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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 486 OF 2019

Manoranjan Santosh Roy.]
Age – 48 years, Occu : Tax Volunteer,]
Indian Inhabitant of Mumbai,]
Residing at : R. No.115, Rui Park,]
Mora Village, J. R. Mhatre Road,]
Juhu, Mumbai – 400049.]...Petitioner.

V/s.

- 1] Union of India Through]
The Finance Minister,]
having address at : Chief Secretary,]
North Block, New Delhi – 110 001.]
]
2] The Director General of Central Economic]
Intelligence Bureau]
Having address at : Sixth Floor, B Wing,]
Janpath Bhavan, New Delhi – 110 001.]
]
3] State of Maharashtra]
Through Home Ministry,]
Mantralaya, Mumbai 032.] ...Respondents.

Mr. Shashikant Chaudhari and Mr. Pranot Pawar i/b Sachin Bandkar for the Petitioner.

Mr. H. S. Venegaonkar for Respondent No.1.

Mrs. M. H. Mhatre, APP for the Respondent-State.

CORAM

: A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.

Reserved on : 22nd August, 2023.
Pronounced on : 8th September, 2023.

JUDGMENT (Per Sharmila U. Deshmukh, J.) :

1. Rule. Rule made returnable forthwith and taken up for final hearing with consent of the parties.
2. Heard Mr. Chaudhari, learned counsel appearing for the Petitioner, Mr. Venegaonkar, learned counsel appearing for Respondent No.1 and Mrs. M. H. Mhatre, APP for the Respondent-State.
3. By this petition, the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, is invoked for the following substantive relief:

“b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, order or directions Under Article 226 and/or any other writ of Constitution of India, 1950, to constitute the Independent Investigation Body/Agency or this Hon'ble Court may suo moto appoint some independent investigation agency in respect as inquiry, investigation, report as this Hon'ble Court may deem fit and proper and this Hon'ble Court be further pleased to pass necessary directions to that effect of investigation in respect of complaint dated 30.11.2018 filed by Petitioner at Exhibit "0".”

4. The pleadings in the Petition are set out in some detail as there is reference to numerical data extracted from the RBI annual reports and information received under RTI, which according to the Petitioner, constitutes wrongful activity and wrongful action which demands investigation. The precise words used in the Petition is that the petition has been filed to “*take immediate action against wrongful activities and wrongful actions by concern authorities which caused right of petitioner and other citizens of Maharashtra as well as India*”.

5. It is pleaded that the Governor of Reserve Bank of India and the Chief General Manager of Reserve Bank of India, in connivance with each other have not followed the proper procedure laid down by the rules and regulations and helped the undue beneficiary to get exchanged their unaccounted old currency notes of Rs.500/- and Rs.1,000/- during the demonetization of the year 2016 with the help of National Bank for Agriculture and Rural Development. It is pleaded that, initially the Petitioner had filed a public interest litigation bearing PIL No.85 of 2015 before this Court raising the issue of illegal currency in circulation, which came to be dismissed by this Court vide Order dated 23rd September 2016, against which review petition filed was also dismissed. It is pleaded that, the said PIL had been filed seeking direction of

investigation in the offences committed by Reserve Bank of India (RBI) and others.

5.1. In paragraph 3.7 and 3.8 of the Petition, a tabular chart has been set out for the period 2016 to 2018 and based on the chart it is pleaded that as per the annual report of RBI for the period 2016 to 2018, the legal tender of bank notes of Rs.500/- and Rs.1000/- in circulation were less than the figure which was received after demonetization which was sufficient to conclude that the illegal notes of Rs.500/- and Rs.1,000/-, totally amounting to Rs.11,66,50,00,00,000/- (Rupees One Trillion One Hundred Sixty Six Billion Five Hundred Million) was in excess which came through the banks.

5.2. The petition further pleads about the discrepancies and illegalities in the records of RBI by setting out a tabular chart to demonstrate that as per the annual report of RBI, the bank notes of Rs.1,000/- which were supplied by the two authorised printing presses for the period from 2000 to 2016 amounted to 10,400 in million pieces and the disposal of the soiled currencies by the RBI of the denomination of Rs.1,000/- amounted to 11,222 in million pieces, which according to the the Petitioner proved that there was more disposal of currency notes of 822 million pieces amounting to value of Rs.8,22,00,00,00,000/-

(Rupees Eight Hundred Twenty Two billion).

5.3. Similarly, as regards the bank notes of Rs.500/- supplied by three printing presses to the RBI for the same period from 2000 to 2016 were 37,523.292 in million pieces whereas the disposal of soiled notes of the same denomination by the RBI for the same period was 39,875 million pieces, which resulted in the disposal of currency notes of 2,351.708 million pieces in excess, which amounted to the value of Rs.11,75,85,40,00,000/- (Rupees One Trillion One Hundred Seventy Five Billion Eight Hundred Fifty Four Million).

5.4. After having calculated the number of notes of the denominations of Rs.5 to Rs.2,000 in million pieces supplied by three printing presses to the RBI for the period 2000 to 2018 and the disposal by RBI of the soiled notes of Rs.5 to Rs.2000 for the period April 2000 to April 2018, it is pleaded the total notes in public circulation should have been 59,585.019 but the RBI annual report of March 2018 shows the public circulation of the notes are 1,02,395 million of pieces which is in excess by 42809.981.

5.5 The petition further pleads that during the demonetization, the amount received by RBI was Rs.1,11,49,50,00,00,000/- (Rupees Eleven Trillion One Hundred Forty Nine Billion Five Hundred Million),

however the press release of 13th December 2016 shows the amount of Rs.1,24,40,00,00,00,000/- (Rupees Twelve Trillion four Hundred Forty Billion) which is again an excess amount of Rs. 12,90,50,00,00,000 (Rupees One Trillion Two Hundred Ninety Billion Five Hundred).

5.6. The petition then proceeds towards the new denomination notes of Rs.2,000/- issued till March 2017 which as per the annual report of RBI is Rs.3,28,50,00,000/- (Rupees Thirty Billion Two Hundred Eighty Five Million), however, the press release of 13th December 2016 shows that it is 1,70,00,00,000/- (One Billion Seven Hundred Million) and the difference is Rs 1,58,50,00,000/ (Rupees One Billion Five Hundred Eighty Five Million only). It is further pleaded that, press release by Finance Minister shows that the RBI received Rs.15.28 Trillion at the time of demonetization however the RBI reports only a sum of Rs.14.12 Trillion.

5.7. The petition pleads that, in the month of March 2018, the annual report of RBI shows the old currency in public circulation of Rs.500 (MG Series) denomination is 15,469 million pieces but in the month of April 2017 till March 2018, the supply of bank notes by two printing presses, new design is 16,953 million pieces and, as such, there is certain amount which is not shown in circulation.

5.8. It is further pleaded that, the currency notes of Rs.500/- printed in the Nashik Currency Note Press during the period April 2015 to December 2016, were 375.40 million pieces and supplied to the RBI was 345.00 in million pieces, which fact is missing from the annual report of RBI. It is pleaded that, as per the information received under the RTI Act, the Nashik Currency Notes Press has informed that 472.061 million pieces of currency notes of Rs.500/- MG-series were printed during the period 1st April 2015 to 31st March 2016 and, as such, there is irregularity in the series which is required to be investigated.

5.9. The case of the Petitioner is that illegal currency by illegal means in collusion with the bank Officers and bureaucrats were deposited by illegal businessmen to convert their unaccounted old currency with the new currency and the information was sought by the Petitioner under the RTI Act from about 20 nationalised banks, however, only 8 banks had given their reply. The Petitioner has placed on record the information received under the RTI from the nationalised banks where it is stated that in 4 days, substantial old notes of Rs.500/- and Rs.1,000/- were deposited during the period 10th November 2016 to 14th November 2016. The petition questions as to how within a short span of 4 days, such huge amount in old notes came to be deposited in the

banks and it requires thorough investigation.

5.10. Based on the annual reports and RTI information, the petition pleads that there is a huge scam going on and as such he has lodged the complaint dated 30th November 2018 with the Central Economic Intelligence Bureau. To the petition are annexed the copies of annual reports as well as the information obtained by the Petitioner under RTI Act as well as the press release.

6. The copy of complaint dated 30th November 2018 addressed by the Petitioner to the Director General, Central Economic Intelligence Bureau, the Union Finance Minister, the Governor, the Chief General Manager, RBI and the Director, National Bank for Agriculture and Rural Development is annexed at page 150 to the petition. The figures mentioned in the petition have been given in tabular form in the complaint and request is made to investigate the matter and submit a report to the Petitioner. As there was no response to the complaint of the Petitioner, the present petition has been filed on 25th January 2019.

7. Mr. Chaduhari, learned counsel for the petitioner at the outset submitted that the Apex Court in the case of *Vivek Narayan Sharma (Demonetization Case-5J.) v. Union of India [(2023) 3 SCC 1]* has considered the validity of impugned notification dated 8th November

2016 issued in exercise of powers under sub-section (2) of section 26 of the Reserve Bank of India Act and has held that, the said notification does not suffer from any flaws in the decision making process and satisfies the test of proportionality and as such cannot be struck down on the said ground. He would submit that, in the proceedings before the Apex Court, the present Petitioner had filed an interim application for impleadment which was withdrawn with liberty to pursue the instant petition. He would further submit that the subject matter of the proceedings before the Apex Court was as regards the validity of impugned notification dated 8th November 2016 whereas in the present petition, the Petitioner is seeking an investigation in the matters enumerated in his complaint dated 30th November 2018, which is as regards the discrepancy in the notes supplied by the printing presses to the RBI, notes which are in circulation as well as the amount which was received by the RBI during demonetization and, as such, the present subject matter is not covered by the decision of the Apex Court in the case of ***Vivek Narayan Sharma (supra)***. He would further submit that he is not seeking any relief against either the Governor of RBI or the Finance Minister and the enquiry is sought against unknown persons. He has invited the attention of this Court to his grievance as regards the

discrepancy revealed from the annual reports of RBI and the information given by the RBI and printing presses in response to the RTI applications filed by Petitioner. He would submit that in the present case the data is completely different from the data which was placed before the Apex Court.

8. Upon a query by this Court as to whether there is pleading in the Petition of different data as canvassed, learned counsel for the petitioner candidly admits that there is no such pleading. Upon a further query by this Court as to what are the offences made out in the complaint of 30th November, 2018 seeking investigation, the response is sections 409, 420 and 120-B of the Indian Penal Code, 1860.

9. *Per contra*, Mr. Venegaonkar, learned counsel for Respondent No.1–Finance Ministry would submit that the reliefs sought in the present petition were also sought in the PIL No.85 of 2015, which has already been dismissed by this Court and as such the bar of constructive *res judicata* applies to the present petition. He has invited attention of this Court to the reliefs in the PIL and to the reliefs sought in the present petition and would submit that the same reliefs are now being sought. He would further submit that the representation dated 30th November 2018 does not demonstrate any criminality. He would urge that

investigation is sought into the policy decision which is not at all permissible. He has invited the attention of this Court to the representation and would submit that the representation only sets out the discrepancy, however, does not make out any offence which would require investigation.

10. Mrs. Mhatre, learned APP appearing for the the Respondent-State adopts the submissions of Mr. Venegaonkar.

11. In rejoinder, Mr. Chaudhari, learned counsel for the petitioner submits that, the Petitioner is not challenging the policy decision as the same has already been adjudicated by the Apex Court.

12. Considered the submissions and perused the papers with the assistance of learned counsel appearing for the respective parties.

13. We could have dismissed the petition at the outset, for the reason that, the pleadings in the Petition and the submissions advanced by Mr. Chaudhari are at variance. As indicated above, there is specific allegation in the Petition against the Governor and Chief Manager of RBI that they in connivance with each other have helped undue beneficiaries during demonetization, however to tide over the issue of dismissal of the PIL NO 85 of 2015 which agitated the same issues, it has been submitted by learned counsel for Petitioner that no relief is sought against the

Governor of RBI or Finance Minister but against unknown persons. The instant petition was also liable to be dismissed in limine for the reason that the PIL No 85 of 2015 sought an investigation in the offences committed by RBI. Even though the reliefs may not be identically worded, it is clear from the pleadings in the instant Petition pertaining to PIL No 85 of 2015 that reliefs of similar nature were sought and not entertained in PIL No 85 of 2015 as this Court observed that there is no public interest involved. As the Petitioner in Paragraph No.1.1 has pleaded the cause in representative capacity of other citizens of Maharashtra as well as India, a query was posed by this Court as to whether the Petitioner has been authorised to espouse the cause of any member of general public, if not many at least 10 to 15 persons, which has been answered in the negative. However, in the interest of justice we have proceeded to examine the allegations to ascertain whether the same discloses sufficient grounds to institute inquiry/investigation.

14. The Petitioner has invoked the criminal jurisdiction of this Court seeking investigation/inquiry in what the Petitioner perceives as a scam pertaining to the legal tender in circulation. Based on the annual reports published by RBI and the information obtained under the provisions of Right to Information Act, 2005, the case, as set out in the

Petition, can be summarized briefly is that:

[a] Firstly, as regards the notes of denomination of Rs 1,000/ and Rs 500/, there is disposal of excess notes by RBI as soiled than the number of notes supplied by the authorised printing presses.

[b] Secondly, there is discrepancy in the annual report of RBI and the press release as regards the amount received by RBI during demonetization, which indicates an excess amount received.

[c] Thirdly, there is discrepancy in the annual report of RBI and the press release as regards the number of bank notes of Rs. 2,000/- issued till March, 2017.

[d] Fourthly, the annual report of RBI of March, 2018 shows discrepancy in the number of old bank notes of denomination of Rs.500/- in circulation and supply of new bank notes of denomination of Rs.500/- by printing presses and as such there is certain amount which is not shown in circulation.

[e] Fifthly, as regards the bank notes of Rs 500/- printed by Nashik Currency Note Press during period April, 2015 to December, 2016, lesser number of bank notes were supplied to RBI than printed and there is irregularity in the series.

15. As the Petition questions the alleged discrepancy in the

currency notes in circulation, useful reference can be made to the decision of the Apex Court in the case of *Vivek Narayan Sharma (cited supra)* . The Apex Court was dealing with various grounds of challenge to the Notification of 8th November, 2016 by which the specified bank notes of denomination of Rs.500/- and Rs. 1,000/- ceased to be legal tender w.e.f 9th November, 2016. The Apex Court considered the statutory scheme of RBI Act, particularly Section 26(2) of RBI which was the source of power for issuance of the Notification leading to the demonetization. The Apex Court observed that the provisions of RBI Act would reveal that in so far as monetary policy and specifically with regard to the matters of management and regulation of currency are concerned, the RBI plays a pivotal role. It was observed in paragraph 149 of the decision that primary and very important role is assigned to RBI in matter of issuance of bank notes and that the RBI has large contingent of expert advice available to it. The Apex Court observed in paragraph 202 of the decision that, the RBI is the sole repository of power for the management of currency and is also vested with the sole right to issue bank notes and to issue currency notes supplied to it by Government of India.

16. The Apex Court considered the entire record which

commenced with the communication addressed by the Secretary, Department of Economic Affairs to the Governor of RBI, the minutes of meetings of the Central Board dated 8th November 2016, the recommendations of RBI and the note for cabinet meeting leading to the notification of 2016 and the relevant observation for our purpose is that the Government of India has shared its concern with respect to the infusion of fake Indian currency notes and generation of black money which was concentrated in the two high denomination notes of Rs.500/- and Rs.1,000/-. The Apex Court considered that the said communication pointed out the adverse impact on the economy and the communication referred to the constitution of special investigation team headed by two former judges of the Apex Court which had made strong observations against the cash economy. The Apex Court held that the impugned Notification dated 8th November, 2016 does not suffer from any flaws in the decision making process and the test of proportionality is satisfied.

17. In the instant case, without going into the veracity of the allegations of discrepancy linked to the supply of the bank notes and the excess bank notes in circulation and received during demonetization, the concern voiced in the communications referred to by the Apex Court as

regards infusion of fake currency notes is sufficient answer to the allegation. Once again reference can be made to the decision of the Apex Court in the case of *Vivek Narayan Sharma (supra)* where the Apex Court referred to various decisions outlining the status of RBI in context of Indian economy and the Apex Court has noted that the RBI plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. The Apex Court also observed that, it has been held that the RBI is the sole repository of power for management of currency and is vested with sole right to issue bank notes and to issue currency notes supplied to it and anything that may pose a threat to or have an impact on the financial system or the country can be regulated or prohibited by RBI. In discharge of its statutory function of management and regulation of currency, the policy decisions have been taken by RBI which have been upheld by the Apex Court.

18. The other issue, which according to the Petitioner, points out irregularity on part of the concerned authorities is the alleged discrepancy in the annual reports of RBI and the press release pertaining to the bank notes in circulation. Considering the prominence that RBI commands in the economic structure, the annual reports of RBI which

are put in public domain by the experts cannot be questioned as being irregular or illegal without any demonstrable criminality. It is required to be noted that, the annual reports are issued by the RBI which is a statutory functionality constituted to regulate the issue of bank notes and for keeping the reserves with a view to securing a monetary stability in India and to operate the currency and credit system of the country to its advantage. Upon a query by this Court as regards the alleged offences, it is submitted by learned counsel appearing for the petitioner that the allegations made in the complaint constitute the offences under sections 409, 420 and 120-B of the Indian Penal Code, 1860. We have therefore proceeded to consider the applicability of the said offences and for ease of reference reproduced the same as under: :

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

“420.Cheating and dishonestly inducing delivery of property.– Whoever cheats and thereby dishonestly induces

the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

“120B. Punishment of criminal conspiracy.-- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

19. In the background of the aforesaid provisions, let us consider the allegations made in the complaint dated 30th November 2018. It will be worthwhile to note the contention of learned counsel for Petitioner that, he is not seeking any investigation against either the Governor of RBI or the Finance Minister and inquiry is sought against unknown

person. That being so, there is no question of application of section 409 of IPC as the same deals with the entrustment of property with a person in his capacity either as a public servant or in the way of business as a banker. To constitute an offence under the provisions of section 409 of IPC, the most essential ingredient is entrustment of property with a person in his capacity as a banker. The allegations made in the complaint dated 30th November 2018 are as regards the alleged discrepancy in the notes which were supplied by the printing presses, the notes which were disposed of by the RBI as soiled notes and the notes which were in circulation and which came to be demonetized. By no stretch of imagination the allegations points to criminal breach of trust either by RBI or any other person.

20. As regards section 420 of IPC, the essential ingredient is cheating and dishonest inducement to deliver property. The application of the aforesaid sections even if it is not submitted in so many words by learned counsel appearing for the Petitioner would in fact be a challenge to the notification of 8th November 2016 as it was that notification by which the notes of Rs.500/- and Rs.1,000/- were demonetized and the general public had deposited the amounts with the banks. The underlining allegations by making a reference to section 409 and 420 of

IPC is dishonest inducement by the Governor of RBI as well as the RBI to deliver the property in the form of specified notes to the banks, dishonestly. The validity of notification of 8th November 2016 having already been upheld by the Apex Court, the provisions of Section 409 and Section 420 of IPC are clearly inapplicable.

21. The act of RBI in issuing the legal tender is a statutory function backed by Expert Committees and cannot be called in question on frivolous grounds. Similarly pursuant to the notification of the year 2016, which was a policy decision, the resultant action of deposit of the specified bank notes and issuance of new bank notes was undertaken. It is trite that there is a presumption that the policy decision which has been taken is bonafide and in the interests of public unless found otherwise. The learned counsel for Petitioner has not been able to demonstrate that de-hors the challenge to the notification of 2016 the issues sought to be raised in the complaint can be agitated notwithstanding the fact that the allegations do not demonstrate commission of offence. That being so, in our opinion, there is no ground for seeking inquiry or investigation.

22. We find that the Petitioner has collated the information from the annual reports of RBI and the information received under RTI and

have come with a case that the numerical figures mentioned therein reveals discrepancy. Neither the pleadings nor the complaint is supported by report of an independent financial expert demonstrating that the discrepancies points out to commission of offence so as to entail a detailed inquiry or investigation. We find that since the year 2015 the Petitioner has been persistently seeking an investigation into the statutory functioning of RBI alleging irregularities and illegalities. It was therefore expected that the Petitioner would support the relief with cogent material and substantiate the allegations with reports of independent financial experts. That not being done, in our opinion, the present Petition is nothing but a fishing inquiry into what the Petitioner perceives to be a scam based on various figures set out in the annual reports as well as the information given under the RTI. In our view, reliance cannot be placed on half baked information pleaded in the Petition and the complaint to direct an investigation in the statutory functioning of an institution like RBI.

23. The demonetization policy was implemented in the year 2016 and the investigation which is sought as regards the discrepancy during that period and the period of one or two years thereafter is nothing but an after-effect of policy decision. At the most it can be said

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that the Petitioner has done mathematical calculations based on the RBI annual reports and the information received by him under the RTI. However, in our opinion, neither the complaint of 30th November 2018 nor the submissions advanced points out commission of an offence to justify the formation of an independent investigating agency. It cannot be disputed that the RBI plays an important role in shaping the economy of our country and the Courts should refrain from delving into the monetary regulatory framework unless it is shown to the satisfaction of the Court that there is a need for an investigation by an independent agency. We are not satisfied that the complaint of 2018 discloses commission of any offence or even any irregularity or illegality as contended. According to us, no criminality can be fastened upon the said Authorities for even an inquiry least for investigation.

24. Having regard to the above, we are not inclined to grant reliefs as prayed for in the Petition. Petition fails and stands dismissed.

25. The Petitioner had initially agitated the same issue in PIL No.85 of 2015 which was dismissed as against which review was sought, which was also dismissed in 2018. The Petitioner persisted and after lodging the complaint dated 30th November, 2018 has again sought to re-agitate the issue by the instant Petition. As we have indicated above

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that, all that is put forward are mathematical calculations and no criminality is demonstrated, the present Petition in our opinion is frivolous and is required to be dismissed with costs. As such the Petition fails. Rule is discharged.

26. We are inclined to impose exemplary cost upon the Petitioner. However, at the request of Mr. Chaudhari, learned Advocate for the Petitioner we have refrained ourselves from doing so.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)