

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 02.09.2016)

DATED : 07.10.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.R.C.Nos.709 of 2013 & 840 of 2016
and

Crl.M.P.Nos.6369 & 6370 of 2016

Crl.R.C.No.709 of 2016

Mr.K.Kuberanathan ... Petitioner /Petitioner/A3

Vs.,

State : rep. by
Deputy Superintendent of Police,
SPE:CBI/BS & FC,
Bangalore,
R.C.No.8 & 9 of 1996 ... Respondent/Respondent/Complainant

Crl.R.C.No.840 of 2016

B.Chandramouli ... Petitioner/Accused No.16

Vs.

The Inspector of Police,
Central Bureau of Investigation,
bank Securities and Fraud Cell,
Bangalore. ... Respondent
(Ref. Cime NO.8 & 9 (E)/1996 dated 19.11.1996)

Criminal Revision Case No.709 of 2013 has been filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order dated 07.02.2013 in Crl.M.P.No.2055 of 2008 in C.C.No.64 of 2001 passed by the learned Principal Special Judge for CBI cases, Chennai.

Criminal Revision Case No.840 of 2016 has been filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order dated 29.04.2016 in Crl.M.P.No.2298 of 2014 in C.C.No.64 of 2001 passed by the learned Principal Special Judge for CBI cases, Chennai.

For Petitioners : Mr.K.S.Dinakaran, Senior Counsel
for Mr.D.Harindran (For Crl.R.C.No.709 of
2013)

Mr.A.Ramesh, Senior Counsel for
Mr.C.Arunkumar (For Crl.R.C.No.840 of 2016)

For Respondent : Mr.K.Srinivasan, Spl. PP for CBI cases.

* * * * *

COMMON ORDER

These Criminal Revision Cases have been filed by the petitioners challenging the orders of dismissal dated 07.02.2013 & 29.04.2016 in Crl.M.P.No.2055 of 2008 and Crl.M.P.No.2298 of 2014, respectively, in C.C.No.64 of 2001, passed by the learned Principal Special for CBI Cases, Chennai, in and by which, the discharge petitions filed by the petitioners herein under Section 239 of Cr.P.C., were dismissed.

2.The petitioner in Crl.R.C.No.709 of 2013 has been arrayed as 3rd accused and the petitioner in Crl.R.C.No.840 of 2016 has been arrayed as 16th accused in the case in C.C.No.64 of 2001 pending on the file of the learned Principal Special for CBI Cases, Chennai.

3.Since some of the submissions made by the counsel for the petitioners are common in respect of both the petitioners/accused, these Revision are disposed of by way of this common order. For the sake of convenience, the petitioners are hereinafter referred to as per their rankings before the Trial Court viz., 3rd Accused & 16th Accused respectively.

4.The brief facts of the case of the prosecution are as follows_

4-1.The case has been registered against the accused persons by the respondent-CBI, in R.C.No.8 & 9(E)/1996 on the source information. The 3rd accused was the Branch Manager, Indian Bank, Muthialpet Branch, Chennai and the 16th accused is the Director of a company viz., M/s.Sadeco Sari Pvt Ltd, Singapore, during the relevant period.

4-2.The group of companies viz., M/s.MVR Exports Pvt Ltd/MVR Industries Pvt Ltd and Ms.Maxwell Promotion / Maxwell Exim Pvt Ltd., approached Indian Bank, Muthialpet Branch, Chennai for Packing Credit facilities with sales contracts signed with Singapore based companies. Similarly, they approached the Bank for Import LC facility with purchase contracts signed with the Singapore based companies. These sales contracts/purchase contracts were signed on behalf of MVR Exports Pvt Ltd / MVR Industries Ltd by G.S.Kumar (A10) and on behalf of M/s.Maxwell Promotion / Maxwell Exim Pvt Ltd

by S.Madhusoodan (A13) etc. On behalf of the Singapore based companies, the purchase/sales contracts were signed by one P.Vijayaraghavan (A15), V.R.Usha (A14), B.Chandramouli (petitioner herein/A16), M.A.J.X.Basil (A17). Though the purchase and seller companies belonged to the same group controlled by M.Varatharajaloo (A7), this fact was dishonestly concealed from Bank.

4-3.M/s.MVR Exports Pvt Ltd / MVR Industries Ltd and M/s.Maxwell Promotion / Maxwell Exim Pvt Ltd, imported raw cashew nut from cashew producing countries in West Africa, Indonesia, Veitnam etc and exported processed cashew kernels to USA, UK, Netherlands, Japan, HongKong etc., and both imports and exports were only billed through their group-companies in Singapore, whereas the consignments never reached Singapore.

4-4.In pursuance of the criminal conspiracy entered into among the accused persons, M.Varatharajullo (A7) managed to get another company under the name and style of M/s.Sadeco Sari Pvt Ltd incorporated at Singapore on 18.02.1991 and in furtherance of the conspiracy, the petitioner/A16 was inducted as Director in the said company viz., M/s.Sadeco Sari Pvt Ltd. The Board of Directors of the Bank sanctioned various credit facilities including FBP-DA in favour of the said company on 04.04.1992. The Board, in its meeting held on 04.06.1994, renewed sanction of the limits as a single line of credit subject to a Maximum of US\$ 10 million. Initially, the Directors of the company including the petitioner/A16 have extended personal continuing guarantee for the company and subsequently on 07.08.1996, Smt.V.R.Usha (A14) and M.V.Raja (A7) signed personal continuing guarantee for the company.

4-5.On some of the bills/goods, Maxwell Exim availed export finance in India. Using the same bills of lading, Singapore Companies namely Mountamount (Singapore) Pvt Ltd, Sadeco Sari Pvt Ltd and Nagova Exim Pvt Ltd have also availed export finance from Indian Bank, Singapore Branch. The total number of 1288 instances would be identified, wherein the same Bills of Lading were used for availing finance once in India and once in Singapore.

4-6.Out of the 220 overdue bills in Indian Bank, Muthialpet Branch, 121 were drawn on M/s.Moutamount (Singapore) Pvt Ltd., 53 bills were drawn on M/s.Nagova Exim Pvt Ltd and 46 bills amounting to Rs.13,91,75,775/- was drawn on M/s.Sadeco Sari Pvt Ltd, wherein the petitioner/A16 was the Director. These overdue bills were mainly on account of non-repatriation of export proceeds from Singapore to India, though the Singapore companies had realised the proceeds of majority of export bills. The bills of exchange in the name of M/s.Sedeco Sari Pvt Ltd., were drawn/signed by the petitioner/A16. These bills were sent for collection only through Muthialpet Branch of Indian Bank to Singapore Branch of Indian Bank. While in the process of collection, these bills were purchased; however, there was no communication to Singapore Branch regarding conversion of collection Bills into Purchase Bills. In pursuance of the criminal conspiracy, the

foreign bills were tendered for collection/purchase concealing that they were drawn on group companies in Singapore viz., M/s.Mountamount (Singapore) Pvt Ltd., M/s.Sadeco Sari Pvt Ltd., and M/s.Nagova Exim Pvt Ltd.

4-7.The goods billed by M/s.MVR Industries Ltd on the three Singapore based companies were further exchanged amongst themselves and fresh bills were drawn dishonestly by the Singapore based companies mostly on M/s.Hamilton Ventures Pvt Ltd., M/s.Globenut (Europe) ARL, M/s.Nutworld Trading ARL, all based in Netherlands and the remaining on M/s.Chao Lien Hong based on Hong Kong. The Bills in the name of M/s.Mountamount (Singapore) Pvt Ltd were drawn by P.VijayaRaghavan (A15) and V.R.Usha(A14). The Bills in the name of M/s.Sadeco sari Pvt Ltd, Singapore were drawn by the petitioner/A16 and the Bills in the name of M/s.Nagova Exim Pvt Ltd, Singapore were drawn by one M.A.Joseph Xavier Basil (A17). Thus, the petitioners herein and the other accused cheated the Indian Bank and caused loss to the Bank to the tune of Rs.190 crores. Hence, the case has been registered by the respondents and after completion of investigation, chargesheet has been filed before the learned Principal Special Judge for CBI cases.

4-8.It is the main allegation against the 16th accused/petitioner herein that he facilitated M/s.MVR Group of Companies and Maxwell to siphon off the ill earned money as seen from the oral and documentary evidence collected during the investigation. The petitioner/A16 took active part in the Company viz., M/s.Sadeco Sari Pvt Ltd., by drawing Bills and signing invoices for and on behalf of M/s.Sadeco Sari Pvt Ltd.; thus, he has committed the offence punishable under Section 120-B r/w 420 IPC.

4-9.It is the allegation against the 3rd accused/petitioner herein that in pursuance of the aforesaid criminal conspiracy, the 3rd accused, while working as Branch Manager at Muthialpet Branch of Indian bank, during the period from December 1988 to July 1991, by corrupt/illegal means, by abusing his position as public servant, went on submitting proposal/notes, recommending the sanction/renewal of various credit limits, for confirmation and ratification of the actions of the Branch and permitting the Branch to release credit facilities in favour of M/s.MCR Exports Pvt Ltd and M/s.Maxwell Exim Pvt Ltd, disregarding banking norms, violating RBI guidelines and at times against the directions of the Board of Directors of the Bank. It is further alleged that the petitioner/A3 failed to protect the interests of the Bank, by not ensuring the proper use of the funds. The 3rd accused/Petitioner herein, as the Head of the Muthialpet Branch, failed to ensure that the proposal submitted by the parties, were in line with the circulars/instructions issued by the Bank, before forwarding them for the consideration of his higher authorities. Thus, he has committed the offence punishable under Section 420 r/w 120B IPC and Section 13(2) r/w 13(1)(c) (d) of the Prevention of Corruption Act, 1988.

Submissions in respect of 16th accused:-

5.Now, the learned counsel for the petitioner/A16 submitted that A16 was not the Director of the company M/s.Sadeco Sari Pvt Ltd, from the inception and he has not signed even a single personal guarantee so far. As per the Final Report filed by the respondent, the total amount alleged to have been lost by the Indian Bank, Muthialpet Branch is Rs.190.55 crores ie., Rs.71.17 Crores and Rs.119.44 Crores (in respect of MVR Industries and Maxewel Exim Pvt Ltd) as on 02.08.1996. However, the entire dues to the Bank had been settled as early as in the year 2007. The petitioner/A16 is charged for an offence under Section 120-B r/w 420 IPC and not for any other offence. Since the matter has been settled and the entire amount was paid to the Bank, now the continuation of the criminal proceedings against the petitioner/A16 is going to be only a futile exercise; hence, the petitioner/A16 is entitled for discharge.

6.As next fold of submission, the learned counsel for the petitioner/A16 submitted that it is the case of the prosecution that 'double finance' facility had been availed by a company, which is incorporated at Singapore through Indian Bank, Singapore. Neither the said Company nor the officials of the Singapore Bank had been arrayed even as a witness. Since the company M/s.Sadeco Sari Pvt Ltd has not been added as accused, charges cannot be framed against the Director of the said Company, for the reason that the vicarious liability can not be fastened as against the petitioner/Director excluding the company. In this regard, the learned counsel for the petitioner/A16 has also relied upon the judgment of the Hon'ble Supreme Court reported in [2015 (12) SCC 781, Sharad Kumar Shangi and Sangeeta Rane], wherein it has been held that if the Company concerned is not made as an accused, no proceedings can be initiated against its Director and there is no vicarious liability in criminal law unless the statute takes that also within its fold.

7.Further, the learned counsel for the petitioner/A16 submitted that in the Final Report filed by the respondent, there is no allegation against the petitioner/A16 or even against the Company (M/s.Sadeco Sari Pvt Ltd) to the effect that they have done anything in India, which constituted an offence in India. Even assuming for a moment that the charges levelled against the petitioner/A16 are true, then also the trial of the case in respect of the petitioner/A16 is barred for a simple reason that the prosecution has failed to obtained prior sanction from the Central Government as mandated under Section 188 of Cr.P.C. In this regard, the learned counsel for the petitioner/A16 has also invited the attention of this Court to Section 188 of Cr.P.C, which reads as follows_

"188. Offence committed outside India.

When an offence is committed outside India—

(a) By a citizen of India, whether on the high seas or elsewhere; or

(b) By a person, not being such citizen, on any ship or aircraft registered in India.

He may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

By referring the above said provision, the learned counsel appearing for the petitioner/A16 submitted that prior sanction from the Central Government has to be obtained to proceed against A16. But, in the instant case, no such sanction has been obtained by the prosecution. On this ground also, the petitioner/A16 is entitled for discharge from the case. In this regard, the learned counsel for the petitioner/A16 has also relied upon the judgment of the Hon'ble Supreme Court reported in 2011 (9) SCC 527 [Thotta Venkateswaralu Vs. State of Andhra Pradesh], wherein it has been held that in respect of the offences alleged to have been committed outside India, the learned Magistrate shall not proceed with the trial without the sanction of the Central Government as envisaged in the proviso to Section 188 of Cr.P.C.

8. Further, the learned counsel for the petitioner, by inviting the attention of this Court to the conclusion portion of the Final Report filed by the respondent, submitted that without the Letter Rogatory (LR), the final report is an incomplete report. The relevant portion in the Final Report reads as follows—

"Since the major areas of wrongful loss caused to the bank were non realisation of export proceeds and delevement of LCs, foreign investigation was required to be conducted in respect of the imports and exports of M/s.MVR Industry Ltd and M/s.Maxwell Exim P Ltd. Investigation also necessitated enquiries with recipients of funds from the accounts of the Singapore based companies of the group. As such, this

Hon'ble Court was requested to issue LR's to 28 foreign countries including Singapore, The Netherlands, Nigeria, Hong Kong covering exporters of raw cashew nuts to India, importers of cashew kernels from India and recipients of funds from the accounts of Singapore based companies of MVR Group. The Hon'ble Court was pleased to issue LR's as prayed for. The replies to the LR's are yet to be received from these countries. The result of the foreign investigation depending upon the outcome of the investigation through LR would be submitted to this Hon'ble Court through reports U/s 173(8) of Cr.P.C., 1973."

By referring to the above concluding portion of the Final Report, the learned counsel for the petitioner/A16 would contend that the respondent/CBI had requested the Court to issue LR's to 28 foreign countries and accordingly, the Court has also issued LR's, but the replies to the said LR's were not received from the said 28 foreign countries, which would show that without completing the investigation, the chargesheet has been filed before the Court below. Since it is an incomplete chargesheet, the investigation is also incomplete. The Final Report does not conform to the requirement of the police report contemplated under Section 173(2) of Cr.P.C; hence, taking cognizance of the offences mentioned therein is not legally sustainable. In this regard, the learned counsel for the petitioner/A16 relied upon the decision of this Court in CrI.R.C.(MD).No.231 of 2013 dated 31.07.2014 (PMC.Marcantile Pvt Ltd and another vs. State and others). Thus, the learned counsel for the petitioner/A16 has sought for discharging the petitioner/A16 from the case, by quashing the impugned order passed by the Trial Court.

9.The learned counsel for the petitioner/A16 would further submit that in respect of the 14th accused, who is a similarly placed person, this Court has discharged the 14th accused by order dated 29.04.2014 in CrI.R.C.No.734 of 2013. Therefore, the petitioner herein/A14 is also entitled to be discharged from the case.

Submissions with regard to 3rd accused:-

10.Though the learned senior counsel appearing for the petitioner/A3 made his submissions in the same line, in respect of the factual aspects of the case on hand, as that of the arguments made by the learned counsel for the petitioner/A16, it is submitted by the learned senior counsel for the petitioner/A3 that though A3 is a Branch Manager of the Indian Bank, Muthialpet Branch, at the relevant point of time, independently, he has no authority to sanction the loan. All loans/limits were sanctioned by the Head Office, mainly by the Board after due appraisal at the Regional Office, Zonal office and Head Office, after scrutiny by

experts/executives/Credit Monitoring Officers (CMO), etc. The export transactions are financed based on the orders received by the party. In fact, the materials available on record would show that all the Bills relating to the period, during which period the petitioner was the Branch Manager of the Bank, were realized. The Branch Manager has no power to sanction limits for exports. The 3rd accused is bound to carry out the instructions given by the Zonal Officer and accordingly, he simply carried out the instructions given by the Zonal Officer. In this regard, the learned counsel for the petitioner/A3 has also invited the attention of this Court to the Regulation 3 of the Indian Bank Officer Employees' (Conduct) Regulations, 1976, which reads as follows:-

"3.General

(1)Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.

(2)Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3)No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

Provided wherever such directions are oral in nature, the same shall be confirmed in writing by his superior official.

(4)Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

Thus, by relying upon the said provision, the learned counsel for the petitioner/A3 submitted that the petitioner has to carry out the instructions given by the Zonal Officer/higher officer. In case, if the loan is sanctioned, the same has to be subsequently confirmed by the superior officer. In this regard, the learned counsel for the petitioner/3rd accused has also invited the attention of this Court to the letter dated 18.04.1989 issued by the Zonal Officer directing the Branch Manager to release the limits (loans) to MV.Exports Pvt Ltd and Maxwell Promotions. Thus, the learned counsel for the petitioner/A3 submitted that the power of the Branch Manager is only to execute the instructions of the Zonal Officer. The petitioner as the Branch Manager, has not committed any offence as alleged by the prosecution. Therefore, according to the learned counsel for the petitioner/A3, the question of

framing charges for criminal misconduct does not arise as far as the petitioner/A3 is concerned.

11. Further, the learned counsel for the petitioner/A3 made his submissions in detail to the effect that the entire amount advanced during his tenure as Branch Manager was recovered and as such, there is no loss to the Bank. The learned counsel for the petitioner/A3 would submit that it is only a simple loan transaction and the loan amount was also subsequently repaid to the Bank; under such circumstances, absolutely, there is no material for the alleged offence under Section 420 IPC or under the provisions of Prevention of Corruption Act.

12. The learned senior counsel for the petitioner/A3 has also submitted that since the Bank has not been arrayed as an accused, the case against the 3rd accused/Branch Manager will not stand. In support of his contention, the learned counsel for the petitioner/A3 has also relied upon the decision of the Hon'ble Supreme Court reported in [2015 (12) SCC 781, Sharad Kumar Shangi and Sangeeta Rane]. Thus, the learned counsel for the petitioner/A3 submitted that since the Bank has recovered all the money advanced to the companies, now nothing survives for framing charge against the petitioner/A3.

Counter submissions made by the Special Public Prosecutor:-

13. Countering the submissions made by the learned counsel for the petitioners, the learned Special Public Prosecutor appearing for the respondent/CBI contended that though the entire amount has been settled to the Bank, the same will not absolve the accused from the criminal liability. The learned Special Public Prosecutor would also contend that insofar as the petitioner/A3 is concerned, the allegations made against him constitute offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act; under such circumstances, the petitioner/A3 is not entitled for discharge from the case on the ground that the entire amount has been settled with the Bank. In this regard, the learned Special Public Prosecutor relied upon the judgment reported in (2012) 10 SCC 303 [Gian Singh Vs. State of Punjab] and submitted that offences relating to the Prevention of Corruption Act or offences committed by a public servant cannot be quashed on the ground of settlement. In the instant case, since the petitioner/A3 has been charged under the provisions of the Prevention of Corruption Act, even if the amount is settled, he is not entitled for discharge from the case, as he has to face the trial.

14. The learned Special Public Prosecutor would also submit that so far as the petitioner/A16 is concerned, though the offences alleged against the petitioner/A16 are punishable under Section 420 r/w 120B IPC, the Trial Court has taken cognizance for offences under Sections 120B, 420 IPC and Sections 11, 12, 13(2) r/w 13(1)(d) of the Prevention of

Corruption Act. Since the Trial Court has taken cognizance, in respect of an offence of conspiracy which includes Prevention of Corruption Act, the decision of the Hon'ble Apex Court in (2012) 10 SCC 303 [Gian Singh Vs. State of Punjab] would equally apply the petitioner/A16 also. Though the 14th accused was discharged by this Court by the order dated 29.04.2014 in CrI.R.C.No.734 of 2013, as against the said order, the respondent/CBI has preferred an appeal in SLP.No.10400/2014 before the Hon'ble Supreme Court and the said appeal is still pending. Further, since the allegations levelled against the petitioners/A3 & A16 are individual in character, non-impleadment of the Bank/Company will not affect the prosecution case.

15.With regard to the submission made by the learned counsel for the petitioners that the investigation is incomplete as the Letter Rogatories(LRs) are yet to be received from the foreign countries, it is the reply of the learned Special Public Prosecutor that even assuming for the sake of argument that the result of the Letter Rogatory (LR) from the foreign countries is not received, still the allegations levelled in the final report make out an offence of conspiracy, cheating and misconduct under the Prevention of Corruption Act; therefore, the final report is maintainable even in the absence of the result of the Letter Rogatory.

16.With regard to the non-obtaining of the prior permission/approval from the Central Government under Section 188 of Cr.P.C., it is the reply of the learned Special Public Prosecutor that since the major portion of the offence has taken place in India and only some of the offences took place outside India, the applicability of Section 188 of Cr.P.C., does not arise in this case. In support of his contention, the learned Special Public Prosecutor has also relied upon the decision reported in AIR 1993 SC 1637 (Ajay Agarwal Vs. Union of India).

17.I have carefully heard the submissions made on either side and perused the materials available on record.

18.It is the submission of the learned counsel for the petitioners that since the entire amount has been settled to the Bank as early as in the year 2007 itself, now, there is no material against the petitioners to frame charges and on that ground, the petitioners are entitled to be discharged from the case. But, as contended by the learned Special Public Prosecutor, the 3rd accused (Petitioner in CrI.R.C.No.709 of 2013) has been charged under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. When the chargesheet was filed against the petitioner/A3, a public servant, for the alleged offences punishable under the Prevention of Corruption Act, this court cannot discharge him merely on the ground that the entire amount has been settled to the Bank. In this regard, a reference could be placed in the judgment of the Hon'ble

Supreme Court reported in (2012) 10 SCC 303 [Gian Singh Vs. State of Punjab], wherein it has been held as follows—

"The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and 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 fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences."

The dictum laid down in the above said judgment is squarely applicable to the facts of the present case also. Hence, on the ground that the amount has been settled to the Bank, the petitioner/A3 cannot be discharged from the case.

19. It is the next fold of submission of the learned counsel for the petitioners that neither the Bank nor the Company has been arrayed as accused in the case by the prosecution; under such circumstances, the prosecution case will not stand as against the petitioners herein. Even this submission of the learned counsel for the petitioners is also bound to fall to the ground, since the allegations against the petitioners herein/A3 & A16 are independent in nature, non-

impleadment of the Bank/Company certainly will not affect the prosecution case. Therefore, I am not inclined to accept this submission made by the learned counsel for the petitioners.

20. In respect of the petitioner/A16, it is the submission of the learned counsel for the petitioner/A16 that since he is in Singapore, before filing the final report, the respondent/CBI ought to have obtained prior sanction from the Central Government as required under Section 188 of Cr.P.C. But, I find that as contended by the learned Special Public Prosecutor, in the instant case, the criminal conspiracy has been hatched between the officials of the Indian Bank and private persons in India and Singapore to commit breach of trust, cheating and criminal misconduct, as defined under the Prevention of Corruption Act. The major part of the allegations levelled against the accused have taken place in India and some outside India. Therefore, the prior sanction of the Central Government contemplated under Section 188 of Cr.P.C., is not applicable. In this regard, a reference could be placed in the judgment of the Hon'ble Supreme Court reported in AIR 1993 SC 1637 [Ajay Agarwal Vs. Union of India], wherein it has been held as follows

"Thus we hold that sanction under section 188 is not a condition precedent to take cognizance of the offence. If need be it could be obtained before trial begins. Conspiracy was initially hatched at Chandigarh and though itself is a completed offence, being continuing offence, even accepting appellant's case that he was at Dubai and part of conspiracy and overt acts in furtherance thereof had taken place at Dubai and partly at Chandigarh; and in consequence thereof other offences had been ensued. Since the offences have been committed during the continuing course of transaction culminated in cheating P.N.B. at Chandigarh, the need to obtain sanction for various offences under proviso to Section 188 is obviated. Therefore, there is no need to obtain sanction from Central Govt. The case may be different if the offences were committed outside India and are completed in themselves without conspiracy. Perhaps that question may be different for which we express no opinion on the facts of this case. The ratio in Fakhrulla Khan has no application to the facts in this case. Therein the accused were charged for offences under Section 420, 419, 467 and 468 and the offences were committed in native State, Mysore. As a result the courts in British India i.e.

Madras province had no jurisdiction to try the offence without prior sanction. Equally in Verghese's case the offences charged under Section 409,IPC had also, been taken place outside British India. Therefore, it was held that the sanction under Section 188 was necessary. The ratio in Kailash Sharma's case is not good at law. The appeal is accordingly dismissed.

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The dictum laid down in the above said judgment is squarely applicable to the present facts of the case also. Even in the instant case, as per the allegations made in the chargesheet, the conspiracy was initially hatched only in India. Therefore, obtaining prior sanction from the Central Government under Section 188 of Cr.P.C, is not required in the instant case.

21.It is yet another submission of the learned counsel appearing for the petitioners that in the concluding portion of the chargesheet, it has been stated that the respondent/CBI is yet to receive reply to the Letter Rogatory from few foreign countries. Therefore, according to the learned counsel for the petitioners, the investigation in this case is incomplete and as such, the Court below cannot take cognizance on the incomplete final report.

22.No doubt, there can not be any quarrel in the legal position that based on the incomplete final report, cognizance cannot be taken by the Court. But, in the instant case, as contended by the learned Special Public Prosecutor, final report makes out some offences of conspiracy, cheating and misconduct under the Prevention of Corruption Act; therefore, the final report is maintainable in the absence of the result of the Letter Rogatory. Therefore, the submission made by the learned counsel for the petitioners in this regard cannot be accepted.

23.However, I find that so far as the 16th accused (petitioner in Crl.R.C.No.840 of 2016) is concerned, similarly placed accused viz., 14th accused, who was a Director of M/s.Mountamount (Singapore) Pvt Ltd, was discharged by this Court by order dated 29.04.2014 in Crl.R.C.No.734 of 2013. Further, the learned Special Public Prosecutor has fairly submitted that though as against the said order dated 29.04.2014, an appeal in SLP.No.10400/2014 was preferred before the Hon'ble Supreme Court, the Hon'ble Supreme Court has not granted any interim stay of the order. Further, the petitioner/A16 has been charged for the offence punishable under Section 120B IPC r/w 420 IPC and not for any other offence. But, the Court has wrongly taken cognizance under the provisions of the Prevention of Corruption Act also as against the petitioner/A16. Hence, this Court is of the view that having discharged a similarly place accused viz., 14th

accused, the petitioner herein/A16 is also entitled for similar relief. Hence, on this sole ground, the CrI.R.C.No.840 of 2016 is allowed.

24. So far as the 3rd accused is concerned, the allegations have been made under the Prevention of Corruption Act in the chargesheet. On perusal of the chargesheet, this Court is of the opinion that the allegations made against the petitioner/A3 attract the Provisions of the Corruption Act. Therefore, he is not entitled for discharge from the case. However, the petitioner/A3 is at liberty to make all his contention before the Trial Court during the trial.

In the result

CrI.R.C.No.840 of 2016 is allowed and the impugned order passed by the Court below is set aside and the petitioner/A16 is ordered to be discharged from the case.

CrI.R.C.No.709 of 2013 is dismissed. However, the petitioner/A3 is at liberty to approach the Trial Court, for dispensing with his personal appearance, by filing an affidavit before the Trial Court to the effect that he will co-operate for the completion of the trial. Such an affidavit being filed, the Trial Court is directed to pass appropriate order dispensing with his appearance.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To,

1.The Principal Special Judge for CBI Cases,
Chennai.

2.The Deputy Superintendent of Police,
SPE:CBI/BS & FC,
Bangalore,

3.The Inspector of Police, Central Bureau of Investigation,
Bank Securities and Fraud Cell, Bangalore.

+1 cc to Mr.D.Harindran,advocate,sr.57932

+2 cc to Mr.C.Arunkumar,advocate,sr.58006

+1 cc to Mr.K.Srinivasan,Spl.PP, chennai.

+1 cc to Mr.K.Srinivasan,advocate,sr.57947.

krd 25/10

CrI.R.C.Nos.709 of 2013 & 840 of 2016
and

CrI.M.P.Nos.6369 & 6370 of 2016