

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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O.S.A.Nos.10 & 11 OF 2015

Between:

O.S.A.No.10 of 2015:

Mr. Samson Arthur

....Appellant

Vs.

1. Quinn Logistic India Pvt. Ltd and others.

.... Respondents

-

DATE OF JUDGMENT PRONOUNCED: 13.10.2015

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SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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1. Whether Reporters of Local newspapers may
be allowed to see the Judgments?

2. Whether the copies of judgment may be marked
to Law Reports/Journals

3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment?

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JUSTICE RAMESH RANGANATHAN

*** THE HON’BLE SRI JUSTICE RAMESH RANGANATHAN**

AND

*** THE HON’BLE SRI JUSTICE S. RAVI KUMAR**

+ O.S.A.Nos.10 & 11 OF 2015

% Dated 13-10-2015

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O.S.A. No.10 of 2015:

Between:

Samson Arthur.

....Appellant

Vs.

\$ 1. Quinn Logistic India Pvt. Ltd and others.

.... Respondents

! Counsel for the Appellant: Sri S. Ravi, Learned Senior Counsel appearing on behalf of Sri Sreekanth Reddy Ambati, Learned Counsel for the appellant.

^ Counsel for respondents: Sri S. Niranjan Reddy.

<GIST:

> HEAD NOTE:

? Citations:

1. (2001) 5 SCC 289
2. (2002) 1 SCC 253
3. (1978) 1 SCC 18
4. (1975) 3 SCC 31
5. (1996) 7 SCC 397 = 1996 (1) ALD (CrI.) 183 (SC)
6. 2007 (6) ALT 294
7. (2003) 7 SCC 175 = 2003 (2) ALD (CrI.) 780 (SC)
8. AIR 1954 SC 397
9. (2012) 10 SCC 303
10. (2014) 5 SCC 364
11. (2008) 9 SCC 677
12. (2003) 4 SCC 675
13. (2008) 16 SCC 1
14. AIR 1980 SC 946
15. (2003) 9 SCC 401
16. (2010) 11 SCC 557
17. (1969) 1 SCC 110
18. (1977) 2 SCC 431
19. (1999) 1 SCC 271
20. (2003) 1 SCC 488
21. (2004) 7 SCC 166
22. (2010) 4 SCC 728
23. (1993) 4 SCC 317
24. (2012) 6 SCC 430
25. (1990) 3 SCC 655
26. (1995) Suppl. 4 SCC 100
27. (2004) 6 SCC 325
28. (2007) 1 SCC 80
29. AIR 2007 SC 2798
30. (2009) 8 SCC 751
31. (2010) 8 SCC 383
32. (1994) 1 SCC 1
33. (2013 CrILJ 4492
34. (2004) 11 SCC 672

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND
THE HON'BLE SRI JUSTICE S. RAVI KUMAR

-

O.S.A.Nos.10 & 11 OF 2015

-

COMMON JUDGMENT: (Per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order passed in C.A. No.1163 of 2013 in C.P. No.30 of 2012 dated 25.03.2015, the 2nd respondent therein has filed O.S.A. No.10 of 2015. O.S.A. No.11 of 2015 is filed by the 3rd respondent in C.A. No.1163 of 2013 in C.P. No.30 of 2012, aggrieved by the very same order passed on 25.03.2015. As both the appeals are preferred against the very same order, by Sri Samson Arthur and Sri N. Chandrasekhar Rao (appellants in O.S.A. No.10 and 11 of 2015 respectively), they were heard together, and are being disposed of by a common order. Parties shall, hereinafter, be referred to as they are arrayed in these appeals.

C.A. No.1163 of 2013 was filed by the respondent- company herein i.e., Quinn Logistics India Pvt. Ltd, (hereinafter referred to as "QLI"), represented by its Director and Authorised Signatory Mr. Robert Dix, under Rule 9 of the Company Court Rules read with Section 340 Cr.P.C. and Sections 191, 192, 193 and 209 I.P.C, seeking an enquiry against both the appellants herein for making false statements on oath, for fabricating documents, for suppressing material facts, and for admitting liability of the respondent-company, in collusion with M/s. R.N. Marwah & Company (the petitioner in C.P. No.30 of 2012), in order to cause injury to the respondent-company; and thereby committing offences punishable under Sections 191, 192, 193 read with Section 209 IPC. The respondent-company requested the Learned Company Judge to direct a complaint to be registered against Sri Samson Arthur and Sri N. Chandrasekhar Rao for having committed offences under Sections 191, 192, 193 and 209 of the Indian Penal Code.

In C.A. No.1163 of 2013, filed before the Learned Company Judge, the respondent herein contended that C.P. No. 30 of 2012 was filed by M/s. R.N. Marwah & Company seeking winding up of the respondent-company, raising false claims of amounts being allegedly due for services purportedly rendered to them; the order of winding up, passed on 06-07-2012, was because of collusion between R.N.

Marwah & Company, Sri Samson Arthur and Sri N. Chandrasekhar Rao who wrongly admitted liability of the respondent-company towards M/s. R.N. Marwah & Company, though no amount was due; on 13-06-2012 an affidavit was filed in C.P. No.30 of 2012, on behalf of the respondent-company, by Sri N. Chandrasekhar Rao wherein he stated that the respondent company did not have any assets; however the audit report, which was accepted by Sri N. Chandrasekhar Rao, records that the respondent-company had sufficient assets in terms of money i.e. Rs.62,91,40,790 owed to it by Mack Soft Tech Pvt. Ltd ("Mack Soft" in short); no mention was made by Sri N. Chandrasekhar Rao, before the Company Court, of the dilution of shareholding of the respondent-company in Mack Soft which is the subject matter of challenge in O.S. No.21 of 2012; on the contrary, in the affidavit sworn to on 13-06-2012 and filed before the Company Court, Sri N. Chandrasekhar Rao had stated that the respondent-company was not operating from the last more than one and half years; information regarding, dilution of shareholding, was suppressed by Sri N. Chandrasekhar Rao which constitutes a suggestion of falsehood i.e., suppression veri suggestio falsi; in another affidavit filed in C.P. No.30 of 2012 on 15-06-2012, whereby extension of time was sought to furnish the books of accounts of the respondent-company to the Official Liquidator, Sri N. Chandrasekhar Rao had stated that, as its records were in bad shape, the respondent-company was in the process of compiling complete records to file the same before the Official Liquidator; Sri N. Chandrasekhar Rao filed an application, on behalf of Mack Soft in O.S. No.21 of 2012 under Section 446 of the Companies Act, 1956, seeking stay of further proceedings in O.S. No.21 of 2012 on the ground that an order of winding up dated 06.07.2012 was passed against the respondent-company; after falsely admitting liability towards M/s. R.N. Marwah & Company, and collusively obtaining an order of winding up against the respondent-company, Sri N. Chandrasekhar Rao, by filing the application under Section 446 of the Companies Act, had sought to misuse the order of winding up dated 06-07-2012 to prevent the bankruptcy receiver for QLS from taking control of the affairs of Mack Soft, and had thereby perpetrated the abuse of process of the court; in response to C.P. No.30 of 2012 filed by M/s. R.N. Marwah & Company, Sri Samson Arthur had filed a counter affidavit, purportedly acting on behalf of the respondent-company, wherein he stated that as the respondent-company was in financial difficulty it could not make payment to the petitioner, the reasons for non-payment was the continued financial crunch that the respondent company was presently facing, they had requested the petitioner to bear with the

respondent-company in view of the on going financial crunch, and were trying to clear the outstanding dues of the petitioner arranging funds from some other source; these statements were falsely made by Sri Samson Arthur despite his knowledge to the contrary of the actual financial position of the respondent-company; the averments of Sri Samson Arthur, in the aforesaid counter affidavit, were in contrast to his averments in the caveat filed by him on 10-02-2012 wherein he claimed that the dues of the petitioner had been paid; these contradictory statements were an abuse of process of court; the audit report of Mack Soft disclosed that the respondent-company had lent Rs.62,91,40,970 to its subsidiary i.e., Mack Soft; these facts clearly demonstrate that the proceedings in the Company Petition were collusive, that Sri Samson Arthur and Sri N. Chandrasekhar Rao had deliberately filed false affidavits before the Court, they had deliberately withheld material information from the Court, and had concealed several relevant facts known to them; the action and conduct of Sri Samson Arthur and Sri N. Chandrasekhar Rao in making false statements, deliberately withholding relevant information, and suppressing material facts from the Court, reflects their willingness to act in the interests of, and at the instructions of, the erstwhile management of the respondent company; and, as such, the application in C.A. No.1163 of 2013 was filed seeking a direction to register a criminal case against both Sri N. Chandrasekhar Rao and Sri Samson Arthur.

The appellants herein filed their counter affidavits, in C.A. No.1163 of 2013 before the Company Court, stating that the authority of Mr. Robert Dix to file the said application was defective, in the absence of properly authorised and executed documents; the dispute in C.P. No.30 of 2012 related to non-payment of the contractual dues, by the respondent company, under the agreement dated 04-05-2011; the validity of the agreement dated 04-05-2011 had not been disputed even by the respondent-company; the entire proceedings, by the bankruptcy receiver, started only after 06-07-2011 when he was allegedly appointed as the bankruptcy receiver of Quinn Logistics Sweden; the agreement between M/s. R.N. Marwah & Company and the respondent-company was signed on 04-05-2011 i.e. more than two months prior to the alleged appointment of the bankruptcy receiver; there is no averment in the affidavit, filed in support of C.A. No.1163 of 2013, that the said agreement is a sham or has been backdated or that payment was made by the respondent company to M/s. R.N. Marwah & Company; the counter affidavit filed by Sri Samson Arthur honestly mentioned the financial difficulties faced by the respondent-company; the

veracity of the statement of Sri Samson Arthur, regarding the financial difficulties faced by the respondent- company and the consequent inability to pay the petitioner's dues, is duly established by the bank statements annexed along with the affidavit dated 13.06.2012 filed by Sri N. Chandrasekhar Rao; as per the annexed documents, the respondent-company had two bank accounts with HDFC bank and HSBC Bank; while the respondent-company had a bank balance of Rs.9,99,150/- in HDFC bank, a sum of Rs.2,772/- was lying to their credit in their HSBC bank account; the veracity of the bank statements has not been disputed by the respondent-company; it was evident that, as on that date i.e. 07-06-2012, the respondent-company was financially unable to meet its admitted liabilities; the fact that it was owed money by Mack Soft is completely immaterial as it would be a claim to be made by the respondent-company against Mack Soft; that is no ground for the respondent-company to deny payment of its admitted liability; on the date on which the agreement was executed, there was no order appointing the bankruptcy receiver as receiver in bankruptcy of Quinn Logistics Sweden AB; the respondent-company could not allege that attempts were made by the petitioner in C.P. No.30 of 2012, in collusion with the erstwhile management, to obstruct a change in the management of the respondent-company, and to prevent the court appointed receiver, in the bankruptcy of Quinn Logistics Sweden AB, from taking control of the assets of the respondent-company; the application in C.A. No.1163 of 2013 had been preferred with the sole motive of intimidating the present/ex-employees of the respondent-company; under the agreement dated 04-05-2011, Rs.45,00,000/- was required to be paid to M/s. R.N. Marwah & Company by the respondent-company for having provided services; the liability was admitted by the appellants that, although the amount was due to M/s. R.N. Marwah & Company, the respondent-company was unable to pay the dues because of its financial condition; the question of action being initiated against the appellants, for having committed perjury, does not arise; the EGM proceedings dated 18-02-2012 are not within their knowledge; it is denied that the documents filed by Mack Soft contained an audit report of Mack Soft dated 29-06-2011 issued by Sarath and Associates, Chartered Accountants for the year ending 31-03-2011; the respondent-company used to be the holding Company of Mack Soft; however fresh equity was issued by Mack Soft in June, 2011 to Mecon FZC, and the share holding of the respondent-company was transferred in August, 2011 to UCA Logvis AG; as on date the respondent-company is not a shareholder of Mack Soft; the dispute, relating to these transactions, is pending adjudication before

the District Court, Ranga Reddy in O.S. Nos.21 of 2012 and O.S. No.1303 of 2013; as per the audit report, a balance loan of Rs.62,91,40,790 is pending in the books of Mack Soft as payable to the respondent-company; and this liability towards the respondent-company is also reflected in the balance sheet of Mack Soft dated 31-03-2012. The appellants denied that, in accordance with the audit report, the respondent-company had sufficient assets in terms of money owed to it by Mack Soft, or that they had falsely admitted liability towards the petitioner and had collusively obtained a winding up order against the respondent-company. The appellants also denied that the respondent-company was now under the management of Sri Robert Dix, Sri Paul Mc. Gowan, and Sri Bryan O' Neil who were unanimously appointed as Directors at the EGM held on 18-02-2012, and subsequently confirmed at the EGM of the respondent-company convened on 29-07-2013 wherein the shareholders had also conferred authority on them to institute legal proceedings on behalf of the respondent-company. According to the appellants, the facts narrated above clearly showed that the affidavits dated 16-02-2012 and 13-06-2012 had truthfully and honestly mentioned the correct financial condition of the respondent company; and there was no falsity in the averments made by them.

In the order under appeal, the Learned Company Judge observed that the power, under Section 340 Cr.P.C, can be invoked upon an application to the Court or otherwise; the only enquiry contemplated under Section 340(1) Cr.P.C, irrespective of the result of the main case, is whether a prima facie case is made out which, if rebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient, in the interest of justice, to take such action; the purpose of enacting Section 340(1) Cr.P.C is to further arm the Court with a weapon to deal with more flagrant cases, and not to take away the weapon already in its possession; the object of the legislature, underlying enactment of Section 340 (1) Cr.P.C, is that the evil of perjury, and fabrication of evidence, should be eradicated; and the present application was maintainable under Section 340 (1) Cr.P.C.

After taking note of the statement of Sri N. Chandra Sekhar Rao, in his affidavit dated 13.06.2012 in C.P.No.30 of 2012, the Learned Company Judge observed that the affidavit filed by Sri N. Chandrasekhar Rao, prima facie, showed

that he had given a false statement that the respondent-company did not have assets at all, and non-payment of the outstanding amount due by the respondent-company was due to the prevailing financial condition of the respondent-company; it is not the case of Sri N. Chandrasekhar Rao, even in his counter affidavit, that they were unable to secure the amount from Mack Soft, and Mack Soft was not paying the amounts due to them, which had resulted in the respondent-company being disabled from paying the debts due to the petitioner; similarly, the averment of Sri Samson Arthur, in the counter affidavit filed in C.A. No.102 of 2012 dated 16.02.2012, (filed for appointment of a provisional liquidator), in justification of non-payment of the outstanding dues, was the prevailing financial condition of the respondent-company, which is contrary to the audit report filed by Sri N. Chandrasekhar Rao himself, as representative of Mack Soft before the Ranga Reddy District Court; the audit report shows that Rs.62,91,40,970/- is due to the respondent-company from Mack Soft; the amount due from Mack Soft to the respondent-company is also admitted in the counter-affidavit filed in C.A. No.1163 of 2013; the Company Court, while appointing the provisional liquidator in C.P. No.30 of 2012 filed by the petitioner, held that the Court had passed the order, appointing a provisional liquidator, since the counter affidavit filed by Sri Samson Arthur was vague, and he had not chosen to give details of the assets of the respondent-company nor had they assured the Court that the assets would not be taken away beyond the jurisdiction of the Court; a caveat petition was admittedly filed by the respondent-company on 10.02.2012, before the winding-up petition in C.P. No.30 of 2012 was filed on 14.02.2012 and the winding up order was passed on 06.07.2012; the sequence of events, leading to the winding up order in C.P. No.30 of 2012 in quick succession, gave rise to the presumption that the appellants had not placed correct facts, before the Company Court, before the order of winding up was passed; the appellants were legally bound by oath to state the truth in the affidavits filed by them in C.P. No.30 of 2012; and, *prima facie*, they had made a false statement which constituted an offence of giving false evidence as defined under Section 191 punishable under Section 193 and 209 IPC.

Relying on the judgment of the Supreme Court, in **In Re: Suo Motu proceedings against R. Karuppan, Advocate**, the Learned Company Judge directed the Registrar (Judicial) to depute an officer, not below the rank of Assistant Registrar, to file a complaint under Section 340 (1) Cr.P.C read with Sections 191,

193 and 209 IPC against the appellants herein before a Magistrate of competent jurisdiction at Hyderabad. The said officer was directed to file the complaint, and take all steps necessary for prosecuting the complaint. The concerned Magistrate was directed to deal with the same as per law without being influenced by any of the observations made in the order, since they were made only for the purpose of a preliminary enquiry under Section 340 (1) Cr.P.C. Aggrieved thereby, the present appeals were filed.

Elaborate oral submissions were put forth, both on the maintainability of the appeals and on merits, by Sri S. Ravi, Learned Senior Counsel appearing on behalf of the appellants and Sri S. Niranjan Reddy, Learned Counsel for the respondent-company. Written submissions were filed by Sri A. Srikant Reddy, Learned Counsel for the appellants, and Sri S. Niranjan Reddy, Learned Counsel for the respondent-company.

I. SECTION 340(1) CRPC: ITS SCOPE:

It is necessary to note, *albeit* in brief, the scope of enquiry in a proceeding instituted under Section 340 C.P.C. As noted hereinabove C.A. No.1163 of 2013 in Company Petition No.30 of 2012 was filed, under Section 340 Cr.P.C. requesting the Company Court to register a complaint against both Mr. Samson Arthur and Mr N. Chandrasekhar Rao, under Sections 191, 192, 193 and 209 and other applicable provisions of the Indian Penal Code. Section 191 IPC relates to giving false evidence, Section 192 IPC relates to fabricating false evidence, Section 193 IPC prescribes the punishment for false evidence, and Section 209 IPC relates to dishonestly making a false claim in Court.

Section 195(1)(b)(i) Cr.P.C stipulates that no Court shall take cognizance of any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of the Indian Penal Code, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate. Section 193 IPC prescribes the punishment for both Sections 191 and 192 IPC. Consequently, Section 195(1)(b)(i) Cr.P.C. disables any Court from take cognizance of the offences under Sections 191, 192, 193 and 209 IPC except on a complaint in writing by the Court before which such offences were committed or by

such officer of the Court as that Court may authorise in writing.

The procedure, applicable to cases falling within the ambit of Section 195(1)(b)(i) Cr.P.C, is prescribed in Section 340 Cr.P.C. Under sub-section (1) thereof, when, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient, in the interest of justice, that an inquiry should be made into any offence referred to in Section 195(1)(b), which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, (a) record a finding to that effect; (b) make a complaint thereof in writing; (c) send it to a Magistrate of the First Class having jurisdiction; (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and (e) bind over any person to appear and give evidence before such Magistrate. The only course available to the respondent-company for action to be taken, for what they believed were offences committed by the appellants under Sections 191, 192, 193 and 209 IPC, was to make an application to the Company Court under Section 340(1) Cr.P.C.

The hub of Section 340(1) Cr.P.C is the formation of opinion by the court (before which proceedings are to be held) that it is expedient, in the interest of justice, that an inquiry should be made into an offence which appears to have been committed. In order to form such an opinion, the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the Court can form such an opinion when it appears to it that an offence has been committed in relation to a proceeding in that court. Even when the court forms such an opinion it is not mandatory that the Court should make a complaint. Sub-Section (1) of Section 340 Cr.P.C has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should record a finding to the effect that, on the fact situation, it is expedient, in the interest of justice, that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. The preliminary inquiry, contemplated in

Section 340(1), is not for finding whether any particular person is guilty or not. The purpose of a preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient, in the interest of justice, to inquire into the offence which appears to have been committed. (**Pritish v. State of Maharashtra**).

At an enquiry held by the Court under Section 340(1) CrPC, irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood of establishing the specified offence, and whether it is also expedient in the interest of justice to take such action. The twin preconditions for laying a complaint, after an enquiry under Section 340 Cr.P.C, are that the material produced before the Court should make out a prima facie case for a complaint, and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 IPC. (**K. Karunakaran v. T.V. Eachara Warriar**).

The Court, at the stage envisaged in [Section 340](#) Cr.P.C, is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient, in the interest of justice, that an inquiry should be made into any offence affecting administration of justice. (**Pritish**²). An enquiry, when made under Section 340(1) CrPC, is really in the nature of affording a *locus paenitentiae* to a person and, at that stage, the Court chooses to take action. The party may choose to place all its materials before the Court at that stage but, if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court. It does not mean that the appellants will not have full and adequate opportunity in due course of the process of justice to establish their innocence. (**K. Karunakaran**³).

Bearing in mind the scope of an enquiry under Section 340 Cr.P.C, let us now examine the rival submissions, urged on behalf of the appellants and the respondent-company, under different heads.

II. FALSE STATEMENTS MADE IN THE AFFIDAVITS FILED BEFORE THE HIGH COURT:

It is not even the case of the appellants that there is any procedural violation, in the

complaint directed to be made to the concerned Magistrate, necessitating interference in appeal. Their case, in short, is that no prima facie case is made out of their having committed the offences under Sections 191, 192, 193 and 209 IPC, much less intentionally, justifying registration of complaints against them.

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the appellants, would submit that Mr. Samson Arthur, who filed the affidavit dated 16.02.2012, thereafter left Mack Soft on 31.03.2012; there was no allegation that Mr. Samson Arthur had knowledge about the balance sheet of Mack Soft, or that he was aware that Mack Soft had a balance outstanding of Rs.62,91,40,970/- as due to QLI in its books; the bank accounts of QLI, at the relevant time, showed a balance of Rs. 9,99,150/- in HDFC Bank and Rs. 2,772/- in HSBC Bank; Mr. Samson Arthur did not state anything about the assets of the Company; he merely referred to the financial position of QLI as on the date of the affidavit; it is not in dispute that QLI had no money available in the bank, other than what is reflected in the bank statements; the appellant in OSA No. 11 of 2015 ie Mr. N. Chandrasekhar Rao was an employee of Mack Soft; he was an electrical engineer by qualification; his job description was of management of the I. T. Park of 1.2 million sq. ft. built up area; his role was that of engineering, soft services, liasoning with the local government authorities, vendor management, clients' management etc; he had no familiarity with the accounts of the company; the extent of his ignorance, of the accounts of the Company, is clear from the affidavit dated 13.06.2012 wherein he stated that QLI did not have any assets at all; in the same breath he had stated that QLI did not have sufficient balance in its bank accounts(s) to meet its legal liabilities and that, as on 07-06-2012, QLI had a balance of Rs. 9,99,150/- in HDFC Bank, and Rs. 2,772/- in HSBC Bank, and the Company has not been operating since one and a half years; he had faithfully given the bank balances of the respondent-company; he did not even equate the bank balances to 'assets of the Company' which shows a complete lack of understanding of the word 'assets' as understood by men of commerce; it was only much later that he filed the balance sheet of Mack Soft, along with the documents, in the year 2013 before the Ranga Reddy District Court; the pleadings of Mack Soft, in the said proceedings in Ranga Reddy District Court in which the balance sheet was filed, were being annexed as it did not form part of the record; even therein Mr. N. Chandrasekhar Rao has not made any statement about the financial position of QLI; a person, who does not understand that "bank balance" is an asset, cannot be attributed to have studied the balance sheet, when he filed an affidavit before the

Company Court on 13.06.2012, a copy of which he had produced a year later before the Ranga Reddy District Court; Mr. N. Chandrasekhar Rao too had no financial interest in Mack Soft or QLI; he was neither a shareholder nor was he a Director of QLI or Mack Soft; he was a paid employee; the findings recorded by the Learned Company Judge is not that he had made false statements in the affidavit but is more about what the affidavit failed to disclose; and this is not what is contemplated under Section 193 or Section 209 I.P.C.

On the other hand Sri S. Niranjana Reddy, Learned Counsel for the respondent-company, would submit that the application, in C.A. No.1163 of 2013 in C.P. No.30 of 2012, was premised on the fact that deliberate wrong statements were made by the appellants in the affidavits filed before the Company Court on 16.02.2012, 13.06.2012 and 15.06.2012 as part of a collusive effort to get the winding up order passed against QLI; in C.A. No. 1163 of 2013 it is specifically stated that the sequence of events, leading to the passing of winding up order dated 06.07.2012, would expose the design behind the abuse of process of Court by filing false affidavits; the order of the Company Court, in C.A. No.102 of 2012 in C.P.No. 30 of 2012 dated 17.02.2012, refers to lack of particulars and vagueness in the counter affidavit filed by Mr. Samson Arthur leading to the High Court forming an impression about the necessity to appoint a provisional liquidator; the said order also records grant of full opportunity to QLI, prior to passing an order appointing a provisional liquidator; the said order clearly manifests that false evidence led before the Court had resulted in the course of justice being subverted/diverted; this was expressly noticed by the Company Judge while allowing C.A. No.1163 of 2013; the said order was, thereafter, sought to be capitalized by Mr. N. Chandrasekhar Rao by filing an I.A. in O.S. No.21 of 2011 under Section 446(1) seeking to delay the suit initiated by the bankruptcy receiver of QLI; withholding critical information had also resulted in the passing of a winding up order on 06.07.2012 which specifically notes that the liability was not disputed, but the company failed to liquidate the same; and the sequence of events, and the effect of the orders, would clearly show as to how affidavits, filed by the appellants, were pernicious and constituted offences under Sections 191, 193 and 209 IPC in respect of which Section 340 Cr. P.C. proceedings were initiated.

Learned Counsel would highlight the further falsities in the affidavits sworn to by the appellants even thereafter. He would submit that, while countering the

averments made by QLI that Mr. Samson Arthur seemed to be in the employment of QLI from 14.04.2011, Mr. Samson Arthur, in his counter-affidavit filed in C.A. No.1163 of 2013, had stated that he continued to serve in QLI till June, 2012 by consistently indicating, throughout the counter-affidavit, as if he was in the employment of QLI; in the additional affidavit, now filed before the appellate court on 25th June 2015, Mr. Samson Arthur has filed a service certificate given by Mack Soft which clearly indicates that he was never in the service of QLI, but was with Quinn Property Management Pvt. Ltd. until 30.06.2011, and had joined Mack Soft from 01.07.2011; while it was asserted by both the appellants, in the counter-affidavits filed in reply to C.A. No. 1163 of 2013 before the Company Court, that the amounts repayable to QLI by Mack Soft were not material and were irrelevant, and lack of knowledge of accounts was stated in justification, in the additional affidavits filed on 25th June 2015, by both the appellants, it is contended that they have no knowledge about accounts; this claim is belied by the positions held by both of them as stated in their resumes filed along with the additional affidavit dated 25th June 2015 filed by Mr. Samson Arthur and Mr. N. Chandra Sekhar Rao wherein Mr. Samson Arthur claims to be a commerce graduate and an MBA in marketing, and Mr. Chandra Shekhar Rao claims to be an engineer and a MBA in operations management.

(a): FALSE STATEMENTS IN THE AFFIDAVITS MUST BE CONSIDERED IN THE LIGHT OF THE SEQUENCE OF EVENTS LEADING UP TO THE ORDER OF WINDING UP:

A picture is presented by Sri S. Niranjan Reddy, Learned Counsel, of deceit and a deliberate and calculated attempt by the appellants to mislead the Company Court only to prevent a change in the composition of the Board of Directors of QLI, and to disable the bankruptcy receiver, appointed by the District Court Stockholm for Quinn Logistics Sweden (AB), from taking control of its assets and that of its subsidiary Mack Soft by misleading the Court to appoint a provisional liquidator, and thereafter an official liquidator to take charge of the assets of QLI. According to Sri S. Niranjan Reddy, the false averments made by the appellants must be seen in the context of the several events which took place within a short span of time both before and after an extra-ordinary general meeting of QLI was held on 18.02.2012. The Learned Company Judge has also held that the sequence of events, leading to the passing of a winding up order in C.P. No.30 of 2012, in quick succession gives

rise to the presumption that the appellants had not placed correct facts before the Court before the winding up order was passed. It is necessary, therefore, to refer to the sequence of events narrated by Sri S. Niranjan Reddy, Learned Counsel, without expressing any opinion on whether it is true or not.

According to the Learned Counsel, Quinn Logistics Sweden AB (QLS) was the holding company of Quinn Logistics India Private Limited (QLI) which in turn was the holding company of Mack Soft Tech Private Limited. QLI held 9,990 shares and Quinn Logistics India Private Limited held the remaining 10 shares in Mack Soft ('Mack Soft' for short) its subsidiary, constituting 10,000 shares of its validly issued share capital. QLI had invested Rs.126,73 Crores in the share-capital of, and lent Rs.62.91 Crores to, Mack Soft which had utilised these amounts to construct a huge complex generating large amount as revenue in the form of lease rentals. The amounts lent by QLI to Mack Soft of Rs.62.91 crores was reflected in the audited balance-sheet of Mack Soft for the financial year ending 31st March, 2011. The District Court at Stockholm in Sweden passed an Order on 05.07.2011 appointing a Bankruptcy Receiver for Quinn Investments Sweden AB which was declared bankrupt on account of its failure to repay the debt of Rs.12,734 Crores owed by it to Irish Bank Resolution Corporation Limited ("IBRC") under the agreement dated 22.11.2007. The District Court at Stockholm also appointed a Bankruptcy Receiver for Quinn Logistics Sweden AB ('QLS' for short) on 06.07.2011. The members of the Quinn family, and their agents, issued 3,76,301 equity shares in Mack Soft to Mecon FZE on 22.06.2011, to dilute the shareholding of QLI in Mack Soft, and thereby ensure that QLI no longer had any controlling interest in Mack Soft. The dilution of shareholding is said to be the subject matter of challenge in O.S. No.21 of 2012 before the Additional District Judge, Ranga Reddy filed by Quinn Logistics Sweden AB. The 10,000 shares held by QLI and Quinn Lodgings India Private Limited in Mack Soft, (for which QLI had paid Rs.126.73 Crores), were purportedly transferred to UCA Logvis AG in August, 2011 for merely Rs.9,90,000/-, which is said to be under challenge in O.S. No.1303 of 2013 filed before the Additional District Judge, Ranga Reddy District wherein an *ex parte* injunction is said to have been granted on 25.10.2013 restraining UCA Logvis ATG from transferring the shares held by it in Mack Soft. According to the Learned Counsel, both Mecon FZE and UCA Logvis AG are believed to be directly or indirectly controlled by the Quinn family.

QLS, through its Bankruptcy Receiver, is said to have sent a letter of requisition on 28.12.2011 to QLI (its subsidiary) to call for an extra-ordinary general meeting of QLI to remove the existing directors viz., Mr. John (Sean) Ignatius Quinn, Mr. Peter Quinn and Mr. John Dara O' Reilly, and for appointment of new directors viz., Mr. Robert Dix, Mr. Paul McGowan and Mr. Bryan O' Neil. QLS, through its Bankruptcy Receiver, filed O.S. No.19 of 2012 before the Ranga Reddy District Court which, by its order dated 05.01.2012, restrained the previous management from adding new directors to QLI. Soon thereafter M/s. R.N. Marwah & Co, a Chartered Accountants firm having its office at New Delhi, sent a notice dated 17.01.2012, under Section 434 of the Companies Act, calling upon QLI to make payment of Rs.45,00,000/- plus service tax for the consultancy fees payable to them in terms of the invoice dated 02.11.2011. The said notice was delivered to QLI on 19.01.2012 and Mr. Samson Arthur promptly, and on the very same day, gave a reply to the notice, on behalf of QLI, admitting the liability of M/s. R.N. Marwah & Co.

Pursuant to the letter of requisition dated 28.12.2011, issued by QLS represented by the Bankruptcy Receiver, QLI issued a notice on 23.01.2012 calling for an extra-ordinary general meeting on 18.02.2012 for removal of the existing directors and for appointment of new directors in their place. After a notice was issued on 23.01.2012 by QLI for convening the extra-ordinary general meeting, and before the extra-ordinary general meeting was convened on 18.02.2012, Mr. Samson Arthur filed a caveat petition, on behalf of QLI and Quinn Lodgings India Ltd, in the High Court of A.P on 10.02.2012 against M/s. R.N. Marwah & Co. In the affidavit, filed in support of the caveat petition, Mr. Samson Arthur stated that all the dues of M/s. R.N. Marwah & Co., against the invoices raised by them, had already been cleared. Four days thereafter, on 14.02.2012, C.P. No.30 of 2012 was filed by M/s. R.N. Marwah & Co. seeking winding up of QLI.

In C.P. No.30 of 2012, M/s. R.N. Marwah & Co stated that a legal notice was issued by them on 17.01.2012 demanding payment; the said notice was delivered at the registered office of QLI on 19.01.2012; and a reply was given on the very same day by Mr. Samson Arthur, on behalf of QLI, seeking time till 01.02.2012 to pay the outstanding debt. Along with C.P. No.30 of 2012, M/s. R.N. Marwah & Co. filed Company Application Nos.102, 103 and 104 of 2012. Company Application No.102 of 2012 was filed by them seeking appointment of the Official Liquidator as the Provisional Liquidator of QLI with all powers, under Sections 450 and 451 of the

Companies Act, including the power to take charge of the assets, properties, stock in trade and books of accounts of QLI pending admission, hearing and final disposal of C.P. No.30 of 2012. Company Application No.103 of 2012 was filed seeking a direction from the Company Court that, pending disposal of C.P. No.30 of 2012, QLI, its directors, officers etc. be restrained from, in any manner, disposing of, transferring, encumbering, alienating, creating third party rights or parting with possession of the assets and properties of QLI. Company Application No.104 of 2012 was filed by M/s. R.N. Marwah & Co. requesting the Company Court, pending disposal of C.P. No.30 of 2012, to restrain QLI, its directors, officers etc. from, in any manner whatsoever, altering the composition of the Board and changing the Memorandum and Articles of Association of the respondent-Company without permission till appointment of a provisional liquidator.

It is only after a winding up order is made that, ordinarily, the official liquidator is appointed as the liquidator of the company, ordered to be wound up, to take into his custody or control all the property, effects, and actionable claims which the Company, ordered to be wound up, is entitled to. Section 450(1) of the Companies Act carves out an exception thereto, and enables the Company Court, at any time after the presentation of the winding up petition and before the making of a winding up order, to appoint the official liquidator to be the provisional liquidator of the company sought to be wound up. The conditions precedent, for appointment of a provisional liquidator, are those prescribed in Section 450(2) of the Companies Act whereunder the Court is required to give a notice to the company sought to be wound up, and give them a reasonable opportunity to make a representation. A provisional liquidator appointed by the Court has, as stipulated under Section 450(3), the same powers as the official liquidator and continues to be the liquidator, of the company sought to be wound up, till an order of winding up is passed. After an order of winding up is passed the company, ordered to be wound up, would come under the control of the official liquidator.

The effect of appointing a provisional liquidator is that the Board of Directors of the Company, sought to be wound up, cannot thereafter exercise control over the management of the company, and all the assets of the company are brought under the control of the provisional liquidator. The submission of Sri S. Niranjan Reddy, Learned Counsel, is that the entire process was stage managed, and the Company Court was mislead into appointing a provisional liquidator, to ensure that the

shareholders of QLI were prevented from changing the composition of its Board of Directors in its extra-ordinary general meeting to be held on 18.02.2012, and the new directors prevented from taking control of the affairs of the respondent-company.

To continue the narration of events, as stated by Sri S. Niranjan Reddy, Learned Counsel, the need for the Company Court to issue a notice, in C.A. No.102 of 2012 in C.P. No.30 of 2012, to the respondent-company was obviated as a caveat petition was filed before the Company Court by Sri Samson Arthur on behalf of QLI, and they were represented by Counsel. The respondent-company was given an opportunity of filing its counter to C.A. No.102 of 2012 whereby appointment of a provisional liquidator was sought. Mr. Samson Arthur who had filed a caveat petition on 10.02.2012 on behalf of QLI, stating that all the dues of M/s. R.N. Marwah & Co against the invoices raised by them, had been cleared, filed a counter-affidavit in Company Application No.102 of 2012 on 16.02.2012, readily admitting liability and stating that non-payment of the outstanding dues of M/s. R.N. Marwah & Co. was because of the present financial condition of QLI.

In its order, in Company Application No.102 of 2012 in Company Petition No.30 of 2012 dated 17.02.2012, the Company Court noted that the basis, for seeking appointment of a provisional liquidator, was the apprehension of the petitioner that the respondent-company and its directors may be devising ways and means of disposing of, alienating and parting with the assets of the respondent-company to third parties with a view to defeat the legitimate claims of the creditors like the petitioner; the petitioner (M/s. R.N. Marwah & Company) believed that the assets of the respondent would be insufficient to satisfy the dues of the creditors including the petitioner, and eventually the petitioner may well be left with no reasonable possibility of ever recovering its lawful dues from the respondent-company; except for a bare and vague denial in the counter-affidavit, the respondent-company (QLI) had neither chosen to give details of its assets nor had it assured the Court that the assets would not be taken beyond the jurisdiction of the Court; Section 450 of the Companies Act conferred power on the Company Court to appoint the official liquidator as the provisional liquidator; the requirement of Section 450(2), of giving notice to the company and giving them a reasonable opportunity to make their representation, had been complied with; the respondent-company (QLI) had filed its counter-affidavit; and under Section 456(1) of the Companies Act, where a provisional liquidator has been appointed, he shall take into his custody, or under

his control, the property, effects and actionable claims to which the company is, or appears to be, entitled.

The Company Court further observed that a strong prima facie case for winding up had been made out; the petitioner's assertion, regarding the amounts due and payable to them, had been admitted as payable by the respondent; the respondent (QLI) had neither chosen to furnish details of their properties and assets, nor did they specifically state that they would not remove these properties beyond the jurisdiction of the Court; and it was just and equitable for a provisional liquidator to be appointed to exercise jurisdiction under Sections 450 and 456 of the Companies Act. The Official Liquidator attached to the High Court was appointed as the provisional liquidator.

The order passed by the Company Court, in Company Application No.102 of 2012 in C.P. No.30 of 2012 dated 17.02.2012, required the Official Liquidator, attached to the High Court, to take charge of all the assets of QLI which, according to Sri S. Niranjan Reddy, Learned Counsel, meant that the Bankruptcy Receiver of QLS was effectively prevented from taking control of the assets of QLI, and consequently its subsidiary-Mack Soft. According to the Learned Counsel, as the object of ensuring that the Bankruptcy Receiver of QLS did not take control of the assets of QLI, and its subsidiary-Mack Soft, was achieved by the order passed in Company Application No.102 of 2012 dated 17.02.2012, the Learned Senior Counsel, appearing on behalf of M/s. R.N. Marwah & Co, informed the Court that they did not desire to press for an order being passed in Company Application Nos.103 and 104 of 2012 and, consequently, both the said applications were dismissed by this Court by its order dated 17.02.2012.

Learned Counsel would further submit that M/s. R.N. Marwah & Company had filed suit No.144 of 2012 before the Additional District Judge, Patiala House, New Delhi against QLI and its directors seeking recovery of money allegedly due for services purportedly rendered by them to QLI; though Mr. Samson Arthur, appeared on caveat at the hearing of the injunction petition filed in Suit No.144 of 2012, there was no opposition by him to the grant of an injunction order, which resulted in an order of injunction being passed restraining QLI and its directors from, in any manner, carrying out changes to the Articles of Association of QLI relating to the removal of directors and composition of the existing board of directors, either by removal of the existing directors or by inducting new directors, without the written

consent of the petitioner. This order of injunction, according to Sri S. Niranjan Reddy, Learned Counsel, prevented a change being made to the erstwhile management of QLI, and was obtained to frustrate the Bankruptcy Receiver of QLS from taking control of QLI and its subsidiary Mack Soft. As the order of injunction did not restrain the shareholders of QLI from holding its EGM on 18.02.2012, the EGM was held and resolutions were passed therein to take effect after the injunction order was vacated. Subsequently, after the order of injunction dated 15.02.2012 was vacated by the Delhi High Court on 06.07.2012, the resolutions are said to have been given effect to. Curiously M/s. R.N. Marwah & Co, which had filed the suit for recovery of money, did not prosecute suit No.144 of 2012 thereafter, and the said suit was subsequently dismissed for non-prosecution, by the Patiala House Court, on 03.04.2013.

The Provisional Liquidator, appointed by the Company Court, appears to have asked QLI, by his letter dated 02.04.2012, to deliver the properties and books of accounts of the company. C.A. No.739 of 2012 was filed, on behalf of QLI by Sri N. Chandrasekhar Rao, requesting the Company Court to grant them three weeks time to submit the entire records, pertaining to QLI to the Official Liquidator. In the affidavit filed in support of C.A. No.739 of 2011, Sri N. Chandrasekhar Rao stated that the Court had appointed a provisional liquidator on 17.02.2012; a letter was addressed by the Official Liquidator on 02.04.2012 asking QLI to deliver the money, property or books or papers pertaining to the Company; the same was received by QLI on 05.04.2012; as the Company was not carrying on any activity for the past one year, most of the employees had left the Company, and the records of the Company were in bad shape; QLI was in the process of compiling the complete records in order to file the same before the Official Liquidator; the delay in submitting the records to the Official Liquidator was unintentional; additional time should be granted for submitting the records; and the Company does not have any ill-intention not to disclose the requested records as directed by the Official Liquidator.

Sri S. Niranjan Reddy, Learned Counsel, would submit that C.P. No.30 of 2012 was pending before this Court, by the time C.A. No.739 of 2012 was filed on 15.06.2012; production of the books of accounts and other records would have revealed that QLI was owed Rs.62.91 Crores by Mack Soft; the abuse of process of

Court, by the erstwhile management of QLI, would have come to light; and it is only to suppress the fact that QLI was commercially solvent, and had sufficient means to discharge the alleged liability of M/s. R.N. Marwah & Co. of Rs.45.00 Lakhs, was the application in C.A. No.739 of 2012 filed seeking extension of time.

A counter-affidavit was filed in C.P. No.30 of 2012 by Sri N. Chandrasekhar Rao, on behalf of QLI, on 13.06.2012 admitting its liability towards the petitioner, stating that QLI had no assets at all, and seeking time for making payment. Mr. Ajit Kumar was examined as PW.1, on behalf of the petitioner ie M/s. R.N. Marwah & Co, and Exs.P1 to P10 were marked as exhibits. Except for the affidavit of Sri N. Chandrasekhar Rao, admitting liability towards the petitioner, neither was PW.1 cross-examined on behalf of QLI, nor was any evidence adduced on behalf of QLI.

In its order in C.P. No.30 of 2012 dated 06.07.2012, the Company Court observed that the affidavit of Sri N. Chandrasekhar Rao was placed on record, on behalf of the respondent, wherein the amounts due to the petitioner had been admitted; the respondent-company did not dispute its liability towards the petitioner; in the reply to the statutory notice, the respondent-company had merely sought two weeks time to liquidate their liability; the respondent did not choose to cross-examine P.W-1; the evidence brought on record clearly established that the liability of the respondent-company, to the petitioner, was undisputed; and the respondent had failed to liquidate the undisputed liability which was sufficient to infer that the respondent-company had become commercially insolvent warranting an order of winding up of the respondent company being passed. QLI was directed to be wound up and the Official Liquidator, who as a provisional liquidator was earlier directed to take into his custody all the properties and effects of the respondent-company, was appointed as the liquidator of the respondent-company.

Mr. N. Chandrasekhar Rao filed an application on behalf of Mack Soft, in O.S. No.21 of 2012, under Section 446 of the Companies Act, 1956, seeking stay of further proceedings in O.S. No.21 of 2012, on account of passing of the winding up order against the respondent-company on 06.07.2012. Sri S. Niranjan Reddy, Learned Counsel, would submit that, after falsely admitting liability towards the petitioner and collusively obtaining the winding up order against the respondent-company, Mr. N. Chandrasekhar Rao, by filing a fresh application under Section 446 of the Companies Act, 1956, sought to use the order of winding up dated 06.07.2012 to prevent the bankruptcy receiver for QLS from further proceeding in its attempts at

controlling the affairs of Mack Soft.

Quinn Logistics Sweden AB, represented by its bankruptcy receiver, filed C.A. No.127 of 2013 in C.P. No.30 of 2012 on 20.12.2012 to recall the order of winding up of QLI. Pursuant thereto, the winding up order dated 06.07.2012 was stayed by the Company Court on 13.08.2013. Thereafter the order of winding up dated 06.07.2012 was recalled by order dated 19.11.2013. QLI, thereafter, filed an application under Section 340 Cr.P.C. against the appellants on 19.11.2013. As a counter-blast M/s. R.N. Marwah & Company filed C.A. No.156 of 2014 on 12.02.2014, under Section 340 Cr.P.C, against Mr. Robert Dix who had earlier filed the application in C.A. No.1163 of 2013, under Section 340 Cr.P.C, against the appellants, on behalf of QLI. Curiously M/s. R.N. Marwah & Company withdrew C.P. No.30 of 2012 on 19.03.2014. They also withdrew C.A. No.156 of 2014 on 25.08.2014.

While there is no specific denial of the liability of the respondent-company towards M/s. R.N. Marwah & Co, Sri S. Niranjan Reddy, Learned Counsel, would submit that the genuineness of these transactions is suspect is evident from the fact that M/s. R.N. Marwah & Co, which filed Suit No.144 of 2012 in Delhi and a winding up petition in C.P. No.30 of 2012 before the Company Court at Hyderabad claiming that a sum of Rs.45,00,000/- was due to them, chose not to contest the Suit which resulted in Suit No.144 of 2012 being dismissed for non-prosecution on 03.04.2013; and they also withdrew C.P.No.30 of 2012, filed before the Company Court, on 19.03.2014.

The chronology of events narrated by Sri S. Niranjan Reddy, if true, would *prima facie* show that the appellants herein had, in collusion with M/s. R.N. Marwah & Company, misused the hallowed portals of this Court, and had misled it into appointing a provisional liquidator initially, and thereafter in appointing a liquidator consequent upon an order of winding up being passed, only to prevent the bankruptcy receiver of Quinn Logistics Sweden AB from taking control of the assets of QLI and, consequently, from taking control of Mack Soft also.

(b). DETAILS OF THE ALLEGED FALSE STATEMENTS MADE ON OATH BY THE APPELLANTS:

It is not in dispute that the balance sheet of Mack Soft, for the year ending

31.03.2011, recorded that a sum of Rs.62,91,40,970 was due to QLI from Mack Soft. It is also the admitted case of the parties that this fact of Rs.62.91 Crores being due to QLI was neither brought to the notice of the Company Court by Mr. Samson Arthur in the counter filed by him in C.A.No.102 of 2012, or by Sri N. Chandrasekhar Rao in the counter filed by him in C.P. No.30 of 2012. Bearing in mind the aforesaid sequence of events, and that these statements were made by Mr. Samson Arthur and Mr. N. Chandrasekhar Rao in the counter-affidavit filed on behalf of QLI in C.A. No.102 of 2012 seeking appointment of a provisional liquidator, and in C.P. No.30 of 2012 seeking winding up of QLI; and a petition seeking winding up, and an application seeking appointment of a provisional liquidator, form part of the process of bringing the very existence of the Company to an end, let us now examine whether, *prima facie*, the averments made in the affidavits filed by Sri Samson Arthor and Sri N. Chandrasekhar Rao are false or not.

In the counter-affidavit filed before the Company Court on 16.02.2012, in C.A. No.102 of 2012 in C.P. No.30 of 2012 wherein appointment of a provisional liquidator was sought, Mr. Samson Arthur stated that:-

“....the only reason for non-payment of the outstanding dues by respondent company was the prevailing financial condition of the respondent company.....”

In the very same counter-affidavit Mr. Samson Arthur also stated that:-

“.... there is no willful default by the Respondent in making the payment of the outstanding dues, the only reason for non making of the outstanding dues are that due to present financial condition of Respondent company as explained above.....”

Mr. Samson Arthur had filed an affidavit dated 10.02.2012, in support of the caveat petitions filed, on behalf of QLI and Quinn Lodgings India before the High Court, against R.N. Marwah & Co wherein he had stated to the contrary that:-

“..... the Respondent started rendering its services in relation to the FEMA compliances of the Caveator Company and raised invoices, for which the Caveator Company has cleared all the dues. Even then, by raising false and frivolous pleas, they had now issued legal notice under Section 433 of Companies Act dated 17.01.2012.....”

Sri S. Niranjan Reddy, Learned Counsel, would submit that the averments, in the counter-affidavit filed in C.A. No.102 of 2012 on 16.02.2012, were false as the audit report filed by Mr. N. Chandra Sekhar Rao, as a representative of Mack Soft before the Ranga Reddy District Court, shows that Rs.62,91,40,790 (Rs.62.91 Crores) is due to the respondent-company from Mack Soft; the amounts due from Mack Soft to the respondent-company is also admitted in the counter filed, by Mr. Samson Arthur, to C.A. No.1163 of 2013; the fact that a sum of Rs.62.91 crores is due to QLI from Mack Soft has been suppressed in the counter-affidavit dated 16.02.2012; Mr. Samson Arthur, on his own admission, was an employee of Mack Soft from 01.07.2011; he could not have been unaware of these dues; it is nobody's case that Mack Soft was unable to pay the said sum of Rs.62.91 crores to QLI; in the counter filed by him in C.A. No.1163 of 2013, all that is stated by Mr. Samson Arthur is that the fact that QLI was owed money by Mack Soft was completely immaterial as it would be a claim to be made by QLI against Mack Soft; it is relevant to note that Mr. Samson Arthur did not, in the counter filed in C.A. No.1163 of 2013, even claim to be unaware of this debt of Rs.62.91 crores; in proceedings for winding up, the ***"financial condition of the company"*** must be held to be sound, and the company considered ***"commercially solvent"***, when the company which was owed Rs.62.91 crores by another company, is sought to be wound up for non-payment of a much lesser sum of Rs.45.00 lakhs; QLI could not, in such circumstances, be said to financially incapable of repaying the alleged debt of R.N. Marwah & Company of Rs.45.00 lakhs, unless it was unable to recover its dues of Rs.62.91 crores from Mack Soft; it is not even the case of the appellants that QLI was unable to recover its dues from Mack Soft or that Mack Soft was also in financial difficulties and was unable to repay these dues to QLI; no reference was made even to the bank accounts of QLI in the counter filed in C.A. No.102 of 2012; Mr. Samson Arthur, in the affidavit filed by him in support of the caveat petition dated 10.02.2012, stated that the amounts due to R.N. Marwah & Company had been repaid; however, in the counter filed by him less than a week thereafter on 16.02.2012 in C.A. No.102 of 2012, he readily admitted the liability of QLI towards R.N. Marwah & Company; one of these two statements is evidently false; and reference to the bank balances, in the subsequent counter filed in C.A. No.1163 of 2013, is an afterthought and is referred to somehow justify the earlier false statements made on oath before the Company Court.

In the counter-affidavit dated 22.08.2014, filed in C.A. No. 1163 of 2013 in C.P. No.30.2012, Mr. Samson Arthur stated that:-

“.... I had resigned from the services of the applicant (QLI) on 31.05.2012 which was effective from May, 2012.....”

Sri S. Niranjan Reddy, Learned Counsel for the respondent- company, would submit that this statement is also false as Mr. Samson Arthur had filed an affidavit on 25.06.2015, in the present appeal before this Court, and had annexed thereto a service certificate dated 31.08.2012; and, in the said Certificate, it is stated that:-

“.....Samson Arthur represented Quinn Property Management Pvt. Ltd. until 30.06.2011 and subsequently joined the services of Mack Soft Tech Pvt. Ltd. from 01.07.2011....”

According to Sri S. Niranjan Reddy, if Mr. Samson Arthur was not even in the employment of QLI, his assertion that he had resigned from the services of QLI was, evidently, false. While expression of any opinion, on the aforesaid submissions of Sri S. Niranjan Reddy, Learned Counsel, would be inappropriate as it may cause prejudice to Sri Samson Arthur in the proceedings before the Magistrate, it cannot, by any stretch of imagination, be said that a prima facie of Mr. Samson Arthur having made false statements on oath, before the Company Court, has not been made out.

In the Affidavit dated 15.06.2012, filed before the Company Court, Sri N. Chandrasekhar Rao stated:-

“.....The company is not operating for the last one and half year (i.e January 2011).....”

Sri S. Niranjan Reddy, Learned Counsel for the respondent-company, would submit that this statement is false as Form FC-TRS dated 28.09.2011, purports to show transfer of shares held by the respondent in Mack Soft to Logvis AG for Rs.9,90,000, even though these shares were purchased by the respondent in May, 2007 for Rs.126,73,23,427/-.

In the counter-affidavit dated 13.06.2012 filed in C.P. No.30 of 2012 before the

Company Court, Sri N. Chandrasekhar Rao stated:-

“.....The only reason for non-payment of the outstanding dues by respondent company was the prevailing financial condition of the respondent company.....”

He again stated that:-

“....I submit that the respondent company does not have any assets at all....”.

Sri S. Niranjan Reddy, Learned Counsel, would submit that sundry debtors of Rs.62.91 Crores (the amount owed by Mack Soft to QLI) constitute the current assets of QLI, and the statement of Sri N. Chandrasekhar Rao that the Company does not have any assets at all is false. On the other hand Sri S. Ravi, Learned Senior Counsel, would contend that Sri N. Chandrasekhar Rao's ignorance of the basic principles of accountancy is evident from the fact that, while in one breath he stated that the respondent-company does not have any assets at all, at the same time he referred to the bank balance of the respondent-company in HDFC Bank and HSBC bank without even realising that bank balances also constitute the assets of the respondent-company.

While much has been said about the lack of knowledge of accountancy, both on the part of Mr. Samson Arthur and Mr. N. Chandrasekhar Rao, the submission of Sri S. Niranjan Reddy, Learned Counsel, that even a layman would know that the company's existence should not be brought to an end for a liability of Rs.45.00 Lakhs when a sum of Rs.62.91 Crores is owed to it by another company, cannot be said to be without merit. Sri S. Niranjan Reddy, Learned Counsel, would further submit that the aforesaid statements are evidently false as the audit report, filed by Mr. N. Chandra Sekhar Rao as representative of Mack Soft before the Ranga Reddy District Court, shows that Rs.62,91,40,790 (Rs.62.91 Crores) was due to QLI from Mack Soft; the amounts due, from Mack Soft to QLI, is also admitted in the counter filed by Mr. N. Chandrasekhar Rao in C.A. No.1163 of 2013; it is not even the case of Sri N. Chandrasekhar Rao that he was unaware of the debt due from Mack Soft to QLI of Rs.62.91 crores; in the counter, filed in C.A. No.1163 of 2013, Sri N. Chandrasekhar Rao stated that the fact that QLI was owed money by Mack Soft was completely immaterial as it would be a claim to be made by QLI against Mack Soft; in the counter-affidavit filed by him in C.P. No.30 of 2012, and in the affidavit filed by

him in C.A. No.739 of 2012, Sri N. Chandrasekhar Rao has not even referred to the fact that a sum of Rs.62.91 crores is due to QLI from Mack Soft which is, evidently, deliberate suppression of material and relevant facts.

(c). SUPPRESSIO VERI SUGGESTIO FALSI:

If the aforesaid submissions of Sri S. Niranjan Reddy, Learned Counsel, were to merit acceptance, it would then mean that relevant facts have been deliberately suppressed from the Company Court. If a wrong or misleading statement is deliberately and willfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of the judicial proceeding. (**Naraindas v. The Government of Madhya Pradesh; Afzal v. State of Haryana; Sri V. Satyanarayana Rao v. State of A.P; S.R. Ramaraj v. Special Court, Bombay; V. Satyanarayana Rao**⁶). "Suppressio veri", i.e., the suppression of relevant and material facts is as bad as Suggestio falsi i.e., a false representation deliberately made. Both are intended to dilute- one by inaction and the other by action. "Suppressio veri Suggestio falsi"-suppression of the truth is equivalent to the suggestion of what is false. (**Black's Law Dictionary with pronouncements-Sixth edition**). A false statement willfully and deliberately made, and a suppression of a relevant and material fact, interfere with the due course of justice and obstruct the administration of justice. (**V. Satyanarayana Rao**⁶).

(d). COURT SHOULD NOT MAKE ANY OBSERVATIONS, OTHER THAN WHAT IS NECESSARY:

While this submission of suppression of material facts by the appellants cannot be brushed aside, we refrain from saying anything more as it would prejudice the cause of the appellants during the course of proceedings before the Magistrate. The Court should not speak more than what is absolutely necessary, as any expression or observation on any facet of the case may prejudice either party in the trial which must be free and impartial wherein no party should have any feeling of misgiving, suspicion or embarrassment (**K. Karunakaran**³); no expression, on the guilt or innocence of the persons, should be made by the Court while passing an order under [Section 340](#) Cr.P.C; an exercise of the Court at that stage is not for finding whether any offence was committed or who committed the same; the scope is confined to see whether the Court could then decide, on the materials available, that the matter requires inquiry by a Criminal Court; and it is expedient in the interest

of justice to have it inquired into. (**Pritish²; M.S. Sheriff v. State of Madras**).

(e). INTERFERENCE IN APPEAL IS JUSTIFIED ONLY IF THE PRIMA FACIE VIEW OF THE COMPANY COURT IS PERVERSE:

The Learned Company Judge has, in the order under appeal, noted that it is not even the case of Sri N. Chandrasekhar Rao, in the counter-affidavit, that they were unable to recover the amount from Mack Soft or that Mack Soft was not paying the amount which resulted in QLI being disabled from paying the debt due to M/s. R.N. Marwah & Co. Interference in appeal can be only on the basis that the Company Court's *prima facie* view, that a complaint should be laid under Section 193 IPC, is so manifestly perverse, so grossly erroneous and so palpably unjust that the appellate Court must interfere in the interest of justice and fair play. (**K. Karunakaran³**). The Company Court's *prima facie* view does not suffer from any such infirmity. The Learned Judge has, in the order under appeal, also made it clear that the Magistrate should not be influenced by any observations made in the order since they were made only for the purpose of the preliminary enquiry under Section 340(1) Cr.P.C. We see no reason, therefore, to interfere with the order under appeal on merits.

III. NO PROOF THAT FALSE EVIDENCE WAS GIVEN BY THE APPELLANTS THAT TOO INTENTIONALLY:

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the appellants, would submit that Section 193 IPC requires that the person giving evidence should "intentionally" give false evidence; from the circumstances described above, it cannot be said that the appellants had given any false evidence, that too intentionally; there is no evidence on record to rebut that the financial situation of QLI was anything other than what the bank balances with HDFC Bank indicated; the Learned Company Judge also proceeded on the footing that Mr. N. Chandrasekhar Rao's knowledge about the balance sheet of Mack Soft would reveal that monies were due from Mack Soft to QLI; prosecution can only be launched for 'intentionally' giving false evidence; Mr. Samson Arthur, without anything more, cannot be presumed to be aware of the balance sheet of Mack Soft, when he signed the counter affidavit dated 16.02.2012; the knowledge of Mr. N. Chandrasekhar Rao, regarding the balance sheet of Mack Soft, and that too on a subsequent date at the

time of filing pleadings in the Ranga Reddy District Court cannot form the basis for the Learned Company Judge to conclude that Mr. Samson Arthur had knowledge about the balance-sheet; it is this knowledge alone which would have established the 'intention'; in the circumstances, the findings of the Learned Company Judge are erroneous, and the reasoning is faulty; Mr. Samson Arthur was a management professional, and was in the employment of Mack Soft; his role was that of brokering, marketing, sales advisory, business development, leasing, negotiating, etc; merely because he had an MBA degree does not mean that he had knowledge about the balance sheet, its contents or its purport; the findings of the Learned Company Judge is completely based on third party knowledge, and is unsustainable; Mr. Samson Arthur had no financial stake either in Mack Soft or QLI; he had no shareholding; he was only an employee; it could not be said that he had any 'intention' to ensure that a provisional liquidator be appointed when he filed the affidavit; as a matter of fact, he specifically denied that QLI and its directors had devised ways and means of disposing of, alienating, and parting with the assets of QLI to third parties with a view to defeat the claims of its creditors like M/s. R. N. Marwah & Co; he had also opposed the passing of an ad-interim order restraining QLI, its directors and other principal officers from, in any manner, transferring, alienating or disposing of the assets and properties of QLI; he had also denied that QLI should be wound up, or that an Official Liquidator should be appointed as the Liquidator of QLI, as any order of the Court would seriously affect the image of the Company, the interest of the employees, and would also undo the efforts being put by QLI; he had finally prayed that the Court may be pleased to dismiss the application; and it would be a travesty to launch prosecution against Mr. Samson Arthur for the alleged falsity of the statement contained in his affidavit dated 16.02.2012.

On the other hand Sri S. Niranjan Reddy, Learned Counsel for the respondent-company, would submit that an order under Section 340 Cr.P.C. is only a tentative and a prima facie view; mere suspicion of probability would suffice for referring the matter to the Magistrate; the rights of the accused are fully protected; notwithstanding a reference, the Magistrate can decide on taking cognizance on the material placed before him; and every defence available to the accused would also be considered like in the course of an ordinary criminal trial.

The fact that a prima facie case has been made out for laying a complaint, does not mean that the charge has been established against a person beyond reasonable doubt. That will be thrashed out in the trial where the parties will have an opportunity to produce evidence and controvert each other's case exhaustively without any reservation. There may often be a constraint, on the part of a person sought to be proceeded against under Section 340 CrPC, to come out with all material in the preliminary enquiry. That constraint will not be there in a regular trial where he will have ample opportunity to defend himself, and produce all material to show that an offence under Section 193 IPC has not been made out. That section contemplates that making of a false statement is not enough. It has to be made intentionally. The accused in a trial under Section 193 will be able to place all circumstances bearing upon the ingredient of the intention attributed to him. (**K. Karunakaran³**).

As the question whether or not the statements made before the Company Court by the appellants were false, and whether such false statements were intentionally made, are matters of examination by the Magistrate, and are not matters to be considered in proceedings under Section 340(1) Cr.P.C, the Learned Company Judge has rightly not expressed any opinion in this regard.

IV. COMPOUNDING OF OFFENCES UNDER IPC:

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the appellants, would submit that it was now apparent that the principal warring parties namely IBRC and Mr. Sean Quinn were in the process of settling their disputes by mediation; the latest information, published on 01.07.2015, shows that a retired Judge Mr. Justice Joseph Finnegan had agreed to act as a mediator in the long running dispute between the Quinn family and IBRC; a copy of the publication was being annexed; the litigation in India is just an offshoot of the litigation in Ireland between IBRC and the Quinn family; it is not as if IBRC has lent any separate money to QLI apart from what it is seeking to recover in the proceedings in Ireland; IBRC's effort appeared only to secure all the assets of Mr. Sean Quinn all over the world; the Supreme Court has, in **Gian Singh v. State of Punjab**, **CBI v. Narendra Lal Jain**, and **Nikhil Merchant v. CBI**, held that, even where certain offences may not be compoundable in terms of Section 320 Cr.P.C., the Court may, in the interest of justice, quash such complaints; and in the peculiar circumstances of this case, since the complaint is emanating

from the High Court itself, which would also ultimately exercise the jurisdiction under Section 482 Cr.P.C. against the very complaint that would be instituted in the Court of the Magistrate, this was a fit case wherein, in the alternative, this Court could consider permitting the compounding of the alleged offences.

Sri S. Niranjan Reddy, Learned Counsel for the respondent-company, would submit that, for compounding of offences punishable under the India Penal Code, a complete scheme is provided under Section 320 Cr. P.C; Section 320(1) provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column (3) of the said table; Section 320 (2) provides that the offences, mentioned in the table, can be compoundable by the victim with the permission of the court; as against this, sub-section (9) specifically provides that “*no offence shall be compoundable except as provided by this section*”; in view of the aforesaid legislative mandate, only offences, which are covered by Table 1 or Table 2 as stated above, can be compounded; the rest of the offences punishable under the IPC cannot be compounded; Section 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 and Section 463, 471, 475 or 476 for which punishment, under Section 340 read with Section 195 Cr.P.C, can be made, have been omitted from Section 320, and are hence not compoundable.

In **Nikhil Merchant**¹¹, the Supreme Court held that, in the case before it, the disputes between the Company and the Bank had been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank had been cleared, and the Bank did not appear to have any further claim against the Company; what, however, remained was the fact that certain documents were alleged to have been created by the appellant in order to avail credit facilities beyond the limits to which the Company was entitled; the dispute involved before it had the overtones of a civil dispute with certain criminal facets; the question, which was required to be answered, was whether the power, which independently lay with it to quash criminal proceedings pursuant to the compromise arrived at, should be exercised?; on an overall view of the facts, keeping in mind the decision in **B.S. Joshi v. State of Haryana** and the compromise arrived at between the Company and the Bank, as also the consent terms in the suit filed by the Bank, they were satisfied that this was a fit case where technicalities should not be allowed to stand in the way of the quashing of the criminal proceedings since, in their view, continuance of the same, after the compromise arrived at between the parties, would

be a futile exercise.

In **Gian Singh**⁹ the Supreme Court held that the power of the High Court in quashing a criminal proceeding or FIR or complaint, in the exercise of its inherent jurisdiction, is distinct and different from the power given to a criminal court for compounding the offences under Section 320 Cr.P.C; in what cases power, to quash the criminal proceeding or complaint or FIR, may be exercised, where the offender and the victim have settled their dispute, would depend on the facts and circumstances of each case, and no category can be prescribed; however, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime; heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be quashed even though the victim or victim's family and the offender have settled the dispute; such offences were not private in nature, and had a serious impact on society; similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc cannot provide any basis for quashing criminal proceedings involving such offences; but criminal cases having a civil flavour stand on a different footing for the purposes of quashing, particularly offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong was basically private or personal in nature, and the parties had resolved their entire dispute; in this category of cases, the High Court could quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction was remote and bleak, and continuation of the criminal case would put the accused to great oppression and prejudice, and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim; the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether, to secure the ends of justice, it is appropriate that the criminal case is put to an end; if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding; and it cannot be said that **B.S. Joshi**¹², **Nikhil Merchant**¹¹ and **Manoj Sharma v. State** were not correctly decided.

In **Narendra Lal Jain**¹⁰, the Supreme Court held that the civil liability of the respondents to pay the amount to the Bank had already been settled amicably; no subsisting grievance of the Bank in this regard had been brought to the notice of the Court; while the offence under Section 420 IPC was compoundable, the offence under Section 120-B IPC is not; to the latter offence the ratio laid down in **B.S. Joshi**¹² and **Nikhil Merchant**¹¹ would apply if the facts of the given case would so justify; having regard to the fact that the liability, to make good the monetary loss suffered by the Bank, had been mutually settled between the parties, and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 CrPC; they did not see how such exercise of power can be faulted or held to be erroneous; and continuance of a criminal proceeding, which was likely to become oppressive or may partake the character of a lame prosecution, would be a good ground to invoke the extraordinary power under Section 482 CrPC.

It is for the first time, in the present appeal, that this submission, of the dispute between Mr. Sean Quinn and IRBC being referred to mediation, is made. The mere fact that the dispute between Mr. Sean Quinn and IRBC has been referred to mediation does not necessitate the conclusion that the parties would arrive at an amicable settlement justifying compounding of the offences alleged against the appellants. It is also debatable whether the appellate Court, under Clause 15 of the Letters Patent, can compound these offences simultaneously exercising jurisdiction under Section 482 Cr.P.C. It must also be borne in mind that the submission, urged on behalf of the respondent-company, if true, would mean that the appellants have sought to misuse the process of the Company Court, and have obtained orders from the Company Court misrepresenting and suppressing material facts. False averments, which interfere with the administration of justice, cannot be ignored or brushed aside, and are matters which ought to be examined by the Magistrate under Section 340 Cr.P.C.

(a). FALSE STATEMENTS AND SUPPRESSION OF MATERIAL FACTS, WHICH AFFECT THE SOLEMNITY OF COURT PROCEEDINGS, SHOULD NOT BE READILY CONDONED:

There is no justification in the request, made on behalf of the appellants, that the offences be compounded. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice. Unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice. (**Advocate General State of Bihar v. Madhya Pradesh Khair Industries; V. Satyanarayana Rao**⁶). In order to sustain and maintain the sanctity and solemnity of proceedings in law courts it is necessary that parties should not make false or, knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the Court where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by recourse to misrepresentation, and conceals material facts, he does so at his own risk. Such a party must be ready to take the consequences that follow. There is a compelling need to take a serious view in such matters to ensure purity in the administration of justice. (**Vijay Syal v. State of Punjab**). As a petition containing misleading and inaccurate statements, if filed to achieve an ulterior purpose, amounts to an abuse of the process of the court, the litigant should not be dealt with lightly. A litigant is bound to make "*full and true disclosure of facts*". (**Manohar Lal v. Ugrasen; Tilokchand and Motichand v. H.B. Munshi**). Whenever the court comes to the conclusion that its process is being abused, it would be justified in refusing to proceed further. This rule has been evolved out of the need for courts to deter a litigant from abusing its process by deceit. (**Manohar Lal**¹⁶; **State of Haryana v. Karnal Distillery Co. Ltd.; Sabia Khan v. State of U.P.; Abdul Rahman v. Prasony Bai; S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Oswal Fats & Oils Ltd. v. Commr. (Admn.)**). It is the duty of the High Court to ensure that its judicial process is not abused, and its order does not become an instrument or aid to overreach the adversary. (**M.V. Venkataramana Bhat v. Returning Officer and Tahsildar**). Every person invoking the jurisdiction of the Court must state the truth, be it in the pleadings, affidavits or evidence. The pleadings must set-forth sufficient factual details which inspire confidence and credibility. (**A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nand Havana Paripalanai Sangam Represented by its President**). It is the duty of the Court, once false averment of facts are discovered, to take appropriate steps to ensure that no one derives any benefit or advantage by abusing the legal process. Fraudulent and dishonest litigants must be discouraged. (**A. Shanmugam**²⁴). It is

the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process. (**A. Shanmugam**²⁴).

Dishonesty should not be permitted to bear fruit and confer benefit to the person who has made a misrepresentation. (**District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi; Union of India v. M. Bhaskaran; Vice Chairman, Kendriya Vidyalaya Sangathan. v. Girdharilal Yadav; State of Maharashtra v. Ravi Prakash Babulalsing Parmar; Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company; Mohammed Ibrahim v. State of Bihar; and Meghmala v. G. Narasimha Reddy**) .A person, whose case is based on falsehood, can be summarily thrown out at any stage of the litigation. (**S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs.**). Grave allegations are levelled against the appellants herein of having deliberately and consciously made false statements on oath, of having suppressed material facts, and to have misled the Company Court into passing an order appointing a provisional liquidator and, thereafter, into passing an order of winding up. These allegations, if true, would mean that the process of the Court has been abused. It is therefore expedient, in the interest of justice, that the matter is enquired into and action is taken by lodging a complaint before the Magistrate. Compounding offences, where litigants are alleged to have abused the process of Court, may not be justified. We find no merit in the submission of Sri S. Ravi, Learned Senior Counsel, that the offences, alleged to have been committed by the appellants, should be compounded.

V. MAINTAINABILITY OF THE APPEAL:

Sri S. Ravi, Learned Senior Counsel appearing on behalf of the appellants, would submit that, as held by the Full Bench of the Delhi High Court, in **Weizmann Ltd. v. Ms. Shoes East Ltd.**, an intra-Court appeal is maintainable. On the other hand Sri S. Niranjan Reddy, Learned Counsel for the respondent-company, would submit that the provisions of Sections 340 and 341 Cr.P.C indicate that there is no appeal against the orders of the High Court which would include the orders of the Single Judge of the High Court; this right of appeal was expressly and deliberately taken away making a departure from Section 476B of the old Code; the judgment of the Delhi High Court Full Bench, in **Weizmann Ltd.**³³ wherein it was held that an appeal, under Section 341 Cr.P.C, is maintainable is based on two erroneous

presumptions viz., (i) that the Law Commission recommendations were premised on **M.S. Sheriff⁸**, which is not so; and (ii) that the Supreme Court, in **P.S. Sathappan (Dead) by LRs Vs. Andhra Bank Ltd.**, specified that, unless there is an express exclusion of the Letters Patent Act, the said Act would apply; in fact, in **P.S. Sathappan³⁴**, the Supreme Court upheld the position that an appeal, under the Letters Patent, can be taken away by an express provision in an appropriate legislation, and the express provision need not refer to or use the words “letters patent”, but if, on a reading of the provision, it is clear that all further appeals are barred then even a letters latent appeal would be barred; and it was held that a specific exclusion may be clear from the words of a statute even though no specific reference is made to Letters Patent.

In **K. Karunakaran³** the Supreme Court held that an order of the High Court, made under sub-section (1) or sub-section (2) of Section 340 Cr.P.C, is specifically excluded for the purpose of an appeal to the superior court under Section 341(1) CrPC. In **P.S. Sathappan³⁴**, the Supreme Court held that the provision of appeal in the Letters Patent could not be excluded by implication; and, in view of Section 4 CPC, appeals filed under clause 15 of the Letters Patent were maintainable. In **Weizmann Ltd.³³**, the Full Bench of the Delhi High Court held that the expression “other than the High Court” in Section 341 Cr.P.C. would not disable an aggrieved party from preferring an appeal, if it is otherwise maintainable, under other statutes and provisions of law; the decision, taken on an application under Section 340 Cr.P.C involves only a formation of opinion whether or not a complaint should be filed; at the stage of formation of such an opinion, the court does not exercise criminal jurisdiction; and, therefore, an appeal under Letters Patent would be available to the aggrieved party.

As we are satisfied that the order of the Learned Company Judge does not necessitate interference on merits, it is wholly unnecessary for us to examine the contention of Sri S. Niranjan Reddy, Learned Counsel for the respondent-company, that no intra-Court appeal lies to a Division bench, under Clause 15 of the Letters Patent, against an order passed under Section 340 and 341 Cr.P.C. The question of maintainability of the appeal is, therefore, left open.

VI. CONCLUSION:

Viewed from any angle the order of the Learned Company Judge, in directing the Registrar (Judicial) to depute an officer, not below the rank of Assistant Registrar, to file a complaint under Section 340(1) Cr.P.C. read with Sections 191, 193 and 209 IPC against the appellants herein before a Magistrate of competent jurisdiction at Hyderabad, is in accordance with law and does not necessitate interference. We reiterate that the Magistrate, on receipt of the complaint, shall consider the same in accordance with law uninfluenced by any observations made either in this order or in the order under appeal. Both the appeals fail and are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

S. RAVI KUMAR, J

Date: 13.10.2015.

Note: L.R. copy to be marked.

B/o

CS/MRKR