

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: December 04, 2015

Pronounced on: December 07, 2015

+ (i) **CRL.M.C.3332/2014 & Crl.M.A.11550/2014**

RAHUL GANDHIPetitioner
Through: Dr. A. M. Singhvi, Senior
Advocate, with Mr. Prashant
Kumar, Mr. Amit Bhandari and
Mr. Shikhar Sareen, Advocates

versus

DR. SUBRAMANIAN SWAMY & ANR.Respondents
Through: Mr. Rahul Mehra, Standing
Counsel (Crl.) with Mr. Sanyog
Bahadur, Mr. Shekhar, Advocates
& Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State
Mr. Yatinder Chaudhary, Mr.
Ishkaran Bhandari and Mr. Ravi
Raghunath, Advocates with
respondent No.1 in person

+ (ii) **CRL.M.C.3333/2014 & Crl.M.As.11552/2014, 15311/2015**

SMT. SONIA GANDHIPetitioner
Through: Mr. Kapil Sibal, Senior Advocate,
with Mr. Devadatt Kamat, Mr.
Rajesh Inamdar, Mr. Javedur
Rahman and Mr. Adit Pujari,
Advocates

versus

DR. SUBRAMANIAN SWAMY & ANR.Respondents

Through: Mr. Rahul Mehra, Standing Counsel (Crl.) with Mr. Sanyog Bahadur, Mr. Shekhar, Advocates & Mr. Vinod Diwakar, Additional Public Prosecutor for respondent-State
Mr. Yatinder Chaudhary, Mr. Ishkaran Bhandari and Mr. Ravi Raghunath, Advocates with respondent No.1 in person

+ (iii) **CRL.M.C.3335/2014 & Crl.M.A.11562/2014**

MOTILAL VORA & ORS.Petitioners
Through: Mr. Harin P. Rawal, Senior Advocate, with Mr. Prashant Kumar, Mr. Amit Bhandari and Mr. Shikhar Sareen, Advocates
versus

STATE & ANR.Respondents
Through: Mr. Rahul Mehra, Standing Counsel (Crl.) with Mr. Sanyog Bahadur, Mr. Shekhar, Advocates & Mr. Vinod Diwakar, Additional Public Prosecutor for respondent-State
Mr. Yatinder Chaudhary, Mr. Ishkaran Bhandari and Mr. Ravi Raghunath, Advocates with respondent No.2 in person

+ (iv) **CRL.M.C.3336/2014 & Crl.M.A.11564/2014**

SUMAN DUBEYPetitioner
Through: Mr. R. S. Cheema and Ramesh Gupta, Senior Advocates, with Ms. Tarannum Cheema, Mr. Shikhar

Sarin and Ms. Hiral Gupta,
Advocates

versus

DR.SUBRAMANIAN SWAMY & ANR.Respondents
Through: Mr. Rahul Mehra, Standing
Counsel (Crl.) with Mr. Sanyog
Bahadur, Mr. Shekhar, Advocates
& Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State
Mr. Yatinder Chaudhary, Mr.
Ishkaran Bhandari and Mr. Ravi
Raghunath, Advocates with
respondent No.1 in person

+ (v)

CRL.M.C.2156/2015 & Crl.M.A.7630/2015

SAM PITRODA @ SATYANARAYAN GANGARAM
PITRODAPetitioner
Through: Mr.R. S. Cheema and Mr. Ramesh
Gupta, Senior Advocates, with
Mr.Prashant Kumar, Ms.
Tarannum Cheema, and Mr.
Shikhar Sareen, Advocates

versus

DR.SUBRAMANIAN SWAMY & ANR.Respondents
Through: Mr. Rahul Mehra, Standing
Counsel (Crl.) with Mr. Sanyog
Bahadur, Mr. Shekhar, Advocates
& Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State
Mr. Yatinder Chaudhary, Mr.
Ishkaran Bhandari and Mr. Ravi

Raghunath, Advocates with
respondent No.1 in person

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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JUDGMENT

1. Probity of a legendary National Political Party is under scanner in these petitions. This case is one of its own kind. The complainant claims to be a public spirited person, who wishes to expose cheating, criminal breach of trust and criminal misappropriation in high places with a view to protect general public interest. In an attempt to do so, recourse to criminal law is sought to be made. The complainant, who is a respondent herein, is a Parliamentarian, who claims to have been a Member of Parliament for five times and his credentials are highlighted in the impugned order. The respondent-complainant claims to be champion in leading crusade against corruption. This time, he has sought to expose cheating, fraud, criminal misappropriation, etc., by Office Bearers of the Congress Party who also happen to be the members of a Private Company-*Young Indian Private Company* (hereinafter referred to as Y.I.) and major shareholders of *Associated Journals Private Limited* (hereinafter referred to as AJL), which was engaged in publishing of newspapers including National Herald, etc..

2. On a criminal complaint filed by *Dr. Subramanian Swamy* (hereinafter referred to as respondent/complainant) alleging cheating, etc., trial court after recording pre-summoning evidence of the complainant-*Dr. Subramanian Swamy (CW-1)*, a Chartered Accountant-

M.R.Ventakesh (CW-2), an official from Registrar of Companies-*Gulab Chand (CW-3)* and *J. Gopikrishnan (CW-4)* associated with the newspaper-*The Pioneer*, vide impugned order of 26th June, 2014 has summoned petitioners of the above-captioned five petitions as accused No. 1 to 7 for the offences under Sections 403, 406 and 420 read with Section 120-B of IPC.

3. All the seven accused are petitioners in the above captioned five petitions. Accused Nos.1 to 4 are the President, Vice-President, General Secretary and Treasurer of the Congress Party, who are also the Director/Shareholders of Y.I.. Accused Nos. 3 and 4 are also the Directors of AJL. Accused No.3 is also the Chairman of AJL. Accused Nos. 5 and 6 are the Directors of Y.I. as well as AJL. Accused No.7 is Y.I. having a share capital of ₹5 lacs only, formed with the objective of instilling democratic and secular values in the entire populace.

4. Factual background of this case, as highlighted by respondent-complainant, already stands noted in detail in the impugned order and hence needs no reproduction. The sum and substance of the case set up against petitioners/accused is that when AJL had closed the printing and publication of newspapers, like National Herald, etc. in the year 2008, it owed a huge debt of ₹90 crores to the Congress Party. Although this debt had accumulated over a period of time, but it is pertinent to note that this huge unpaid debt was outcome of interest free loans extended by the Congress Party to AJL from time to time. It has to be kept in mind that AJL was a Public Limited Company, which had immovable assets having value of crores of rupees. It is matter of record that Congress Party had assigned the huge debt of ₹90 crores to a Section 25 Company i.e. *Young*

Indian on receiving a paltry amount of ₹50 lacs only. For this, the Congress Party owes an explanation to its supporters, donors, etc.. It is also matter of record that accused No.1-Mrs. *Sonia Gandhi* and her son-*Rahul Gandhi*, who is accused No.2, owned 38% each of the shares i.e. 76% of *Young Indian Company*. The debt which AJL owed to Congress Party now stood transferred to *Young Indian* which was formed in November, 2010. Pertinently, in December, 2010, AJL increased its share equity by allotting large chunk of its shares to *Young Indian* in lieu of the debt owed to Congress Party which now stood assigned to *Young Indian*. Thus, AJL became a wholly owned company of Y.I. by merely paying ₹50 lacs and in this manner, Y.I. acquired complete control of AJL which had real estate assets of at least ₹2,000 crores in prime areas of New Delhi, Lucknow, Bhopal, Mumbai, Indore, Patna, Panchkula and other places. According to respondent-complainant, the conservative real estate worth of AJL is ₹5,000/- crores.

5. It is the case of respondent-complainant that Y.I. after acquiring the control over AJL, declared that it will not publish any newspaper including National Herald. Undisputedly, National Herald building is a prime property in New Delhi, which was leased out for commercial purpose and AJL is receiving rental of ₹60 lacs per month in respect of this property alone. The precise stand of respondent-complainant is that accused Nos. 1 and 2 had hatched criminal conspiracy with accused Nos. 3 to 6, who are their loyalists, to defraud the Congress Party and AJL by dubiously forming Y.I. Company to misappropriate the huge assets of AJL and petitioners/accused have committed criminal breach of trust reposed in the Congress Party as well as AJL and its shareholders.

According to respondent-complainant, the rights of the shareholders of AJL and its properties had been dishonestly misappropriated by petitioners/accused by conversion of loan of ₹90 crores odd into equity shares in favour of Y.I. and in this dubious manner, the shareholders of AJL and the supporters of the Congress Party have been cheated.

6. Respondent-complainant maintains that AJL owed ₹90 crores odd to Congress Party in relation to zero interest unsecured loans and AJL had no other liability. It is asserted by Respondent-complainant that if the assets of AJL had been liquidated, then hundreds of shareholders of AJL would have received back sums equivalent to several thousand times the amount invested by them originally and the Congress Party would have got back the loan with interest, but instead of adopting such a transparent course, by dubious means, petitioners have misappropriated the entire assets of AJL by gaining effective control over the entire assets of AJL and thus, the original shareholders of AJL as well as the supporters/donors of Congress Party have been cheated by petitioners.

7. The substratum of the pre-summoning evidence led by respondent-complainant finds mention in the impugned order. The sequence of events has been recapitulated in the impugned order. The factual eight steps enumerated in the instant complaint, which gives the gist of this complaint, are spelt out as under:-

Step 1: AJL was formally closed and printing of the newspapers terminated in April 2008.

Step 2: In December 2010, Board of Directors of Young Indian formally passed a Resolution offering to own the outstanding debt of AJL of ₹90 crores. This offer was accepted by the Chairman and Board of AJL.

- Step 3: Accused no.1 to 4 as Senior Office Bearers of Congress Party used their position to provide an unsecured zero interest of loan of ₹90 crores.*
- Step 4: The AJL thereafter held a meeting of their Board and without reference to the Shareholders resolved that in lieu of Young Indian owing the debt and for a further consideration of ₹50 Lakhs, the entire share equity of AJL would be transferred to Young Indian. Thus, AJL became a wholly owned company of Young Indian.*
- Step 5: Accused no.1 as the President of the Congress Party alongwith accused no.2, 3 & 4 thereafter, held a meeting of the Congress Party and decided to write off the loan from the Party as irrecoverable by falsely holding that the Net Worth of the Company is negative.*
- Step 6: Thus, having possession of the vast Real Estate, the Young Indian declared through accused no.2 that Young Indian will not engage in publishing a newspaper including National Herald as it was against the declared objective submitted for obtaining the registration under Section 25 of the Companies Act.*
- Step 7: The Memorandum of Association of the AJL bars the Company from entering into any transaction which is not for furthering its objective to publish newspapers.*
- Step 8: National Herald House is a prime property in Bahadur Shah Zafar Marg and was given by the Government for the purpose of publishing a newspaper at concessional rates. However, the Young Indian now owner of the National Herald House has opened this property for commercial renting such as to Multinational Companies and to the Ministry of External Affairs for its Passport Seva Kendra on rent.*

8. What role has been played by petitioners/accused has been also spelt out in the impugned order, which needs no reproduction as the facts are not in dispute. To highlight the criminal conspiracy amongst petitioners, reliance was placed by respondent-complainant on a chart showing inter connection between the office bearers of All India Congress Party, Directors of Associated Journal Limited and the Directors of Young Indian company. For ready reference, the relied upon Chart (*Annexure-15*) is reproduced as under: -

a) Composition of AICC Office Bearers

<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>
<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>
<i>President</i>	<i>Vice President</i>	<i>Treasurer</i>	<i>General Secretary</i>

b) Members of Board of Directors/ Shareholders of Associated Journals Ltd. (AJL)

<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>
<i>A2</i>	<i>A3</i>	<i>A4</i>	<i>A5</i>	<i>A6</i>
<i>(Since 2008 in Control of 3,00,000 shares)</i>	<i>Director and CMD</i>	<i>Director</i>	<i>Director</i>	<i>Director</i>

c) Founder Members/Directors of Young Indian, with percentage of shares owned by them.

<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>
<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>	<i>A5</i>	<i>A6</i>
<i>(38%)</i>	<i>(38%)(12%)</i>	<i>(12%)</i>			

9. In the impugned order, trial court has subjected the case of respondent-complainant to the test of a *prima facie* case. By relying upon Apex Court's decision in *A.R. Antulay v. Ram Dass* (1984) 2 SCC 500 trial court has concluded that anyone can put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. After advertent to the ingredients of the offence of cheating, criminal breach of trust, dishonest misappropriation and criminal conspiracy, trial court has concluded as under: -

“From the complaint and the evidence led so far it appears that YI was infact created as a sham or a cloak to convert public money to personal use or as a special purpose vehicle for acquiring control over ₹2000 crores worth of assets of The AJL and since all the accused persons have allegedly acted in consortium with each other to achieve the said nefarious purpose/ design, there are sufficient grounds for proceedings against all of them. It goes without saying that guilt of an accused is determined after trial when the burden of proof is discharged beyond reasonable doubt. This is only the stage of summoning of the accused. When the accused persons appear before the court they shall be at liberty to refute the allegations of the complainant, cross-examine the complainant's witnesses and to lead evidence in their defence. However, as the complainant has established a prima facie case against the accused u/s 403, 406 and 420 read with section 120B I.P.C. hence, let the accused No 1 to 6 namely Mrs. Sonia Gandhi, Mr. Rahul Gandhi, Sh. Moti Lal Vohra, Sh. Oscar Fernandes, Sh. Suman Dubey and Mr. Sam Pitroda be summoned for 7.08.2014. Let the accused No.7 (Young Indian) be summoned through it's authorized representative for the same date.”

10. At the hearing, it was submitted by both the sides that the common impugned order in the above captioned five petitions is to be tested on identical submissions and so, with the consent of both the sides, these petitions were heard together while treating Crl.M.C.3333/2014 to be the lead case and after having heard both the sides at length, these petitions are being disposed of by this common judgment.

11. At the outset, this Court places on record its deep appreciation for the able assistance rendered by both the sides to facilitate a proper understanding of facts in the light of the evidence led and the contextual reference to the judicial precedents.

12. To assail the impugned order, vide which petitioners have been summoned as accused, precise submissions have been advanced in the form of written synopsis, which were supplemented by oral submissions and reliance was placed upon various decisions to highlight that upon a bare reading of the complaint in question, no criminal offence is *prima facie* made out.

13. With much persuasiveness, learned senior counsels for petitioners had submitted that none of the ingredients of alleged offences exists. Attention of this Court was drawn to the comparative chart filed alongwith the written synopsis to highlight as to how the findings returned in the impugned order are unsustainable. It was asserted that due to historical and emotive bond, money was advanced by the Congress Party to AJL from time to time and the objective of the Congress Party as well as AJL is to uphold the legacy and tradition of secularism and non-alignment. It was pointed out that there is no statutory provision, rule,

regulation or by-law which prohibits disbursement of money to a newspaper, which is closely linked to the Congress Party and infact Section 13 A of *Income Tax Act* contemplates “*income from other sources*” in respect of Political Parties, which are run on donations and other Political Parties have also invested money in mutual funds, etc.. Pointed reference was made to *Bhartiya Janta Party (for short BJP)* investing in Canstar Fund.

14. It was asserted on behalf of petitioners that constitution of the Congress Party permits for formation of a trust to hold immovable properties belonging to the Congress Party and there is no allegation that petitioners-accused were the trustees of the funds of the Congress Party. It was also asserted that Congress Party could have written off the loan of ₹90 crores advanced to AJL, but it had assigned it to Y.I. for ₹50 lacs, which has nothing to do with the immovable property. To assert that there is no criminal breach of trust, it was pointed out that in the first place, there was no entrustment of any money to Congress Party and so, there is no question of any misappropriation or breach of trust as the donations received by the Congress Party could have been dealt with in the manner it liked. It was asserted that there is no fraudulent misrepresentation as AJL had no net worth and was unable to repay the debt to Congress Party. Reliance was placed upon Apex Court’s decisions in *Central Bureau of Investigation v. Duncans Agro Industries Ltd., Calcutta* (1996) 5 SCC 591, *Indian Oil Corporation v. NEPC India Ltd. And Others* (2006) 6 SCC 736 and *V.P. Shrivastava v. Indian Explosives Limited and Others* (2010) 10 SCC 361 to assert that in the absence of any entrustment, no criminal misappropriation can be alleged.

15. It was next submitted on behalf of petitioners that there is no violation of any law or breach of any contract/trust in giving of loan to AJL. It was pointed out that neither *the Representation of the Peoples Act* nor *the Income Tax Act* or any other Act prohibits giving of loans by Political Party. To maintain that a Political Party can invest in commercial ventures, reliance was placed upon a decision of Income Tax Tribunal in *Bhartiya Janata Party v. Deputy Commissioner of Income Tax* CIT (2003) 258 ITR 1. It was further submitted that writing off the loans by Congress Party is not an illegal act nor there is any breach of trust *qua* the shareholders of AJL. To assert that a shareholder is not the owner of the assets belonging to the Company, reliance was placed upon Apex Court's decision in *Bacha F. Guzdar, Bombay v. Commissioner of Income Tax, Bombay* (1955) 1 SCR 876. According to petitioners, it is not for the complainant or anybody else to decide that in what manner the affairs of AJL had to be managed.

16. It is the case of petitioners that there was no fraudulent misrepresentation and the control of the assets of AJL rests with the Company and there was no dishonest inducement because allotment of the majority of equity shares of AJL to Y.I. stands duly approved in the AJL's Extraordinary General Meeting of 21st January, 2011 and in the event of winding up of Y.I., which is a Section 25 Company, its assets, if any, shall vest in another Section 25 Company. It was pointed out that there is nothing on record to indicate that the emoluments were being drawn by petitioners as Directors of Y.I. or that the assets of AJL have been depleted or that any wrongful loss has been caused to Y.I. nor petitioners are filling their personal kitties as Directors of Y.I..

17. On behalf of petitioners, it was pointed out that Section 403 of *IPC* is applicable in respect of movable properties whereas assets of AJL are immovable properties. According to petitioners, there is no evidence to indicate misappropriation of any immovable property of AJL or Y.I. or that the rental income of AJL has been misappropriated by petitioners. Thus, it was submitted that there is neither wrongful gain or loss to AJL or Y.I. and no illegal act has been committed by petitioners and so, on a plain reading of the complaint in question, it can be certainly said that neither the offence of cheating nor of fraudulent or dishonest misappropriation is made out. It was thus submitted that in view of the dictum of Apex Court in *Thermax Limited and Others v. K.M. Johny and Others* (2011) 13 SCC 412, in the absence of essential ingredients of dishonest intention, prosecution of petitioners in the instant complaint is wholly untenable. Reliance was placed upon decisions in *State of Haryana and Others v. Bhajan Lal and Others* 1992 Supp. (1) SCC 335, *Dhariwal Tobacco Products Limited and Others v. State of Maharashtra and Another* (2009) 2 SCC 370, *Rajiv Thappar and Others v. Madan Lal Kapoor* (2013) 3 SCC 330 to submit that the stand of petitioners ought to be considered while exercising jurisdiction under Section 482 of Cr.P.C. as it is manifestly clear that allegations levelled against petitioners, when taken on their face value, do not constitute any offence.

18. On the issue of *locus standi*, it was submitted that in a case of cheating and misappropriation, victim or the person or entity cheated, who complains of wrongful loss, alone can maintain a complaint of cheating, misappropriation, etc.. Reliance was placed upon Apex Court's decision in *Mohammed Ibrahim & Ors. V. State of Bihar & Anr.* (2009) 8

SCC 751 to submit that a third party, who does not claim to be cheated, cannot maintain such a complaint. Attention of this Court was drawn to Section 39 of Cr.P.C. to point out that for the offences scheduled therein, any person can maintain a complaint, but the offences of cheating and criminal misappropriation are not there in the said Schedule to Section 39 of Cr.P.C.. It was thus submitted that unless the necessary *mens rea* is there, such a complaint cannot be proceeded with. It was asserted on behalf of petitioners that neither the shareholders of AJL nor any supporter/donor of Congress Party or anyone from Y.I. has made any complaint and infact, only such persons are competent to file the complaint in question and not the respondent-complainant, who has *malafidely* filed the instant complaint. It was submitted that the complaint in question proceeds on the basis of unwarranted assumptions and presumptions and contains misstatement of facts and so, there is no justification to proceed further with the instant complaint.

19. It was vehemently contended on behalf of petitioners that no inference of criminal conspiracy can be drawn as there is no material on record to suggest that Y.I. was formed as a part of criminal conspiracy to take over the assets of AJL. It was pointed out that it is a matter of record that none of the assets of AJL has been taken over by Y.I. and there was no element of cheating in granting or assigning of loan as no unlawful act has been done by petitioners to attract any criminality. It was also pointed out that rental income accruing to AJL has not been transferred to Y.I. or any of its Directors and the incorporation of Y.I. and its objective is not incompatible with the revival of AJL and the decision not to publish any newspaper cannot attract any criminal liability, as it is for the AJL to

decide whether to revive National Herald or not. The precise stand taken on behalf of petitioners that the impugned order smacks of *mala fides* and discloses utter non-application of mind as the necessary ingredients of the offences alleged are lacking and so, malicious prosecution of petitioners ought to be ended to secure the ends of justice.

20. Learned Senior Counsel for the remaining petitioners adopted the submissions advanced on behalf of above petitioners and had supplemented by asserting that entertaining of the complaint in question *qua* accused-Sam Pitroda and Oscar Fernandes, who reside outside the jurisdiction of the trial court, is barred as it is not preceded by an inquiry.

21. The submissions advanced on behalf of petitioners were concised by Dr. Singhvi, learned Senior Counsel for one of the petitioners, as under: -

- i) *No conversion, appropriation by Y.I. for benefit is possible.*
- ii) *Y.I. is Section 25 Company-barred in law from giving any benefit, salary, remuneration, dividend etc to its shareholders.*
- iii) *All properties owned by AJL remains in ownership of AJL; only shareholders of AJL change.*
- iv) *In law, shareholders of a company do not own properties owned by the company. Company is a separate legal entity. Ownership of shares in company is not ownership of properties of company.*
- v) *Since all properties remain properties of AJL, there is and can be no entrustment.*

- vi) *No identifiable or identified person or entity even claims to be deceived or cheated as a victim.*
- vii) *Complainant himself filed the balance sheet of AJL and Y.I. shows;*
 - a) *Property of AJL remains property of AJL at all times.*
 - b) *Rent received from these properties is received by AJL and so shown in balance sheet.*
 - c) *AJL is a loss making company, admittedly, and hence no dividend declared. So neither Y.I. nor accused shareholder of Y.I. can get any dividend.*
 - d) *Y.I. balance sheet similarly shows nil income received.*

22. Finally, it was submitted on behalf of petitioners that by entertaining the complaint in question and by passing the impugned order, trial court has abused the process of law and so, the instant complaint and the impugned order deserves to be quashed.

23. Respondent-complainant, who has chosen to argue these petitions in person, had submitted at the outset that impugned order suffers from no illegality or perversity and that there is due application of mind. It was submitted that in the exercise of jurisdiction under Section 482 of Cr.P.C., the truthfulness or otherwise of the allegations cannot be gone into and the inherent powers are to be exercised with circumspection on the basis of the complaint and not by taking into consideration any fresh material/documents. To submit so, reliance was placed upon Apex Court's decision in *N.Soundaram v. P.K.Pounraj & Anr.* 2014 (10) SCC 616.

24. Dismissal of these petitions was sought by respondent-complainant by submitting that petitioners have alternate remedy to approach the trial court while invoking Section 245 of Cr.P.C.. Reliance was placed upon Apex Court's decision in *Nupur Talwar v. CBI* (2012) 11 SCC 465 to submit that it is not essential for trial court to deliver a detailed order while issuing the process. It was submitted that sufficient grounds exist for summoning petitioners for the offences in question. It was highlighted by respondent-complainant as to how interest free loan was questionably extended to AJL by Congress Party and was dubiously assigned to Y.I., who had in turn, taken over the Management of AJL and thereby offence of cheating, criminal misappropriation has been blatantly committed by petitioners, which calls for their prosecution in the instant complaint. It was asserted by respondent-complainant that the question of *locus standi* does not arise as the supporters/donors, etc., of Congress Party as well as the shareholders of AJL have been blatantly duped and larger public interest has been sacrificed which is a serious cause of concern as the trust reposed in the Congress Party has been openly breached. It was pointed out that with the *mala fide* intention, *Special Purpose Vehicle* i.e. Y.I. was floated to indirectly acquire the control of AJL without being saddled with huge liabilities.

25. According to respondent-complainant, the *modus operandi* of petitioners clearly smacks of criminal intent. As per respondent-complainant, an extraordinary and unprecedented fraud has been played upon the entire nation by petitioners. Respondent-complainant maintained that the first step in the commission of the crime in question i.e. criminal breach of trust, is assigning of the Deed of Assignment of Loan and the

second pre-mediated step, smacking of criminal conspiracy to commit the offences in question, is the extinguishment of the debt of ₹90 crores odd by merely paying ₹50 lacs and of converting the assigned loan into equity shares and thereby acquiring the control over AJL having huge assets of ₹2,000/- crores.

26. According to respondent-complainant, Extraordinary General Meeting (EGM) was indeed held but with just seven shareholders and no proxies and yet, it was said that the quorum was requisite. The legality of this EGM is questioned by respondent-complainant by pointing out that approximately 99% shares of AJL stood transferred to Y.I. and thus, AJL became an almost wholly owned subsidiary of Y.I.. In the written synopsis placed on record by respondent-complainant, it has been highlighted as to how 761 shareholders of AJL were reduced to minority status of 1% with no clue as to what was in store for them and instead of reviving the newspaper publication, the assets of AJL are being misused to earn commercial profits, which was not the purpose of AJL. In support of the stand taken by respondent-complainant, reliance was placed upon decisions in *Binod Kumar & Ors. v. State of Bihar & Anr*; (2014) 10 SCC 663; *N.Soundaram v. P.K.Pounraj & Anr*; (2014) 10 SCC 616, *Rishipal Singh v. State of U.P.* (2014) 7 SCC 215; *Arvind Kejriwal & Ors. v. Amit Sibal & Anr.* (2014) 1 JCC 229; *Rajiv Thapar & Ors. v. Madan Lal Kapoor* (2013) 3 SCC 330; CrI.M.C. 4751 of 2013 titled *Kamla Rana v. NCT State & Ors.* decided on 19th May, 2014; *Nupur Talwar v. CBI* (2012) 11 SCC 465; *Bhushan Kumar v. NCT* (2012) 5 SCC 424; *Subramanian Swamy v. Manmohan Singh* (2012) 3 SCC 64; *Centre for Public Interest Litigation & Ors. v. Union of India & Ors.* (2012) 3 SCC

1, (2012) 1 SCC; *Indian Oil Corporation v. NEPC India Ltd. & Ors.* (2006) 6 SCC 736; *M/s Medchl Chemicals & Pharma P.Ltd. v. M/s Biological E.Ltd. & Ors.* (2000) 3 SCC 269; *Rashmi Kumar v. Mahesh Kumar Bhada* (1997) 2 SCC 397; *State of Haryana & Ors. v. Bhajan Lal & Ors.* (1992) Supp. (1) SCC 335 and *Express Newspapers (P) Ltd. v. Union of India* AIR 1986 SC 872.

27. Lastly, it was submitted by respondent-complainant that the conspiracy to commit the offence in question is writ large on the face of it and so, prosecution of petitioners in the complaint in question is very well justified on merits and no case for quashing the instant complaint or the impugned order is made out. Thus, dismissal of these petitions is sought.

28. The respective stand taken by both the sides needs to be considered in view of the fact that in a democratic set up, how a Political Party of national stature acts is everybody's concern. Rather, it is a matter of serious concern as allegations of fraud, etc. are levelled against the Congress Party, who has ruled the Nation for many decades. Precisely, it is the act of Office Bearers of Congress Party and their associates which is under scanner in this case.

29. Upon evaluating the impugned order on the touchstone of judicial precedents and in the light of submissions advanced by both the sides, this Court finds that question of *locus standi* of respondent-complainant to maintain the complaint in question pales into insignificance in view of the fact that Apex Court in *Subramanian Swamy v. Manmohan Singh* (*supra*) has reiterated that freedom of a private citizen to proceed against the corrupt cannot be restricted. It will not be fair to literally interpret Section 39 of Cr.P.C. or to assert that a private citizen is free to proceed

against corrupt public servants but not against a political party when it is accused of serious offences of cheating, misappropriation, etc.. In a unique case, like the instant one, expanded meaning to the law has to be given. In the considered opinion of this Court, the plea of *locus standi* cannot be restricted to typical cases of cheating, misappropriation, etc., as here is a case where the act of Office Bearers of Political Party having criminal overtones is under scrutiny and so, the challenge to the *locus* of respondent-complainant to maintain the complaint in question is hereby repelled.

30. Impugned order elaborately notes the facts of this case and considers the pre-summoning evidence, the ingredients of the offences alleged and after considering the judicial precedents and the submissions advanced, concludes that a *prima facie* case to summon petitioners as accused is made out. Upon scrutiny of the impugned order, this Court is constrained to note that the presumptive observations made by the trial court are uncalled for and such a deeper scrutiny of facts is not required to be undertaken at this initial stage and on a bird's eye view, it is required to be seen whether a *prima facie* case to summon petitioners as accused is made out or not. Such a deep scrutiny of facts is required at the charge stage and not at the summoning stage.

31. In the instant case, it cannot be disputed that the Office Bearers of the Congress Party are the trustees of the funds belonging to the Party. No doubt, a Political Party can have income from other sources as well and can invest money in mutual funds, etc., to augment its resources. However, it has to be kept in mind that the allegations against the Office Bearers of the Congress Party are of siphoning off the party funds in a

clandestine manner. The impropriety of extending interest free loans to a separate legal entity i.e. AJL, which is a Public Limited Company, by the Congress Party is a matter of concern in a democratic set up, particularly, when the source of Congress Party's fund is largely from donations given by public and so, any citizen can legitimately question the siphoning off funds by Political Party. What crops up in the mind of a prudent person is as to where was the need of extending interest free loans to a Public Limited Company engaged in a commercial venture of publishing newspapers.

32. Considering the fact that AJL has sizeable assets of ₹2000 crores, it needs to be explained by petitioners as to what was the need to assign the huge debt of ₹90 crores when this debt could have been easily liquidated by AJL from its sizeable assets. Even writing off such a huge debt by the Congress Party can legitimately attract allegations of cheating, fraud, etc.. Petitioners had gone step further in conspiring to get this huge debt assigned to a *Special Purpose Vehicle* i.e. Y.I. and thereafter, to hijack AJL via Y.I.. Such grave allegations levelled against petitioners cannot be brushed aside lightly by relying upon judicial precedents cited, to conclude that the ingredients of the criminal offences alleged are lacking. To say the least, to do so would be preposterous. Such a *prima facie* view is being taken in view of the fact that the assignment of the huge debt by Congress Party to Y.I. was for a paltry sum of ₹50 lacs. This is certainly questionable and justifiably attracts the allegations of cheating, misappropriation, criminal breach of trust, etc.. Such a view is being taken as it needs to be explained before the trial court as to how the net worth of AJL can be negative when it has assets worth crores of rupees. It

also crops up in the mind of a prudent person as to why interest free loan was assigned and why it was not written off. In any case, writing off such a huge debt by a legendary Political Party is indeed questionable. Instead of adopting such a questionable course, what was done by the Congress Party is more questionable. It also needs to be answered as to why the genuine shareholders were marginalized in the Extraordinary General Meeting, which was attended by just seven shareholders. Such a questionable conduct of petitioners certainly invites allegations of committing the offences for which petitioners have been summoned. Is it not criminal misappropriation of Congress Party's funds? This aspect needs to be addressed after respondent-complainant is cross-examined at the pre-charge stage. It also needs to be examined at pre-charge stage as to whether lacs of citizens who had donated to the Congress Party felt cheated by assignment of such a huge debt to Y.I. who was managed by none others than petitioners, who were Office Bearers of Congress Party as well as Directors of Y.I.. Not only this, the main persons, who were instrumental in allegedly siphoning off political funds were the recipients of the assignment of the huge debt by the Congress Party and they were the same persons, who had clandestinely acquired the control of AJL. All this smacks of criminality. What species of criminal offence is made out is not required to be seen at this initial stage.

33. In all fairness to petitioners, it needs to be noted that subtle factual inaccuracies in the stand taken by respondent-complainant were pointed out, but this Court finds that the so-called inaccuracies pointed out do not substantially impact upon the substratum of the case set up against petitioners as it is immaterial as to whether the existing share equity was

taken over by Y.I. or fresh shares were floated to marginalize the existing shareholders and without any public issue of the fresh shares floated, they were allotted to Y.I.. Rather, this is more questionable. At this stage, it would not be worthwhile to consider as to whether a share holder owes the assets of the company or not, because more than 90% of the shares were acquired by Y.I. in a questionable manner.

34. Considering the role played by petitioners-*Sam Pitroda* and *Oscar Fernandes*, I find that hyper-technical objections to their summoning on the premise that they reside outside the territorial jurisdiction of the trial court and so, their summoning ought to be preceded by an inquiry, does not carry much substance. The sum and substance of the allegations levelled against petitioners cannot be brushed aside by merely saying that at best it is a case of takeover of AJL and the remedy lies in invoking the provisions of the Company Act. Upon reading the complaint as a whole, it emerges that the transactions of the Congress Party with AJL via Y.I. are not a mere commercial transactions as these transactions legitimately attract the allegations of cheating, fraud, breach of trust, misappropriation, etc.

35. During the course of hearing, an apprehension was expressed by respondent-complainant that since petitioners have acquired full control of AJL, therefore, the day is not far away when petitioners would liquidate the assets of AJL by converting Y.I., a Charitable Company, into any other kind of company as Section 8 of *the Companies Act, 2013* now permits adoption of such a course. This was strongly refuted by learned senior counsel for petitioners by submitting that this is beyond the purview of the complaint and so, this cannot be considered in these

proceedings. Certainly, this aspect cannot be considered in these proceedings, but it is indeed a cause of concern, which needs to be addressed if any upright citizen seeks to explore this aspect in the background of this case by having recourse to appropriate forum. This aspect is left open, without expressing any opinion, lest it may prejudice petitioners.

36. This Court has taken notice of the submissions advanced on behalf of petitioners and is constrained to observe that legal jugglery of words does not and cannot persuade this Court to opine at this initial stage that the allegations made in the complaint in question do not make out a *prima facie* case to summon petitioners. As already noticed above, the submissions now advanced are infact required to be considered at the charge stage, as by then, after cross-examination of respondent-complainant, full baked facts would come to the fore. At present, the facts are half baked in the sense that one side of the picture is emerging but upon taking the case of respondent-complainant on its face value, it cannot be *prima facie* said that the ingredients of the offences alleged are lacking. It needs no reiteration that this is not the stage to even *prima facie* opine that the ingredients of any of the alleged offences exist to justify putting petitioners on trial or not. Any observation made in this regard by the trial court or this Court shall have no bearing when the case of petitioners is considered at the charge stage.

37. Apex Court in *N. Soundaram v. P.K. Pounraj and Another* (2014) 10 SCC 616 has reiterated the principles governing the inherent jurisdiction under Section 482 of Cr.P.C. by reminding the Courts that this power has to be exercised sparingly and cautiously to prevent abuse

of process of the court and to secure the ends of justice while cautioning that inherent powers should not be exercised to stifle a legitimate prosecution and High Courts should refrain from giving a *prima facie* opinion at the initial stage unless there are compelling reasons to do so, as the case set up has to be considered as it is, without adding or subtracting anything to it. Applying the afore-noted parameters to the instant case, this Court finds that the ingredients of the offences alleged are not lacking and sufficient ground to proceed against petitioners certainly exists. No *mala fides* can be alleged against respondent-complainant nor can it be said that the summoning of petitioners is an abuse of process of the court.

38. This Court is of the considered view that the gravity of the allegations levelled against petitioners has a fraudulent flavour involving a national Political Party and so, serious imputations smacking of criminality levelled against petitioners need to be properly looked into.

39. After having considered the entire case in its proper perspective, this Court finds no hesitation to put it on record that the *modus operandi* adopted by petitioners in taking control of AJL via *Special Purpose Vehicle* i.e. Y.I., particularly, when the main persons in Congress Party, AJL and Y.I. are the same, evidences a criminal intent. Whether it is cheating, criminal misappropriation or criminal breach of trust is not required to be spelt out at this nascent stage. In any case, by no stretch of imagination, it can be said that no case for summoning petitioners as accused in the complaint in question is made out. Questionable conduct of petitioners needs to be properly examined at the charge stage to find out the truth and so, these criminal proceedings cannot be thwarted at this initial stage. Such a view is being formed on a bird's eye view of the

whole case and the observations in the impugned order of there being a *prima facie* case have to be read in the context of there being sufficient grounds for summoning petitioners.

40. Without casting any reflection on the merits of this case and while leaving the larger questions raised in these petitions open, to be considered at the charge-stage, these petitions and the pending applications are dismissed with afore-noted clarification.

(SUNIL GAUR)
JUDGE

DECEMBER 07, 2015

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