief which had been sought for in the proceedings in PCR being identical to that sought for in the writ petition before the Hon'ble Delhi High Court,

the PCR itself was not maintainable, therefore, the question of the present Writ Petition being maintainable would not at all arise.

5.6. The Hon'ble Delhi High Court by way of its order dated 29.5.2017 had disposed the writ petition with a direction to respondents No.1 and 2 therein to examine the complaints made by the petitioner and to pass orders on the same. He however submits that reference to respondent No.2 therein is to RBI inasmuch as there is a typographical error which has crept into the matter. A direction having been issued to RBI, the RBI was required to look into the matter which it has done and order dated 5.9.2017 passed by the RBI regretting RBI's inability to accede to the request of the petitioner to approach the Court to annul the merger or to pass any order. In this background he submitted that these facts

having been suppressed in PCR No.7111/2020 and Hon'ble Delhi High Court having already dealt with the matter, issued directions to RBI and thereafter RBI having passed an order, the same could not be re-agitated in the PCR.

5.7. The petitioner had also filed a PIL in W.P.No.3635/2020 before this Court whereunder the Governor of RBI and various other entities had been arrayed as parties and that in the said matter also allegations were made as regards violation of RBI Act, more particularly relating to registration of the NBFC. The said allegations are detailed in para 26(a) of the said PIL which is reproduced hereunder:

*"a. **RBI Act:** The 11th Respondent was a Central Government appointee on the Central Board of Reserve Bank of India from 27.06.2006 to 20.09.2013. Companies controlled by the 11th Respondent, including the 3 companies and their subsidiaries, had a free run conducting business as Non Banking Finance Companies (NBFC's) without mandatory registration.*

b. Even when some of them registered they were non compliant with the norms. RBI evidently could not act against its own Central Board Member and never took any action.

c. Even in respect of the merger RBI Regulations mandated that there should be a pre approval of RBI before a merger is filed at High Court. This was also violated.

d. Even post merger RBI allowed the companies to operate for many years as NBFC's without registration in direct contravention of law.

*e) RBI refused to act in any manner even when the violations were [laced before it. True Copy of the Petitioner's representations dated 14.03.2017 and 28.01.2020 to the Reserve Bank of India is annexed herewith and collectively marked as **ANNEXURE-R.**"*

5.8. The said PIL having been heard by the Division Bench of this Court, upon the Division Bench of this Court not being convinced with the said matter, the petitioner after addressing arguments in the matter sought for withdrawal of the same during the proceedings on 1.10.2020 and as such, the petition was disposed of as unconditionally withdrawn.

5.9. Relying upon the same Sri. S Ganesh, learned Senior counsel would submit that once the proceeding had been filed making allegations before this Court as a PIL or otherwise and the same had been withdrawn, the filing of the present writ petition is barred by relying on the decision of the Apex Court in **Sarguja Transport Service -v- State Transport Appellate Tribunal and others [1987(1) SCC 5]** more particularly para 9 thereof which is reproduced hereunder for easy reference.

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in

bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We however leave this question open."

5.10. The withdrawal of the above PIL would amount to abandonment by the petitioner of all his claims and therefore, the present writ petition

could not have been filed by the petitioner and is therefore required to be dismissed.

6. Sri.R.V.S. Naik, learned Senior counsel instructed by Sri.V.V.Giri, learned counsel for respondent No.1 would submit that:

- 6.1. The claim of the petitioner is hit by the principles of *resjudicata* inasmuch as the RBI vide its order dated 5.9.2017 has rejected the claims of the petitioner. If at all the petitioner has any grievance, the petitioner ought to have challenged the order dated 5.9.2017. Same not having been challenged, a private complaint could not have been filed by the petitioner.

- 6.2. The said order of the RBI having been made in pursuance of the order of the Hon'ble Delhi High Court has an effect of *resjudicata*, the

petitioner cannot once again reagitate the same except by way of an appeal.

6.3. On these grounds he submitted that the above writ petition is to be dismissed.

7. Sri.R.Subraminian, learned counsel for the petitioner submitted that:

7.1. the proceedings which had been filed before the Hon'ble Delhi High Court were different from that which had been filed before the Magistrate by way of above PCR No.7111/2020.

7.2. Before the Hon'ble Delhi High Court, the relief which had been sought for was for a mandamus to decide on the representations given by the petitioner, whereas the proceedings in PCR had been filed to register a complaint against respondents No.2 to 7.

7.3. The Hon'ble Delhi High Court by way of its order dated 29.5.2017 had directed respondents No.1 and 2 therein i.e. Union of India to examine the aforesaid complaints and pass orders.

7.4. The letter dated 5.9.2017 of RBI cannot be said to be an order passed by the RBI inasmuch as there is no judicial or quasi judicial proceedings which took place. The said letter has been issued on the basis of the documents available, no hearing was conducted and therefore, the same is not in compliance with the directions of the Hon'ble Delhi High Court and as such, the said letter dated 5.9.2017 cannot be said to be an order passed by the RBI.

7.5. In the alternative, he submits that there is no order passed by the Union of India as directed by the Hon'ble Delhi High Court and as such,

the cause of the petitioner continues to be subsisting and the petitioner could agitate the same by filing PCR which has been so done.

7.6. He submits that PIL which had been filed before this Court was also relating to a completely different aspect inasmuch in the said PIL, the petitioner had sought for the constitution of a Multi Disciplinary Investigation team to investigate and prosecute the 11th respondent therein and his associates as set out in the representation dated 30.01.2020 and 3.2.2020 of the petitioner which is completely different from that which is sought for before the Magistrate.

7.7. In this background, he submitted that there is no order as such passed by the Hon'ble Delhi High Court which can operate as *resjudicata*, the reliefs which have been sought for before the Hon'ble Delhi High Court, in the PIL before

this Court similar to that which has been sought for in the PCR.

7.8. The principles laid in **Sarguja's case** would not be applicable to the present facts for the reason that in **Sarguja**, it is after the withdrawal of the petition a new petition has been filed, whereas in the present case, the writ petition was withdrawn on 1.10.2020, however, the PCR had been filed in March 2020 and the said PCR had been dismissed in July 2020, it is thereafter on 12.10.2020 that the present writ petition was filed. Thus he submits that the withdrawal of the PIL would have no bearing to an already existing matter before the trial Court and the present writ petition is not one under Article 226 but is more under Article 227 of the Constitution of India seeking for exercise of supervisory jurisdiction, as also one under Section 482 of

Cr.P.C. to exercise inherent power to set-aside the order passed by the Magistrate. He therefore submits that the withdrawal of the PIL would not have any bearing to the present petition.

8. In rejoinder, Sri.S.Ganesh, Learned Senior counsel would submit that :

8.1. the PIL had been filed earlier in February 2020, thereafter in March 2020 the PCR had been filed which came to be dismissed in July 2020 and the PIL was withdrawn on 1.10.2020, the present writ petition having been filed on 12.10.2020, the principles of **Sarguja** would apply, the subject matter of the PIL and the PCR being one and the same.

8.2. In this regard he relies upon para 14 of the decision in **Vimlesh Kumari Kulshrestha -v- Sambhajirao and Another [(2008)5 SCC**

58] which is reproduced hereunder for easy reference:

"14. The application filed for withdrawal of the suit categorically stated about the pendency of the earlier suit. Respondent, therefore was aware thereof. They objected to the withdrawal of the suit only on the ground that legal costs therefor should be paid. The said objection was accepted by the learned Trial Court. Respondent even accepted the costs as directed by the Court, granting permission to withdraw the suit. In a situation of this nature, we are of the opinion that an inference in regard to grant of permission can also be drawn from the conduct of the parties as also the Order passed by the Court. It is trite that even a presumption of implied grant can be drawn."

9. Sri.R.Subramanian contending that the said decision in **Vimalesh Kumari's case** had not been referred to by Sri.Ganesh in his initial argument, therefore, he sought for permission to reply to the said rejoinder. In his sur-rejoinder Sri.R.Subramanian submitted that:

9.1. It is para 15 of **Vimalesh Kumari's case** which is relevant, the said para is reproduced hereunder for easy reference:

"15. In Hari Basudev Vs. State of Orissa and Others [AIR 2000 Orissa 125], a Division Bench of the Orissa High Court held; "7. As already indicated, the cause of action accrued to opposite party No. 4 to file the election dispute u/S. 30 of the Act only after publication of the result of the election. Opposite party No. 4 in his petition made out a case for grant of permission to withdraw M.I.C. No. 14 of 1997. He had also stated in the petition that he reserved his right to file a fresh case, if necessary. The learned Civil Judge having permitted him to withdraw the said case, we are inclined to hold that permission to institute a fresh case in the circumstances was impliedly granted."

9.2. By relying on the said para he submits that the proceedings in PIL and that under Section 156 are independent proceedings. They are not connected to each other and therefore, the preliminary objections raised by Sri.Ganesh and Sri.RVS Naik, Senior counsels are not maintainable, those contentions are required to

be dismissed and the matter should be heard on merits.

10. Heard Sri.S.Ganesh, learned Senior counsel instructed by Sri.Sandeep Huligoi for respondents No.2 to 7, Sri.R.V.S. Naik, learned Senior counsel instructed by Sri.V.V.Giri and Sri.R.Subramanian, learned counsel for the petitioner. Perused papers.

11. The points which would arise for determination by this Court in the present matter are:

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i) Whether the present writ petition is maintainable in view of the orders passed by the Delhi High Court, as also withdrawal made by the petitioner of the PIL filed before this Court ?

ii) Whether the orders passed by the Delhi High Court, as also the order of withdrawal passed by the Division Bench of this Court would amount to res judicata ?

iii) What order ?

12. **ANSWER TO POINT No.1 – *Whether the present writ petition is maintainable in view of the orders passed by the Delhi High Court, as also withdrawal made by the petitioner of the PIL filed before this Court?***

12.1. Chronologically speaking it is the proceeding before the Hon'ble Delhi High Court which was taken up first whereunder there have been allegations made as regards respondents No.2 to 7 having violated the provisions of 45IA of the RBI Act and requiring for action to be taken by the RBI. Though the action is stated to be to consider the representations made by the petitioner vide its complaints dt. 1.11.2016, 14.3.2017 and 28.4.2017, it is seen on a reading of the said complaints that essentially the action which is to be taken by the RBI is as regards the alleged violation by respondents No.2 to 7 of Section 45 IA punishable under Section 58B(4C) of the RBI Act.

12.2. Juxtaposing the same to what was sought for in the PIL before this Court, it is seen that there was a multi disciplinary enquiry Committee which was requested to be formed for the purpose of investigating into various allegations including that made under para 26-A of the said PIL which has been reproduced hereinabove. Essentially the allegations made therein is also of conducting business as non-banking financial company without mandatory registration i.e. an alleged offence under Section 45-IA of the RBI Act.

12.3. Now coming to the private complaint in PCR No.711/2020, the prayer sought for therein is once again for a direction to the RBI to register a complaint against respondents No.2 to 7 herein for offences under Section 45-IA r/w 58-B(4A) of the RBI Act. Thus it cannot be disputed now by the petitioner that the relief

sought for before the Delhi High Court, in the PIL before this Court, as also in the private complaint filed before the Magistrate, are one and the same though by legal and linguistic gymnastics they have been worded differently. What this court is required to look into and appreciate is if the reliefs sought for on the allegations made are one and the same. Clever drafting and or subterfuge resorted to in such drafting would not take away the fact that the allegations made in all three proceedings are one and the same.

12.4. The wording being different is only the careful and ingenious drafting of the prayers and/or the reliefs sought for since the Forums are different but essentially in all the three matters what has been sought is a direction to the RBI to take action against respondents No.2 to 7

for alleged violation of Section 45-IA of the RBI Act.

12.5. Sri.R.V.S. Naik, learned Senior counsel has submitted that it is in pursuance of the directions of the Delhi High Court in W.P.No.4905/2017 that the order dated 5.9.2017 has been passed by RBI. Though Sri.R.Subramainan, learned counsel for the petitioner would contend that the letter dated 5.09.2017 is not an order but according to RBI it is an order.

12.6. Admittedly, the said order has not been challenged by the petitioner till date. What was sought for by the petitioner was for consideration of the complaints filed by the petitioner which has been so considered by the RBI and rejected by order dt. 5.9.2017. Whether said order is proper or not is is not a matter which could be considered by this Court

since the said order is not under challenge before this Court.

12.7. The RBI has categorically debunked the allegations made by the petitioners against respondents No.2 to 7, as also against RBI and in that background, the RBI has categorically stated that the merger cannot be annulled or RBI cannot approach the Court for annulment of such merger.

12.8. As regards the annulment of merger, it is stated that the petitioner has filed a separate Company Application in Co.P. No.182/2014. Thus the RBI not having the jurisdiction to do so and the petitioner having approached the jurisdictional Court, even that aspect cannot be considered by the Magistrate.

12.9. In view of the above, though it has been contended by Shri R.Subramanian that the

present writ petition is more in the nature of an appeal from the order passed by the trial Court in PCR No.7111/2020 having regard to the aforesaid facts and the aforesaid proceedings, I am of the considered opinion that the said PCR No.7111/2020 is one more proceedings filed by the petitioner in furtherance of the proceedings before the Hon'ble Delhi High Court, PIL filed before this Court, the proceedings before the Company Court, etc.

12.10. The allegations and/or complaints of the petitioner having already been considered by the RBI and a detailed order dated 5.9.2017 having been passed by the RBI, I am of the considered opinion applying the principles laid down by the Apex Court in **Sarguja's case** that when the petitioner unconditionally withdraws a particular matter, the said subject

matter could not be re-agitated in any other proceedings.

12.11. The principles laid down by the Apex Court in **Sarguja's case** was on the basis of public policy and to prevent abuse of the process of the Court, as also to prevent bench hunting.

12.12. In the present case, the grievance of the petitioner being the same in all the proceedings, the action sought for by the petitioner also being the same, in that for the RBI to take necessary action against respondents No.2 to 7. The petitioner having failed before the Magistrate tried his luck by addressing arguments in the PIL where also the petitioner failed and had to withdraw the same unconditionally without any liberty. The petitioner cannot agitate the same ground before this Court thereafter.

12.13. This is further reinforced by the contentions taken up by the petitioner when the petitioner has itself stated that de hors the proceedings before the Magistrate this Court ought to issue a mandamus directing 1st respondent to initiate action. It is in pursuance thereof that an alternative prayer seeking for a mandamus to that effect is sought for i.e. to say that the present proceedings are not strictly impugning the order of the Magistrate in PCR No.7111/2020 but are independent writ proceedings which would attract the embargo imposed by the Apex Court while developing the principles relating thereto in **Sarguja's case.**

12.14. Be that as it may even the reliefs sought for by the petitioner in the PCR is for the RBI to take action against the Respondents 2 to 7 on the basis of the allegation that the Respondents 2

to 7 have violated Section 45-IA of the RBI Act, the RBI having already considered the said request and passed an order according to RBI dated 05.09.2017, the reliefs sought for in the PCR cannot be granted, as such the question of issuance of a certiorari to quash the order dismissing the PCR, restoring the PCR and issuing directions to the RBI to consider the alleged offence would also not arise. The RBI having contended that the letter dated 05.09.2017 is an order, the Petitioner would be at liberty to challenge the same in accordance with law.

12.15. In view of the above, I answer point No.1 holding that *the present writ petition is not maintainable in view of the orders passed by the Hon'ble Delhi High Court, as also withdrawal made by the petitioner of the PIL filed before this Court as also the*

order passed by the RBI dated 05.09.2017.

13. **POINT No.2: *Whether the orders passed by the Delhi High Court, as also the order of withdrawal passed by the Division Bench of this Court would amount to resjudicata?***

13.1. Though it is sought to be contended by Sri.R.V.S.Naik, learned Senior counsel that the order passed by the Delhi High Court would operate as *resjudicata*, I am of the considered opinion that the order of the Delhi High Court was only a direction to the RBI to consider the complaints and pass an order. Such a direction not being one on merits cannot be termed to operate as *resjudicata*. For an order to operate as *resjudicata* it has to be passed on merits between the same parties.

13.2. The order of the Hon'ble Delhi High Court would not qualify to be that passed between the same parties since the parties in the present matter are different and as such, I am of the considered opinion that the said order would not operate as *res judicata*.

13.3. ***Hence I answer point No.2 by holding that the orders passed by the Delhi High Court, as also the order of withdrawal passed by the Division Bench of this Court would not amount to res judicata.***

14. **POINT No.3: What order ?**

14.1. In view of the above discussion, I am of the considered opinion that the writ petition filed is an abuse of process of law and of this Court, the same is not maintainable. The grievance of the petitioner has already been addressed by RBI by its order dated 5.09.2017 passed. If

at all the petitioner has any grievance as regards the said order, the petitioner is required to take adequate and necessary steps not by filing of proceedings by way of a private complaint before the Magistrate or by way of writ petition before this Court.

14.2. Furthermore, as afore stated, the petitioner having approached this Court by way of PIL and having withdrawn the same unconditionally, the petitioner cannot re-agitate the said issues in the present writ petition. As such, the preliminary issue raised by Sri.S.Ganesh, learned Senior Counsel on behalf of respondents No.2 to 7 are held to be valid. The writ petition is therefore, **dismissed.**

14.3. There are several decisions/citations which have been filed by both the parties. However, since the decisions which were referred to

during the course of argument being limited to those in **Sarguja and Vimalesh Kumari's case**, the other decisions are not adverted to in this Judgment, more so since they relate to merits of the matter and this petition is being dismissed on the ground of sustainability of the preliminary issues raised.

Sd/-

JUDGE

Bar & Bench (www.barandbench.com)

In.