

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION No.7584 of 2015

ORDER :

This Criminal Petition is filed by the petitioner/A-3-N.Srinivasan, no other than the Vice Chairman and Managing Director of A-7-M/s.India Cements Limited, under Section 482 Cr.P.C praying to quash the proceedings in C.C. No.24 of 2013 on the file of the learned Principal Special Judge for C.B.I Cases, Hyderabad at Nampally, which is the outcome of FIR in R.C. No.19(A)/2011, registered on 17.08.2011, for the offences punishable under Sections 120-B read with 420, 409, 477-A I.P.C and Section 13(1)(C&D) of the Prevention of Corruption Act, 1988, against more than 73 accused(where the petitioner-A3 was not named), pursuant to the directions in W.P.Nos.794 & 6604 of 2011, and after investigation and final report submitted by the state through C.B.I, Hyderabad, the learned Special Judge for C.B.I. cases, Hyderabad has taken cognizance for the offences punishable under Sections 120-B read with 420 I.P.C and Section 12 of the Prevention of Corruption Act, 1988, in so far as against the petitioner/A-3 concerned, leave about other 8 accused charged including A-7-M/s.India Cements Limited, rep. by its Vice Chairman and Managing Director(petitioner/A-3-N.Srinivasan).

2. Brief allegations in the charge sheet in so far against the petitioner/A-3 concerned are the following:

2(i). The petitioner/A-3 herein being the Vice Chairman and Managing Director of M/s.India Cements Limited (A-7) is in charge of the day-to-day management and functions of the A-7-Company.

2(ii). Allegations against M/s.India Cements Limited (A-7):

(a). During the year 1990 M/s.India Cements Limited acquired Coromandal Cement plant at Kadapa, Kadapa District; in the year 1997 they acquired Cement plant of Visakha Cement Industry Limited at Tandur, Ranga Reddy District; in the year 1998 they acquired cement plant of Cement Corporation of India at Yerraguntla, Kadapa District and in the year 1998 they acquired M/s.Raasi Cement Limited of Nalgonda District (of the erstwhile state of Andhra Pradesh).

(b). It is averred that District Collector, Kadapa had submitted proposals for allotment of land on lease to an extent of Ac.2.60 cents at Chowdur Mandal, Kadapa District in favour of India Cements Limited (A-7) for a period of 20 years from the date on which the Company was in possession from 1983 and the Chief Commissioner Land Acquisition (CCLA) Government of Andhra Pradesh after examining said proposals of the District Collector, issued orders vide G.O.Ms.No.53, dated 18.01.2001 awarding lease of said land in favour of India Cements Limited (A-7) for 20 years with retrospective effect from 1983 to 2003 for construction of infiltration well with pump house for supply of water to the cement plant at Chilamkur village with a condition of 10% annual lease on market value of Rs.50,000/- per annum and with provision for 20% increase for every 5 years as per the provisions of the Revenue Board sanding order-24. Further, India Cements Limited (A-7) submitted a requisition to the District Collector, Kadapa on 30.06.2003 after expiry of the lease period for renewal of the lease of said land as long as the operations of the cement plant continues in Chilamkur, stating that the infiltration well built in that land is the only source of water for their plant operations. On

06.02.2006 the District Collector, Kadapa through his letter No.E1/909/2000 submitted proposals to the Government through CCLA for extension of the lease of the land of Ac.2.60 cents in favour of India Cements Limited (A-7) with a recommendation that the period as prescribed under G.O.Ms.No.1484, dated 15.11.1977 on payment of rent at 10% of the market value of Rs.2,50,000/- per acre per annum and the CCLA forwarded said proposals by accepting the recommendation of the District Collector, Kadapa.

(c). The Assignment-IV Section of the Revenue Department put up the latest amendment to the lease rules to Finance Department, which in turn returned the file to Revenue Department with remarks to take action as per G.O.Ms.No.1484, dated 15.11.1977 read with G.O.Ms.No.840, dated 14.10.1996. The District Collector proposed for payment of rent at 10% for the current market value of Rs.2,50,000/- per acre per annum and the CCLA also recommended the proposal keeping in view of the orders issued in G.O.Ms.No.1484 read with G.O.Ms.No.840 in the year 1996. As per the G.O.Ms.No.840, dated 14.10.1996 initial period of lease should be for only five years and the maximum period of lease shall in no case exceed twenty five years. On receipt of the proposal, a circulation note was put by the then Joint Secretary (Sri N.Venkata Subbaiah), Revenue Department endorsed that “proposals at para 43 may kindly be considered for approval, regarding the period, it is submitted that the present lease granted has been expired by 30.06.2003, extension of lease for further period 5 years from 01.07.2003 may be considered for approval”.

(d). Sri M.Samuel, IAS (A-4) the then Principal Secretary, Revenue Department, Government of Andhra Pradesh, at the initial stage got the above note circulated for extension of lease of

land for a period of five years from 01.07.2003 to 01.07.2008 by giving his assent. Said note was routed through Principal Secretary (Finance) and was approved by the Minister for Revenue-Sri Dharmana Prasada Rao and it was finally approved by the then Chief Minister, Late Dr.Y.S.Rajasekhara Reddy for placing before the Council of Ministers. The file was re-circulated to the then Chief Minister for obtaining specific orders to be placed before the Council of Ministers. The then Chief Minister has given his assent on 16.06.2008 for placing the matter before the Council of Ministers. Sri M.Samuel (A-4), the then Principal Secretary, in furtherance of criminal conspiracy with dishonest intention did not mention the fact that the then Chief Minister had approved the lease for a period of five years only, instead he put up a draft memorandum for the Council of Ministers as to the period- “as prescribed under G.O.Ms.No.1484, dated 15.11.1977 read with G.O.Ms.No.840, wherein the maximum period lease shall in no case exceed 25 years”. The proposal placed before the Cabinet in its meeting held on 30.06.2008 was approved for five years period from 01.07.2003 and would expire on 01.07.2008 vide its resolution No.241/2008, dated 01.07.2008. Sri M.Samuel (A-4)-Principal Secretary, in furtherance of the criminal conspiracy with other accused persons, by abusing his office as a public servant issued orders vide G.O.Ms.No.865, dated 11.07.2008 extending the lease of land in Sy.No.657/2, Ac.2-60 cents of Chowduru Village of Proddatur Mandal in favour of India Cements Limited (A-7), Chilamkur for a period as prescribed under G.O.Ms.No.1484, dated 15.11.1977 read with G.O.Ms.No.840, dated 14.10.1996, thereby giving the lease for 25 years instead of only five years and M/s.India Cements Limited (A-7) was unduly favoured through this. A-7, in furtherance of the above said criminal conspiracy and

in quid-pro-quo for favours received, had paid illegal gratification to the tune of Rs.140.00 crores in total, in the guise of investment, in the companies viz., M/s.Raghuram Cements Limited (Rs.95.00 crores), M/s.Jagati Publications Limited (Rs.40.00 crores) and M/s.Carmel Asia Holdings Private Limited (Rs.5.00 Crores), owned by Sri Y.S.Jagan Mohan Reddy (A-1), who was the ultimate beneficiary to the illegal gratification.

. (e). M/s.Visaka Cement Industries Limited was given permission to draw 10 mcft of water vide G.O.Ms.No.244 dated 19.12.1996, that the Government's order did not mention the period of permission and the rate of water royalty to be fixed by the Government. The violation of any condition mentioned in the G.O.Ms.no.244, shall entail the cancellation of the permission granted for drawl of water without any notice. M/s.Visaka Cements got amalgamated later with India Cements Limited (A-7) in the year 2007 and on 10.03.2008, India Cements Limited (A-7) filed an application with Superintending Engineer, Irrigation Circle, Hyderabad requesting for additional allocation of 13 Mcft water from River Kagna in addition to the already allocated 10 Mcft water to M/s.Visaka Cements. The Chief Engineer, Minor Irrigation forwarded the request of India Cements Limited (A-7) to the Irrigation Department for obtaining Government Orders for utilization of 13 Mcft water by India Cements Limited (A-7) in addition to the existing utilization of 10 Mcft water accorded by G.O.Ms.No.244, I & C Department, dated 19.12.1996. Sri N.Bhaskar Rao, Superintending Engineer having the knowledge about the payment of royalty, intentionally ignored and did not insist for payment of royalty by the entity before recommending for allocation of additional water and Sri B.Seetharamaiah, Chief Engineer merely forwarded the proposal

received from Superintending Engineer to the Irrigation Department and on receipt of the proposal, Sri Alahari Subba Rao, the then Special Officer(Technical), Irrigation & Command Area Development (I&CAD) Department raised the following points to be ascertained:

- i. "As to the proposed enhancement regarding drawl of water(13 Mcft) will not affect Lower & Upper Riparian Rights and does not exceed the restriction of 6 TMC.
- ii. No mention is there about the period of permission granted.
- iii. Whether the former company had paid royalty charges up-to-date.
- iv. No remarks of CE, ISWR on the proposal".

(f). Sri Adithyanath Das, IAS (A-5), Secretary (AD), Irrigation Department, in furtherance of criminal conspiracy, by abusing his official position, had made observations regarding the need to refer the matter to Inter State Water Resources (ISWR), terms and conditions of drawl of water in the earlier G.O.Ms.No.244 namely period and royalty fixed. The issue was again clarified by Special Officer who reiterated to ascertain the period of supply, water royalty fixed by the Government payment of water royalty, dues pending from the firm and others. Sri Adithyanath Das (A-5) in furtherance of the criminal conspiracy, by breaching the trust reposed in him and by abuse of his official position, did not refer the matter of allocation of water from Kagna River to Inter State Water Resources even though Sri Alahari Subba Rao, special Officer (Technical) had raised various issues for protecting the interest of the State including referring the note to Inter State Water Resources, which was mandatory in allocating any water from inter-state rivers or its subsidiaries. He has also raised the issue of royalty aspect. Sri Adithyanath Das (A-5) in furtherance of

criminal conspiracy, with dishonest intention, referred the file to Sri Lava Kusha Reddy, Advisor (Telangana) and got a favourable observation from him overlooking the queries raised by Special Officer (Technical). As per the Secretariat Business Rules there is no role defined for the advisers. Sri Lava Kusha Reddy, Advisor (Telangana) toed the line of the Secretary in giving a favourable noting but the concerned processing authority who has to ensure the pre-requisites for allocation of water was Special Officer (Technical). Sri Adithyanath Das (A-5), Secretary, Irrigation Department having got fraudulently favourable noting from Adviser, overlooked the objections raised by the Special Officer (Technical), gave his assent for allocation of water to M/s. India Cements Limited (A-7). The proposal was put up to the Minister, keeping him in dark by ignoring the vital technical facts. Sri Adithyanath Das (A-5) was in the knowledge of all the intricacies relating to this issue in furtherance of criminal conspiracy got final approval of the then Chief Minister. Accordingly, G.O.Ms.No.94, I&CAD dated 12.08.2009 was issued. India Cements Limited (A-7) owed royalty to irrigation Department since May, 1997 and it has not complied one of the conditions of the earlier G.O.Ms.No.244 of 1996. A-5 was in the knowledge of the above fact raised by the Special Officer. The conditional clause No.9 of G.O.Ms.No.244 of 1996 warranted that violation of the any of the conditions mentioned in the G.O, shall entail the cancellation of the permission granted to India Cements Limited (A-7) for drawl of water without any notice. This fact was intentionally omitted by Sri Adithyanath Das (A-5) in abuse of his official position as part of the criminal conspiracy for favouring India Cements Limited (A-7). M/s. India Cements Limited (A-7) was owing water royalty since May, 1997 which was later calculated in 2011 after registration of

the case by C.B.I, for an amount of Rs.17,87,864/- (without penalty) towards outstanding water cess. (g). M/s. India Cements Limited (A-7) acquired M/s.Raasi Cement Limited in the year 1998. M/s.Raasi Cement Factory at Wazirabad was given permission to draw 3 lakh gallons of water from Krishna River subject to conditions vide G.O.Ms.No.408 dated 21.06.1979 issued by Irrigation & Power (IRR.III) Department. On 20.09.2007, Sri Y.Shekar Reddy, Executive Engineer, Irrigation & Command Area Development, Nalgonda and Sri R.Nagi Reddy, Senior Personal Manager of India Cements Limited (A-7), Wazirabad entered into Article of Agreement for permission to draw 3 lakh gallons of water per day from Krishna River for cement factory for the period from 20.09.2007 to 19.09.2008 for an amount of Rs.1,62,000/- for 12 months. Prior to 2007, there is no record of India Cements Limited (A-7) paying any royalty and fulfilling conditions prescribed in G.O.Ms.No.408, dated 21.06.1979. The agreement was entered on 20.09.2007 for one year only, which paved the way for the company to seek permission for additional quantity of water. Based on said agreement, the Superintendent Engineer requested Chief Engineer to obtain and communicate necessary permission from the Government. The Executive Engineer, Nalgonda failed to bring to the notice regarding the issue of entering of agreement with the firm to the Superintending Engineer, as substantial period had lapsed from the date of issue of the original G.O.Ms.No.408, dated 21.06.1979 and the agreement dated 20.09.2007. In order to accommodate the request of M/s. India Cements Limited (A-7) for additional water allocation, Executive Engineer, Nalgonda and M/s. India Cements Limited created an agreement dated 20.09.2007 for a period of one year that too after a lapse of 28 years from the earlier G.O, projecting as if the conditions of earlier G.O are

fulfilled. Sri P.R.K.Raju, Chief Manager of India Cements Limited (A-7) vide letter dated 10.12.2007 addressed to the Executive Engineer, Irrigation Department, Nalgonda stating that they had taken permission to draw 3 lakh gallons of water per day from Krishna River earlier from Irrigation Department vide letter No.C/1, dated 12.10.1982 and that they were expanding their plant and require additional quantity of water to an extent of 7 lakhs gallons per day. Sri Y.Shekar Reddy, Executive Engineer, Nalgonda, recommended the request of India Cements Limited (A-7) for enhancement of water to a tune of 10 lakh gallons per day vide his letter dated 23.02.2008. Sri Bhaskar Rao, Superintendent Engineer, Irrigation & Command Area Development, Irrigation Circle, Hyderabad vide letter No.DEE-I/TS-2/7152, dated 12.03.2008 addressed to the Chief Engineer, Minor Irrigation, Hyderabad requesting the Chief Engineer to obtain and communicate necessary permission from the Government. Sri B.Seetha Ramaiah, Chief Engineer, Minor Irrigation addressed a letter No.DCE(MI)/OT3-T4/India Cements/ 2008, dated 28.03.2008 to the Principal Secretary, Irrigation & CAD, Department, Hyderabad stating that permission was accorded to India Cements Limited (A-7) formerly M/s.Raasi Cement to draw water from Krishna River, downstream of Nagarjunasagar Dam near Wazirabad village at the rate of 3 lakh gallons per day as per G.O.Ms.No.408, Irrigation & Power (Irrigation-II) Department dated 21.06.1979. The letter also stated that an agreement had been entered with the firm and royalty is being paid by the firm. The letter also contained that the firm has represented for enhancement of water drawl from 3 lakh gallons to 10 lakh gallons per day in view of their expansion of cement plant. On receipt of letter from Chief Engineer, dated 28.03.2008 by the I & CAD (PW)

Department, a circulation note was put up vide C.No.10548/Reforms/2008 on 03.04.2008. In the note file Sri A.Subba Rao, Special Officer (Technical) made the following observation:

- a. That the period is not specified.
- b. The remarks of the E in C (irrigation) and the CE/ISWR on sparing of 10 lakh gallons per day to the company are to be obtained.
- c. The proposal to expand the cement plant requires confirmation from the Industries Department duly indicating the approval accorded by the department indicating the plan readiness and the expanded installed capacity and the date of commissioning.

(h). A-5, in furtherance of criminal conspiracy intentionally raised doubts on referring the file to the Chief Engineer, ISWR. Sri A.Subba Rao, Special Officer (Technical) clarified that as the drawl of water was from River Krishna at the rate of 10 lakh gallons per day and suggested for taking the views of the Chief Engineer, ISWR. A-5 issued a memo vide No.10548/Reforms/2008, dated 29.04.2008 to the Engineer-in-Chief/Chief Engineer, Inter State Water Resources to offer their remarks on sparing 10 lakh gallons of water per day to India Cements Limited (A-7) and send a report in the matter at the earliest. Dr.P.Rama Raju, Chief Engineer, Inter State Water Resources, Hyderabad, vide letter No.RCWR/DD(K)/7527/89, Vol.III, dated 23.05.2008 mentioned that as per requirement sought by the firm is relatively small, the proposal may be considered for giving permission duly accounting for the above quantity against the savings from the utilizations within the framework of the Bachawat Tribunal allocations. On 06.06.2008, Irrigation Department, sought clarifications from the Engineer-in-Chief, I &

CAD Department with regard to sparing 10 lakh gallons of water per day to India Cements Limited (A-7) from Krishna River by meeting the same from the savings from utilizations within the framework of the Bachawat Tribunal and that the same will not affect upper and lower riparian rights.

(i). After the approval, the file had to be sent or circulated to Industries Department for remarks regarding the status and information about expansion of India Cements plant. But instead by abuse of official position, Sri Adityanath Das (A-5), IAS, Secretary, Irrigation Department overruled the above aspect and made an endorsement that the Chief Engineer, ISWR has agreed to the proposal of the Chief Engineer, Minor and agreed to give additional 7 lakh gallons of water per day in addition to already 3 lakh gallon (total 10 lakh gallon in all) to India Cements Limited (A-7). On 25.06.2008 the then Minister (M & MI) Sri Ponnala Lakshmaiah agreed to the proposal and finally the then Chief Minister late Sri Y.S.Rajasekhara Reddy, in furtherance of criminal conspiracy accorded his assent on 03.07.2008, in quid-pro-quo to the illegal gratification paid by India Cements Limited (A-7). The draft G.O was put up on 08.07.2008, the Special Officer (Technical) made an observation that the terms and conditions must be specified and he also observed that the period of permission to be specified as five years as there was no mention of the period in the earlier G.O.Ms.No.408, that G.O.Ms.No.146 dated 22.07.2008 was issued according permission to India Cements Limited (A-7) to draw 10 lakh gallons of total quantity of water per day including 3 lakh gallons of water already permitted from Krishna River downstream of Nagarjunasagar Dam near Wazirabad for consumptive use of their expansion unit at Nalgonda. A-5 by abusing his official position as a public servant

issued G.O.Ms. No.146, dated 22.07.2008 according permission to draw 10 lakh gallons of total quantity of water per day including 3 lakh gallons of water already permitted from Krishna River unduly favouring the firm, by deceit and suppressing the facts pertaining to the terms and conditions mentioned in the earlier G.O.Ms.No.408, during the period 2007 to 2008 apart from India Cements Limited (A-7) other companies viz., M/s.Deccan Cements Limited, Hyderabad, M/s.Madhucon Sugar and Power Industries, M/s.Maruti Ispat and Energy Private Limited had also applied for allocation of water. Their proposals from the concerned Chief Engineers were sent to Secretary, Irrigation Department and they were kept pending on the instructions of the then Chief Minister by abusing his official position made remarks on the file 'lie until further orders' whereas in case of India Cements Limited (A-7), no such remarks were made by the then Chief Minister as there was illegal gratification in the guise of investment as quid-pro-quo by India Cements Limited (A-7) into the companies of Sri Y.S.Jagan Mohan Reddy.

(j). India Cements Limited (A-7) had invested 12,50,000 of preference shares at a premium of Rs.110/- for a sum of Rs.15,00,00,000/-. Thereafter India Cements Limited (A-7) had invested a sum of Rs.80.31 crores at a premium of Rs.1440/-. There was no explanation available in the minutes of the meeting or the statements recorded from the top management of the company with regard to the necessity to increase the premium from Rs.110/- to Rs.1440/- (sudden raise of almost 12 times within a small time span of 9 to 10 months), except a simple statement that it is a "bouquet of investments". The company which is having public funds with it, never bothered to get the "due diligence on the required premium" neither from their own technical team nor from

an outside agency. Thus, it is clearly construed as a quid pro quo transaction between the India Cements Limited (A-7) and Sri Y.S.Jagan Mohan Reddy (A-1). India Cements Limited (A-7) sold the shares at Rs.671/- to M/s.PARFICIM, SAS, FRANCE on 14.04.2010 on the directions of Sri Y.S.Jagan Mohan Reddy undergoing a loss of Rs.26,85,50,489/-. This clearly shows that the investment into M/s.Raghuram Cements Limited, M/s.Bharathi Cement Corporation Limited by M/s.India Cements Limited (A-7) was nothing but a quid-pro-quo investment. In April, 2010 M/s.Pani & Associates, Bangalore evaluated the share price of M/s.Raghuram Cement Corporation Private Limited and arrived at the value of share at Rs.221.17 Ps. That the Board Resolution of India Cements Limited (A-7) dated 14.04.2010 resolved to invest up to Rs.125 crores by way of Inter Corporate Loans/Advance/Investment in M/s.Bharathi Cement Group whereas on the same day India Cements Limited (A-7) had sold their stake 1803973 shares of Rs.10/-each in M/s.Bharathi Cements Corporation Limited at a total price of Rs.121.00 crores to M/s.PARFICIM, SAS, FRANCE.

2(iii). There is no averment from the above of any role of the petitioner/A3-Srinivasan to make him liable. **It is however averred in the charge sheet as if therefrom, it is clearly establishing that Sri N.Srinivasan (A-3) representing (A7) India Cements Ltd proposed to give back the entire amount received by selling shares to PARFICIM, back to Sri Y.S.Jagan Mohan Reddy (A-1) which was invested as a quid-pro-quo.**

2(iv). It is averred in the charge sheet further that during June, 2007 India Cements Limited (A-7) gave inter corporate deposits to M/s.Sandur Power Company Limited amounts

aggregating to Rs.8.50 crores. During November, 2007 India Cements Limited (A-7) placed inter corporate deposit with M/s.RR Global Enterprises Private Limited amounting to Rs.13.00 crores. For above said inter corporate deposits, there was no approval of the Board of the Directors and there were no written agreements between India Cements Limited (A-7) and M/s.Sandur Power Company Limited and M/s.RR Global Enterprises Private Limited, none of these companies have any business dealing with India Cements Limited (A-7) and others. **Inter corporate deposits made by India Cements Limited represented by N.Srinivasan (A-3) without any Board Resolution clearly indicates connivance of N.Srinivasan (A-3) with Sri Y.S.Jagan Mohan Reddy (A-1).** An amount of Rs.1.35 crores were given by India Cements Limited (A-7) as a loan to Sri Y.S.Jagan Mohan Reddy (A-1), vide cheque Nos.315471, 315472 & 315473 drawn on Punjab National Bank dated 11.03.2005 which was repaid with interest clearly establishes an undue interest and connivance between them.

2(v). It is also averred in the charge sheet that M/s.Carmel Asia Holdings Private Limited (A-9) was valued by M/s.Jagadisan & Co. represented by Sri J.Prabhakar and the valuation ranged from Rs.294 Crores to Rs.309 crores and the valuation was based on the projections provided by Sri V.Vijaya Sai Reddy (A-2). Although the valuation report was completed by January, 2007, the report was ante-dated as 01.11.2006 at the instance of Sri V.Vijaya Sai Reddy (A-2). **The purchase of shares of M/s.Carmel Asia Holdings Private Limited (A-9) by Sri N.Srinivasan (A-3) at a value of Rs.252/- in January, 2007 is only to cover the quid pro quo amount paid to Sri Y.S.Jagan Mohan Reddy (A-1) for the undue benefits received by Sri**

N.Srinivasan (A-3) was based on the projections of M/s. Indira Television Private Limited, M/s.Jagati Publications Private Limited and M/s.Janani Infrastructure Private Limited which did not commence their operations at that time.

2(vi). It is also averred in the charge sheet that this clearly establishes that the valuation report of M/s.Deloitte Touche Tohmatsu India Private Limited was ante-dated as 16.11.2007 on the directions of Sri V.Vijaya Sai Reddy (A-2) in conspiracy with Sri Y.S.Jagan Mohan Reddy (A-1) to justify the investments already solicited from India Cements Limited (A-7) at the rate of Rs.350/- per share.

3) From the above there is no specific role of petitioner/A-3 to attribute, but for if at all he represented the India Cements Limited (A-7) being its Vice Chairman cum Managing Director. It discloses that the investigation proceeded on accusing the petitioner/A-3 from his status to the India Cements Limited (A-7) being its Vice Chairman cum Managing Director and beyond that there is nothing of how personally and if not atleast by what provision or fiction of law by virtue of his status vicariously liable to charge for any of the offences. **However, it is averred that in brief the charge sheet filed by 2nd respondent reveals the role of petitioner/A-3-Sri N.Srinivasan as follows:**

4) A-3 being the Managing Director of A-7 Company conspired with A-1 by entering into share subscription agreement dated 19.05.2007, that in pursuance of such agreement, A-7 surrendered their rights in favour of M/s.Raghuram Cements Limited(A-6) represented by A-1 as a quid-pro-quo. For which A-7 got the benefit of allocation of additional quantity of water,

extension of lease of land for a period of 20 years and priority in supply of cement under Indiramma Scheme. A-3 in furtherance of the conspiracy paid illegal gratification in the form of investments amounting to Rs.95.32 crores in A-6 company by purchasing shares on high premium of Rs.1440/- amounting to Rs.40.00 crores in M/s.Jagathi Publications Limited (A-8) and Rs.5.00 crores in M/s.Carmel Asia Holdings Private Limited (A-9), thereupon A-7 invested in 0% convertible preference shares and also surrendered all their rights in favour of A-6 as a preference shareholder/equity shareholder and received no dividends. The total amount paid by A-7 was to the tune of Rs.140.32 crores. A-3 being the Managing Director in furtherance of criminal conspiracy had given Inter Corporate Deposits of Rs.8.5 crores to M/s.Sandur Power Corporation Limited of A-1 and Rs.13.00 Crores to M/s.R.R.Global Enterprises Limited with whom either India Cements Limited (A-7) or Sri N.Srinivasan (A-3) had no direct business relationship. A-3 also given a personal loan of Rs.1.35 crores to A-1. ***None of these transactions had any approval of Board of Directors. This clearly establishes the connivance of A-1 and A-3. By above mentioned overt and covert acts of A-3 being the Managing Director of A-7, is liable for the offences punishable under Sections 120-B r/w. 420 I.P.C. and Section 12 of the Prevention of Corruption Act.***

5) Based on the allegations, the learned Principal Special Judge for C.B.I Cases, Hyderabad taken cognizance on 25.09.2013 for the above offences. The cognizance order reads, 'Perused the record and office note. Charge-sheet is taken on file for the offences against the accused as mentioned below:

A-1 : - - - -

A-2 : - - - - -

A-3: N.Srinivasan, VC & MD., M/s.India Cements Ltd,

Chennai–Section 120-B read with 420 I.P.C and Section 12 P.C. Act.

A-4 : - - - -

A-5 : - - - - -

A-6 : - - - -

A-7: M/s.India Cements Ltd, rep. by its VC & MD N.Srinivasan –Section 120-B read with 420 I.P.C and Section 12 P.C. Act.

A-8 : - - - -

A-9 : - - - - -

6) Aggrieved by the above, petitioner/A-3 presented the quash petition on the following grounds:

7) None of the ingredients of the offence punishable under Section 420 I.P.C have been made out against the petitioner/A-3, that petitioner/A-3 has neither made any false inducement or representation knowingly so as to deprive another of any valuable security or other things while discharging his duties as Vice Chairman and Managing Director of A-7 company, when the basic ingredients of the offence charged against the petitioner/A-3 are absent, the charge sheet is liable to be quashed, that the learned Special Judge has committed a grave error in mechanically issuing process to the petitioner/A-3 based upon the CBI/respondent's final report which does not any way point out the personal involvement of the petitioner/A-3 for any personal benefits or obligations or in any conspiracy to bestow undue benefits on A-7, a public company which is managed by a Board of Directors, that the learned Special Judge has not given any reasons in the order dated 25.09.2013 taking cognizance for inclusion of the alleged offence under Section 12 of the Prevention of Corruption Act, 1988. The impugned order suffers from clear legal infirmity without recording reasons why the Court felt compelled to include offence under the prevention of Corruption Act against the petitioner. When there is no averment in the

charge sheet of any criminal act attributed to the petitioner, the inclusion of a serious offence in the impugned order without giving reason would be illegal. The learned Special Judge for C.B.I cases has completely ignored the fundamental principle of criminal jurisprudence that the petitioner cannot be held vicariously liable even for any act or omission by A-7. The final report while making specific references to the alleged roles played by each of the accused, as far as the petitioner concerned, has repeated the same set of allegations made against A7 concerning investments made by A-7 and the alleged unlawful benefits conferred on A-7 are the only allegations made against the petitioner/A3 also in the charge sheet and therefore, the accusation against the Petitioner/A3 of having conspired to commit fraud or for that matter any other offence is absurd and unsustainable on its face for no specific allegations of criminal conduct against the petitioner. The petitioner/A-3 has not signed or entered into any share subscription agreement with accused No.1 and that is why no such document has been supplied along with the charge sheet and the charge sheet itself is silent as to shares of which company were surrendered by Accused No.7 in favour of Accused No.6. In view thereof the allegations of quid pro quo are unsustainable, vague and incomprehensible and in any event accused No.3 had no role to play in any act of quid pro quo, that he has not paid any gratification illegal or otherwise in form of investment amounting to Rs.95.32 Crores in accused No.6 nor has he paid any amount in accused No.8 or Rs.5.00 crores in accused No.9, that the charge sheet has thereby furnished no evidence of alleged payments to accused No.6, accused No.8 and accused No.9, that the charge sheet is also silent as to how the three alleged payments to accused No.6, accused No.8, accused No.9 constitute illegal

gratification, that the accused No.3 has given no inter corporate deposits of Rs.8.5 crores to M/s.Sandur Power Corporation nor Rs.13.00 crores to M/s.R.R.Global Enterprises Limited, that there is no evidence to this effect in the charge-sheet, that M/s.Sandur Power Corporation and M/s.R.R. Global Enterprises Limited are not accused entities in the charge-sheet, that there is no elaboration as to how the transaction discloses any criminal offence, that as regards the substantive offence of Section 420 I.P.C manifestly no ingredients of the offence are disclosed against Accused No.3, that the charge sheet is totally silent as to what false representation was made by accused No.3 and to whom, it is also silent on the question whether any person was induced to part with any property by virtue of any false representation on the part of accused No.3, that there is no suggestion of wrongful gain on the part of accused No.3 and having caused wrongful loss to anybody and accordingly the substantive offence of Section 420 I.P.C is totally unsubstantiated against the petitioner and as regards the offence of conspiracy to cheat, the charge sheet is totally silent as to who cheated whom. The criminal conspiracy charge can never be proved against the petitioner since each and every allegation that has been made against the petitioner in the charge sheet pertains to the business activities of the Company (A-7). There is not a single overt act which has been attributed to the petitioner/A3 suggesting any conspiracy in the making of investments by A-7, that even assuming without admitting that the investments made by A-7 were nothing but bribe amounts, even then the role played by the petitioner has to be necessarily spelt out as a specific item of charge, that in the absence of any material whatsoever in the charge sheet against the petitioner, the petitioner need not face the

ordeal of a trial and finally prayed to quash the proceedings in C.C. No.24 of 2013 against the petitioner/A-3.

8) Whereas it is the submission by the learned special public prosecutor for the CBI that the accused as Vice Chairman cum Managing Director, responsible for day to day affairs of the A7 Company and as such for every act of A7 is done by A3, he is personally liable and therefore the final report from investigation when spelt out the same and the learned special Judge having perused the record and taken cognizance, leave about reasons not mentioned even that itself is not at all a ground for quashing the cognizance order, a reading of the same clearly proves judicial application of mind and thereby there is nothing to entertain the quash petition, much less to quash the case proceedings pending against A3/petitioner, saying such a contention is meritless and any remedy is besides submission from prosecution material if no grounds to frame charge to consider later, if not to face trial and defend and thereby sought for dismissal of the quash petition. The learned counsel for C.B.I submitted gist of the points in writing in support of above contention of Petitioner/A-3 liable in the capacity of Managing Director-cum-Vice Chairman of India Cements for the following:

8(a). He has been charge sheeted in view of his role as Vice Chairman and Managing Director and not as a private individual and in his individual capacity. He was present in that capacity of India Cements in the Board meeting on 16.01.2008 to say his connection to its affairs and it is he in that status to India Cements that initiated the payment transaction of Rs.90.00 to 92.00 crores payment to Raghuram Cements (now Bharti Cements) as an agenda item No.8 in the Board meeting supra that was approved

by the Board therefrom and in his capacity with India Cements, the Company did not obtain prior approval of public financial institution in terms of Section 372-A (2) of the Companies Act, 1956 though as Managing Director responsible for the affairs of the Company, for the proviso to Section 372-A(2) exemption will not apply and he did not obtain specific approval in the said Board meeting but for general approval for the investments in Raghuram Cements, which nowhere mentions the actual loan/investment even the 0% dividend and 0% preference shares, though the Board resolution supra authorized him to finalize the terms of the said investment of Rs.90.00 Crores with Raghuram Cements and he even surrendered 0% C.P.S in the share subscription agreement dated 19.05.2007 with Raghuram Cements even he was not a signatory to it, it cannot be avoided for nothing out of his knowledge and said investment by diversion of funds of India Cements Limited to Raghuram Cements is by abusing his position in India Cements. The other contention of he played vital role in diverting money of India Cements without board approval of Rs.5.00 crores each by cheque Nos.022249, 039912 and 918273 dated 02.02.2007, 20.04.2007 and 08.05.2007 respectively before board approval dated 16.01.2008 and the Board resolution dated 16.01.2008 is also with no legal affect for violation of Sections 372-A(2) read with 9(b) of Companies Act and it is not enough of there is no loss of India Cements as the investments of quid-pro-quo for the water allocation and land lease etc, is nothing but a bribe under another device if considered the substance over the form even recorded in the books as investments for cannot be recorded as bribe, same is also in relation to payments to Sandur and R.R Global though the Board resolution was in ratification of the same subsequently, further that though money paid for the allotment of shares in 2009

shares were allotted in March, 2010 which cannot be called a strategic investment that too in preference and not equity shares and the investments are with no protective clauses and the collusion and conspiracy is to deprive the rights of listed company shareholders as held in ***Ramachandra Singh V. Savitri Devi***^[1] and even the preference shares that carry dividend such rights of dividend also surrendered for the investments in Raghuram Cements supra and the surrender of liquidity of shares in favour of A-1 is proving the factum of collusion and conspiracy and the charge sheet discloses the commission of offence by the petitioner/A-3 and there are no grounds to quash as held in ***Dr.Sharada Prasad Sinha V. State of Bihar***^[2] of allegations set out in the complaint/charge sheet only if not constitute any offence then only the proceedings can be quashed including cognizance order of the Magistrate and there are certain guidelines for quash with four illustrative guidelines laid down in ***Nagawwa V. V.S.Konjalgi***^[3] and in ***Medchal Chemicals Limited V. Biological E***^[4] it was held that the quashing is an exception of complaint/charge sheet rather than a rule as not to use to scuttle the prosecution and the complaint in its entirety shall be examined before invoking quash jurisdiction under inherent powers. It is contended thereby of there is prima facie case against the petitioner/A-3 and there are no grounds to quash the proceedings but for put him to the ordeal of trial after framing of charges for the offences charged and taken cognizance by the learned Special Judge.

8(b). The respective Counsel in support of the contentions placed reliance on some expressions and also some handout as

written submissions for consideration which are being discussed contextually as per relevancy.

9) Now the points for consideration are:

I. Whether the petitioner/A-3-Srinivasan, being the Vice Chairman and Managing Director of M/s. India Cements Limited (A-7), be made personally liable for any acts of India Cements Limited with vicarious liability for the offences punishable under Sections 120-B read with 420 I.P.C. and Section 12 of the Prevention of Corruption Act, by virtue of any statutory liability or legal fiction?

II. If not, whether petitioner/A-3-Srinivasan, other than of his status or position as Vice Chairman and Managing Director of India Cements Limited, be made personally liable for any acts and if so on what basis for the final report to accuse and for the learned special judge to take cognizance without specifying as to on vicarious liability or personnel liability?

III. Whether the cognizance taken by the learned special judge without specifying as to on vicarious liability or personnel liability, is outcome of non-application of judicial mind and same is otherwise unsustainable for not reflecting any reasons or otherwise and is liable to be quashed?

IV. To what result?

10) **Points I to III :** As points 1 to 3 are interrelated and to avoid repetition by separate dealing, taken up to decide together for sake of convenience.

11) From the writ petition orders directing C.B.I investigation though speak allegations showing quid-pro-quo investments made out of the benefits received by investors/beneficiaries from the decision of the State Government in various forms and M/s.Jagati Publications of the year 2008-09 shows huge unexplained cash credit and huge escalated face

value of shares and it is necessary to ascertain role of individuals/firms/public servants/group of companies Sri Y.S.Jagan Mohana Reddy and the material available supports a thorough probe and investigation in all the aspects into financial misdeeds involving huge magnitude of Government largesse corporate dealings including huge investments as part of quid-pro-quo arrangement for the largesse and benefit obtained by investors -- -- --, the most appropriate agency would be the C.B.I., from C.B.I investigation covered by the charge sheet averments supra, even coming to the role of the petitioner/A-3 as the Vice Chairman and Managing Director of India Cements/A-7 from the material placed reliance in opposing the quash petition of the petitioner, by the respondent-C.B.I, through its Special Public Prosecutor, the material referred supra, in fact rests the case or accusation against the petitioner/A-3, for extending the benefits to the India Cements/A-7 by the State Government and further for the investments made by India Cements/A-7 with some of the Companies of the A-1/Jagan Mohana Reddy, no other than the son of the then Chief Minister, either directly owned atleast majority shares by A-1 or those in which A-1 did not acquire, but for subsequently if at all. It is by saying that there is a quid-pro-quo being culled out therefrom between A-7/India Cements and A-1/Jagan Mohana Reddy. It is in saying the petitioner/A-3 as Vice Chairman and Managing Director/A-7 is liable being privy to the conspiracy for the offence of cheating and also for abetment in conferring illegal benefits which tantamounts to illegal gratification to the then Chief-Minister and his son.

12) As referred supra and at the cost of repetition neither in the two writ petitions pursuant to the direction of which the crime was registered, there is no name of A-3/Srinivasan in the writ

petitions about 73 respondents named among others not named. In the crime to show as accused, but for A-7/India Cements entity if at all at best represented by its Managing Director-cum-Vice Chairman Srinivasan named A-3, there is no name of A-3 Srinivasan as accused in the crime and there is no material from the investigation directly to show his role actively to make him personally liable for the accusation as to any participation or privy for any conspiracy muchless to commit the offence or to abet the offence under Prevention of Corruption Act.

13) Undisputedly, charges are not framed so far in the above calendar case at the post-cognizance stage from the appearance of the accused persons including against the petitioner/A-3 or India Cements/A-7.

14) It is but for contextually to mention that the writ petition supra among the directions of registration of crime to investigate, the direction is specific to protect the genuine investors who made in the State and that might be the reason though in the F.I.R there are more than 73 accused, the final report speaks against only 9 accused persons including A-7/India Cements and the petitioner separately as A-3 being its Vice Chairman and Managing Director leave about other final reports against some others.

15) A-7/India Cements from the material on record relied by both parties in support of their respective contentions, is a private limited company incorporated and in existence since 1946 and A-3 is acting as its Vice Chairman and Managing Director from 15.09.1989 undisputedly. It is also not in dispute that A-7 entity has acquired or taken over some of the cement and other units viz., Coromandel Fertilizers, Raasi Cements etc., and the entity got more than 4000 crores turn over.

16) It is needless to say that the petitioner/A-3 by virtue of his status as Vice Chairman and Managing Director of A-7/India Cements not shown as vicariously liable either under the Prevention of Corruption Act or under the I.P.C or by any other statutory or legal expressions or other legal fiction including on the principle of alterego. The vicarious liability at best that is defined under the Indian Penal Code to be made out is under Sections 34 to 37 or 141 to 149 or 107 to 120 or 120-B I.P.C and under the Prevention of Corruption Act is with reference to Section 120-B and 107 I.P.C and under Section 12 of the Act. It is needless to say for that there must be a specific allegation or attribution either as instigator or abettor or conspirator or person sharing common intention or participant or atleast a member of the assembly formed unlawfully with some common object. Though the final report speaks the accusation under Section 120-B I.P.C for the offence under Section 420 I.P.C and under Section 12 of the Prevention of Corruption Act as referred supra of the gist of the police final report that was taken cognizance, there is nothing at the cost of repetition to say how the petitioner/A-3 being a privy by any specific overt act of any common concert or agreement to say conspirator or abettor. In the absence of showing any meeting of minds from alleged acts of conspiracy to attribute so far as petitioner/A-3, being managing director of A-7, other than by virtue of the status for same by any legal fiction no way made liable if at all any conspiracy between A-7 and A-1 with others if any including any of the officials of the State Government in toeing to A-1, no way makes the petitioner/A-3 personally liable from the settled position of the law of the land as on date undisputedly.

17) Thus, the crux here to answer the quash petition of any

entitlement to quash or not concerned is how far the additional material filed in support of the respective contentions in the quash petition and in the final report taken cognizance with counter opposing the quash petition material points out any role of the petitioner/A-3 to sustain the accusation in the final report that was taken cognizance and if no material, the cognizance taken can be said by judicial non application of mind leave about reasons are required to be given or not though generally the application of mind shall reflect by reasons, even some of the expressions say mere non assigning of reasons will not entitle to quash the cognizance, once the cognizance taken reflects the judicial application of mind. It is also necessary to mention in this regard that in showing the benefits if at all said to have been conferred to A-7/India Cements by the then Government some of the officials acted in privy or there were dereliction of duties in conferring favours to A-7 entity as a quid-pro-quo for the investments made by A-7 with A-1 or any of his controlled or representing entities directly or indirectly. None of the Government Orders or proceedings of the alleged benefits were withdrawn or varied or revised by Government and in fact those were approved including by placing same of which in the Council of Ministers from the very averments in the final report referred supra.

18) Undisputedly India Cements Limited (A-7) acquired the Coromandel cement plant of Kadapa only in 1990 and the cement plant of Cement Corporation of India of Yarraguntla in Kadapa District only in the year 1998 (which are within the Andhra area) and acquired the Visakha Cement Industry of Tandur at Ranga Reddy District in the year 1997 and the Raasi Cement Limited of Nalgonda District in the year 1998 which are within the Telangana area. So far as regards the lease of lands concerned, (i) of

Ac.2.60 cents at Chowdur Mandal, Kadapa District in favour of India Cements Limited (A-7) for a period of 20 years from the date on which the Company was in possession from 1983 and the Chief Commissioner Land Acquisition (CCLA) Government of Andhra Pradesh after examining said proposals of the District Collector, issued orders vide G.O.Ms.No.53, dated 18.01.2001 awarding lease of said land in favour of India Cements Limited (A-7) for 20 years with retrospective effect from 1983 to 2003 for construction of infiltration well with pump house for supply of water to the cement plant at Chilamkur village with a condition of 10% annual lease on market value of Rs.50,000/- per annum and with provision for 20% increase for every 5 years as per the provisions of the Revenue Board sanding order-24. It is very clear that the leases were entered earlier even before India Cements Limited/A-7 acquired the Cement plants. It is only the leases renewed with retrospective effect for the period already under enjoyment without continuation concerned also in generating revenue to the Government without loss that cannot be ignored. It is for the subsequent period, India Cements Limited (A-7) submitted a requisition to the District Collector, Kadapa on 30.06.2003 after expiry of earlier lease period supra for renewal of the lease of said land as long as the operations of the cement plant continues in Chilamkur, stating that the infiltration well built in that land is the only source of water for their plant operations, on 06.02.2006 the District Collector, Kadapa through his letter No.E1/909/2000 submitted proposals to the Government through CCLA for extension of the lease of the Ac.2.60 cents in favour of India Cements Limited (A-7) with a recommendation that the period as prescribed under G.O.Ms.No.1484, dated 15.11.1977 on payment of rent at 10% of the market value of Rs.2,50,000/- per acre per

annum and the CCLA forwarded said proposals by accepting the recommendation and the Revenue Department put up the latest amendment to the lease rules to Finance Department, which in turn returned the file to Revenue Department with remarks to take action as per G.O.Ms.No.1484, dated 15.11.1977 read with G.O.Ms.No.840, dated 14.10.1996. On receipt of the proposal, a circulation note was put by the then Joint Secretary Revenue Department endorsed to consider for approval and placed before the Council of Ministers in the Cabinet meeting held on 30.06.2008 and approved for five years period from 01.07.2003 and would expire on 01.07.2008 vide its resolution No.241/2008, dated 01.07.2008. Sri M.Samuel (A-4)-Principal Secretary, in furtherance of the criminal conspiracy with other accused persons, by abusing his office as a public servant said to have issued orders vide G.O.Ms.No.865, dated 11.07.2008 extending the lease of land in Sy.No.657/2, Ac.2-60 cents of Chowduru Village of Proddatur Mandal in favour of India Cements Limited (A-7), Chilamkur for a period as prescribed under G.O.Ms.No.1484, dated 15.11.1977 read with G.O.Ms.No.840, dated 14.10.1996, thereby giving the lease for 25 years instead of only five years and M/s.India Cements Limited (A-7) was unduly favoured through this and A-7, in furtherance of the above said criminal conspiracy and in quid-pro-quo for favours received, had paid illegal gratification to the tune of Rs.140.00 crores in total, in the guise of investment, in the companies viz., M/s.Raghuram Cements Limited (Rs.95.00 crores), M/s.Jagati Publications Limited (Rs.40.00 crores) and M/s.Carmel Asia Holdings Private Limited (Rs.5.00 Crores), owned by Sri Y.S.Jagan Mohan Reddy (A-1), who was the ultimate beneficiary to the illegal gratification.

19) From the above, there is nothing against A-3 of he

played personal and specific role to make him liable and in the absence of which from his mere status as Managing Director of A-7 cannot be made liable for any of the offences taken cognizance by the learned Special Judge from the transactions supra. It is also important in this context of G.O.Ms.No.1484, dated 15.11.1977 is only applicable to the Telangana Area under Hyderabad Land Revenue Act for uniformity of the leases as it mentions specifically in so far as Andhra area or Andhra region the leases are covered by Revenue Board Standing Orders and in particular B.S.O No.24A. Same is also the position regarding G.O.Ms.No.840 only for Telangana Area. It is important to mention that the prosecution claims from the final report said G.O fixes the maximum 25 years of lease and cannot be extended beyond the period of the lease commenced in the year 1983. The final report speaks the entity was not acquired by A-7/India Cements in 1983 but for later. It is to say indirectly of the lease was continuing even to prior to acquisition of the entity by India Cements. Even otherwise, taken for granted the lease was from the beginning only in favour of the India Cements, a combined reading of the two G.O.Ms.Nos.1484 and 840 clearly visualizes that it mentioned lease initially for five years and there is no outer limit to the maximum period of 25 years or it cannot be said more than 25 years, even to find fault for asking for 75 years or even by counting from the original commencement of the lease allegedly in the year 1983, extended beyond 25 years by the original lease initially for five years or the extension for further periods and the total period if counted comes beyond 25 years. In fact the Board Standing Orders 24 speaks with proforma of lease even coming to G.O.Ms.No.53, the same referring to B.S.O.No.24 for the lease rightly. Even coming to G.O.ms.No.865, dated 11.07.2008, same

amended by G.O.Ms.No.100®, dated 02.02.2010, it also reflects B.S.O 24 and amended from five years to 25 years or so. As referred supra in none of the proceedings or material, there is anything to reflect any role or petitioner/A-3 specifically as privy but for to say by virtue of his status in A-7/India Cements which no way makes him vicariously liable for no statutory provision or legal fiction including on the principal of alterago.

20) **So far as the water distribution or allotment of additional water component to any of the entities that were acquired by IC/A-7 concerned and making of the provision concerned,** M/s.Visaka Cement Industries Limited was undisputedly amalgamated with India Cements Limited (A-7) only in the year 2007. In fact long prior to it, M/s.Visaka Cement Industries Limited was given permission undisputedly to draw 10 mcft of water vide G.O.Ms.No.244 dated 19.12.1996, though the Government`s order did not mention the period of permission and the rate of water royalty to be fixed by the Government. The India Cements Limited (A-7) applied only on 10.03.2008 for additional allocation of 13 Mcft water from River Kagna in addition to the already allocated 10 Mcft water to M/s.Visaka Cements. The Chief Engineer, Minor Irrigation forwarded the request for obtaining Government Orders, from Special Officer(Technical), Irrigation & Command Area Development (I&CAD) Department raised the following points to be ascertained as to the proposed enhancement will not affect Lower & Upper Riparian Rights and does not exceed the restriction of 6 TMC, period of permission to be granted, whether the former company had paid royalty charges up-to-date and remarks of CE, ISWR on the proposal, the matter was needed to be referred to Inter State Water Resources (ISWR), terms and conditions of drawl of water in the earlier G.O.Ms.No.244 namely

period and royalty fixed, however Sri Adithyanath Das (A-5) in furtherance of the criminal conspiracy, by breaching the trust reposed in him and by abuse of his official position, without referring the matter of allocation of water from Kagna River to Inter State Water Resources, only referred the file to Sri Lava Kusha Reddy, Advisor (Telangana), who made a favourable observation though the Secretariat Business Rules defined no role for the advisers. Sri Adithyanath Das (A-5), Secretary, Irrigation Department with the favourable noting from Adviser, overlooked the objections raised by the Special Officer (Technical), gave his assent for allocation of water to M/s. India Cements Limited (A-7). The proposal was put up to the Minister and there was a final approval of the then Chief Minister resulted in issuing G.O.Ms.No.94, I&CAD dated 12.08.2009. It was in saying conspiracy therein. For that there is nothing to attribute against the petitioner/A3-Srinivasan by any whisper much less specific and substantial allegation of any of his role. The earlier non-payment of royalty by Visakha Cements was for the period prior to amalgamation with India Cements Limited if at all owing water royalty since May, 1997, that cannot be a ground for attributing conspiracy. Similarly coming to the India Cements Limited (A-7) acquired in the year 1998, Raasi Cement Factory at Wazirabad; undisputedly the Raasi Cement was given permission to draw 3 lakh gallons of water from Krishna River by G.O.Ms.No.408 dated 21.06.1979 issued by Irrigation & Power (IRR.III) Department. What all later continued was in saying Sri R.Nagi Reddy, Senior Personal Manager of India Cements Limited (A-7), Wazirabad entered into Article of Agreement for permission to draw 3 lakh gallons of water per day from Krishna River for cement factory for the period from 20.09.2007 to 19.09.2008 for an amount of

Rs.1,62,000/- for 12 months and Sri P.R.K.Raju, Chief Manager of India Cements Limited (A-7) vide letter dated 10.12.2007 addressed to the Executive Engineer, Irrigation Department, Nalgonda stating that they had taken permission to draw 3 lakh gallons of water per day from Krishna River earlier from Irrigation Department vide letter No.C/1, dated 12.10.1982 and that they were expanding their plant and require additional quantity of water to an extent of 7 lakhs gallons per day. Even therefrom, it is not A3-Srinivasan but local officers that were party to above agreement, based on which, the Superintendent Engineer requested Chief Engineer to obtain permission from the Government by alleged creation of agreement dated 20.09.2007 for a period of one year. The Executive Engineer, Nalgonda, recommended the request of India Cements Limited (A-7) for enhancement of water to a tune of 10 lakh gallons per day by letter dated 23.02.2008 and the Superintendent Engineer, Irrigation & Command Area Development, Irrigation Circle, Hyderabad by letter No.DEE-I/TS-2/7152, dated 12.03.2008 addressed to the Chief Engineer, Minor Irrigation, Hyderabad requesting the Chief Engineer to obtain necessary permission from the Government and the Chief Engineer, Minor Irrigation addressed a letter No.DCE(MI)/OT3-T4/India Cements/ 2008, dated 28.03.2008 to the Principal Secretary, Irrigation & CAD, Department, Hyderabad stating that permission was accorded to India Cements Limited (A-7) formerly M/s.Raasi Cement to draw water from Krishna River, downstream of Nagarjunasagar Dam near Wazirabad village at the rate of 3 lakh gallons per day as per G.O.Ms.No.408, Irrigation & Power (Irrigation-II) Department dated 21.06.1979 and are paying royalty and for additional drawl from 3 lakh gallons to 10 lakh gallons per day sought from expansion of the cement plant. Same

was circulated with note put up in C.No.10548/Reforms/2008 on 03.04.2008 and the Special Officer (Technical) observed as period is not specified, remarks of the E in C (irrigation) and the CE/ISWR on sparing of 10 lakh gallons per day to the company are to be obtained subject to confirmation of the expansion of the cement plant. A-5-Adityanathdas issued a memo vide No.10548/Reforms/2008, dated 29.04.2008 to the Engineer-in-Chief/Chief Engineer, Inter State Water Resources to offer their remarks on sparing 10 lakh gallons of water per day to India Cements Limited (A-7) and send a report in the matter at the earliest and Dr.P.Rama Raju, Chief Engineer, Inter State Water Resources, Hyderabad, vide letter No.RCWR/DD(K)/7527/89, Vol.III, dated 23.05.2008 mentioned that as per requirement sought by the firm is relatively small, the proposal may be considered for giving permission duly accounting for the above quantity against the savings from the utilizations within the framework of the Bachawat Tribunal allocations. It was therefrom on 25.06.2008 the then Minister (M & MI) Sri Ponnala Lakshmaiah agreed to the proposal and finally the then Chief Minister late Sri Y.S.Rajasekhara Reddy, in furtherance of criminal conspiracy accorded his assent on 03.07.2008, in quid-pro-quo to the illegal gratification paid by India Cements Limited (A-7) and A-5 by abusing his official position as a public servant issued G.O.Ms. No.146, dated 22.07.2008 according permission to draw 10 lakh gallons of total quantity of water per day including 3 lakh gallons of water already permitted from Krishna River unduly favouring the firm, by suppressing the facts pertaining to the terms and conditions mentioned in the earlier G.O.Ms.No.408, during the period 2007 to 2008 apart from India Cements Limited (A-7) other companies viz., M/s.Deccan Cements Limited, Hyderabad,

M/s.Madhucon Sugar and Power Industries, M/s.Maruti Ispat and Energy Private Limited had also applied for allocation of water and whose proposals kept pending as there was quid-pro-quo investments by India Cements Limited (A-7) into the companies of Sri Y.S.Jagan Mohan Reddy out of 12,50,000 preference shares at a premium of Rs.110/- for a sum of Rs.15,00,00,000/-, India Cements Limited (A-7) invested Rs.80.31 crores at a premium of Rs.1440/- with no explanation available in the minutes of the meeting or the statements recorded from top management of the company with regard to the necessity to increase the premium from Rs.110/- to Rs.1440/- (sudden raise of almost 12 times within a small time span of 9 to 10 months), except a simple statement that it is a “bouquet of investments” and India Cements Limited (A-7) sold the shares at Rs.671/- to M/s.PARFICIM, SAS, FRANCE on 14.04.2010 undergoing a loss of Rs.26,85,50,489/- Even therefrom in saying the investments into M/s.Raghuram Cements Limited, M/s.Bharathi Cement Corporation Limited by M/s.India Cements Limited (A-7) was nothing but a quid-pro-quo investment, there is nothing of any specific role of A3-Petitioner, but for saying his status as Managing Director of India Cements Ltd, including in regard to in April, 2010 M/s.Pani & Associates, Bangalore evaluated the share price of M/s.Raghuram Cement Corporation Private Limited at Rs.221.17 Ps per share and the Board Resolution of India Cements Limited (A-7) dated 14.04.2010 resolved to invest up to Rs.125 crores by way of Inter Corporate Loans/Advance/Investment in M/s.Bharathi Cement Group whereas on the same day India Cements Limited (A-7) had sold their stake 1803973 shares of Rs.10/-each in M/s.Bharathi Cements Corporation Limited at a total price of Rs.121.00 crores to M/s.PARFICIM, SAS, FRANCE. Thus, there is no any specific

averment from the above of any role of the petitioner/A3-Srinivasan to make him liable.

21) Apart from it, in opposing to the accusing of Sri Ponnala Lakshmaiah in the water allocation as concerned Minister, being privy to the quid-pro-quo's conferred to A-1 by A-1 abusing his position as son of the then Chief Minister and said Lakshmaiah toed to the requirement or dictates of the then Chief Minister or his son concerned, the contents of the affidavit running in about 42 paras in about 28 pages submitted by Sri Ponnala Lakshmaiah before the apex Court in S.L.P. No.1609 of 2012 where the C.B.I was undisputedly arrayed as 15th respondent, reads particularly from Para No.27 that the Government Orders were issued in the public interest and there is no criminal conspiracy with so called beneficiaries of said Government Orders and G.O.ms.No.146, dated 22.07.2008 pertains to Krishna River water and G.O.Ms.No.94 dated 12.08.2009 pertains to Kagna river were issued by the Department of Major and Medium Irrigation by examined by various functionaries connected and concerned with the issue and after following due process and under A.P. Business Rules and Secretariat instructions and the allegation of water to India Cements Limited thus was only in public interest following the due process. The affidavit further reads the industrial policy of the State mandates that 10% of the water will be reserved from existing and future reservoirs for industrial use which policy is in vogue since the year 2001 and as public interest will be better served more by timely utilization of water as it not only would accrue revenue through royalty to the Government but also facilitates industrial development and spurring economic growth besides employment generation and state water policy puts industrial use of water at third priority after drinking water and

irrigation with subsidized price and the only way commercial use can be made of water is thereby through industrial use in order to subsidize at least the O & M cost of said sources and if water is not used in the Run of the river then it assumes a perishable nature as it goes as waste to the sea or evaporates and it is from the field officers examined of availability interstate issues, upper and lower riparian rights, Run of the water and sources like run of the water or reservoir point of view, the recommendations were sent to the Government which examined the availability and the industrial use from the policy in issuing the G.Os concerned, it also made clear from para Nos.32 to 36 that the quantity required by India Cements Limited was relatively small even from the remarks of Chief Engineer, ISWR submitted to the Memo of Irrigation and CAD (PW-Reforms), preceded by recommendation of the Chief Engineer of sufficient quality of water available that also from report of Executive Engineer and Superintending Engineers concerned and what was accorded is from the savings from utilization within framework of Bachawat Tribunal allocations and within the water and industrial policy of the State pursuant to the Government Orders in vogue, leave about before acquisition by India Cements Limited, the earlier entities were even allotted the Water and the bonafide actions or conduct do not attract any liability under Prevention of Corruption Act muchless as misconduct or privy or abetment.

22) So far as the investment referred supra, in relation investment in Raghuram Cements of Rs.90.00 Crores limit, there was minutes of the meeting of the Board of Directors of India Cements held on 16.01.2008 and similarly in relation to the further investment in Bharathi Cements of what already invested in

Raghuram Cements before its acquisition by Bharathi Cements, it was stated in addition to the Rs.90.00 crores limit as already approved, approved for further investment of Rs.40.00 crores limit and there was minutes of the meeting of the Board of Directors of India Cements held on 28.10.2009 in this regard and also for sale of the equity shares in Bharathi Cements, there was minutes of the meeting of the Board of Directors of India Cements held on 14.04.2010.

23) Once such is the case, so far as the water allocation or land lease and from the investments made by India Cements with any of the entities directly or indirectly under the control of A-1, referred above, there is nothing to make the petitioner/A-3 liable. There remains to consider any privy of petitioner/A-3 from any personal loan for five years by petitioner/A-3 to the A-1, Jagan Mohana Reddy of Rs.1.35 crores by three cheques of Punjab National Bank dated 11.03.2005. How it could be made the petitioner/A-3 is privy of any conspiracy for such lending, with A-1 undisputedly India Cements got a sister concern as an investment entity with its financial resources to invest. Even it lent any amounts; it is part of its business activity for very purpose it is in existence. If at all such investment by A-7 entity and its sister concern with A-1, to make with liability for alleged cheating it must be to cheat the shareholders or Directors with investment for no proper returns and same to assume not even with any complaint by any shareholders or directors or debenture holders or others and when such is the case that may at best serve as one of the links or circumstances to say any privy of quid-pro-quo between A-1 and A-7 and nothing to make A-3 liable personally. Even coming to the investment of Rs.5.00 crores each by three cheques dated 02.02.2007, 20.04.2007 and 08.05.2007, by India Cements in

Sandur power and R.R.Global concerned, the main accusation against A-7/India Cements made the investments and it is A-3/petitioner acting as its Managing Director and for the said investments there were no prior board resolutions of A-7 or its sister concern as the case may be concerned, in fact there is a board resolution dated 16.01.2008, which is no doubt subsequently some months later to the respective three cheques. Once such is the case, a lack of prior board resolution for the investment, when even subsequently a board resolution ratified the investment as part of the business activity in investing, therefrom nothing to attribute so far as against the petitioner/A-3 concerned personally, that too when the Board resolution is there passed confirming the investment by its acceptance and not by opposing or questioning. Even coming to the investments made by India Cements of purchase of shares of 12,50,000 at purchase value of Rs.120/- per share in Raghuram Cements Limited of Rs.15.00 Crores covered by Board Resolution dated 16.01.2008 and the share certificates were dated 26.02.2008, similarly 2,09,147 shares at share value of Rs.1,450/- each for a total of Rs.30,32,63,150/- covered by Board Resolution of even date in Bharath Cements Corporation Limited and the share certificates were dated 14.08.2008. Needless to say again in Bharathi Cements Corporation Limited from 3,44,826/- shares with share value of Rs.1,450/- total value Rs.49,99,97,700/- as per Board Resolutions dated 28.10.2009 and 05.03.2010 and the share certificates were dated 15.03.2010, leave about name of Raghuram cement subsequently changed as Bharathi Cements is either controlled by A-1 or by his wife Smt.Bharathi as the case may be from the contentions, at average the shares were purchased at Rs.528.42 Ps. And sold at Rs.671.20 Ps by India Cements Limited with a private and there is

a board resolution filed dated 14.04.2010. Can it be said there from A-3 is privy to any conspiracy with A-1 under the principle of alterego or under the guise of quid-pro-quo between A-7/India Cements and A-1/Jagan Mohana Reddy.

24) It is needless to say from the share subscription agreements by and between Raghuram Cements and India Cements, the agreement submitted by the special standing counsel for C.B.I in the course of hearing, there is nothing to show the petitioner/A-3 is a signatory to it. It was signed for Raghuram Cements by its Director and there is no signature on behalf of India Cements but for mentioning only the name of the petitioner N.Srinivasan as in the capacity of Managing Director of India Cements and not even personally muchless his signature anywhere to make him liable, there from so also in reference to Bharathi Cements for the investments referred supra. Apart from it, the investment with M/s.Raghuram Cements of about Rs.95.32 Crores later sold for Rs.121.00 crores and same is also subjected to income tax and capital gains tax as shown by the counsel for the quash petitioner of the claim of genuine investment with returns to it. Further, on taken preferential shares as per the company law particularly with reference to Section 82 to 87 in Chapter IV of the Act, the same can be converted into equity shares besides preference shares got priority in all respects of dividend and preference to claim if wound up though there is no voting rights like in equity shares and the Companies Act Section 85 clearly speaks two types of shares one is preferential and the other is only equity and the contention of Board resolution dated 16.01.2008 is void for non-application of exemption and non-obtaining of prior consent under Section 372-A(2) of the Act does not arise in the case on hand for the investment not impugned by

any of the shareholders or Directors of the India Cements apart from any lapse of the Company, the Company is already arrayed as accused and there is nothing to show how A-3 is personally liable in the absence of his any active role with specific averments and material in showing the same. In fact, there was earlier Board resolution even generally dated 20.11.1996 apart from specific Board resolution dated 28.10.2009 in respect of Carmel Asia Holdings Limited Rs.5.00 Crores, Sandur power of Rs.8.50 Crores and R.R. Global of Rs.12.00 Crores and for Jagati Publications of Rs.40.00 Crores investment respectively authorizing to make the corporate investments up to Rs.100.00 Crores which the C.B.I could not dispute. In fact, once these are the investments made by India Cements and nothing personally by petitioner/A-3 Srinivasan to make him personally liable in the absence of showing how personally privy or to make him liable. It is also to mention the investments in Raghuram Cements and Bharti Cements in the years 2008 and 2010 showing the purchase on average at Rs.528.42 ps. and sold on an average at Rs.671.20 Ps. of each share, but for on comparison of investment in Raghuram Cements in February, 2008 at Rs.120/- per share, whereas in Bharti Cements in August, 2008 and March, 2010 at Rs.14.50 per share. Even coming to the intercorporate deposits supra in Sandur and R.R.Global, so far as Sandur concerned of the year 2007 June of Rs.8.50 crores there was a profit of Rs.56,23,042/- from the deposits of what was returned and in R.R.Global of Rs.13.00 crores in November, 2007 there is a profit of Rs.32,63,855/- from what was returned leave about alleged loan given by India Cements to A-1 in March, 2005 under dispute of Rs.1.35 crores shown returned of Rs.1.87 crores with profit of Rs.52,08,424/-. No doubt, it is not the profit or loss that is

criterion but the investments made were in quid-pro-quo rather by way of giving otherwise a gratification for the water and land allotment on lease to be seen. There so far as water allotment concerned, there could be nothing to show what was allotted is beyond the 10% allocation of the industrial purpose out of available resource and so far as land lease concerned, it was even subsistence prior to the acquisition of the entities by India Cements to it that what was continued by renewal showing not by violation of any of the Board Standing Orders of Andhra Area and relevant G.Os and circular orders of Telangana area and if at all any violation and any benefit therefrom by India Cements, India Cements is already facing accusation as A-7 for nothing to show how A-3 is privy and personally liable by any specific acts and in the absence of which can he be made liable by virtue of his status as Chairman-cum-Managing Director of India Cements. Before coming to discuss the legal position with further facts in this regard even at the cost of repetition subject to context requires, now coming to the sustainability of quash petition from the expressions relied and referred supra and those relied being referred hereunder.

25) From above facts, now coming to the scope of Section 482 CrPC and whether the same can be invoked in present facts to quash the proceedings, in ***R.Kalyani V. Janak C.Mehta***^[5], it was held that for invoking the inherent power in discharge of paramount duties by the High Court, it is to see a person apparently is not subjected to persecution and humiliation on the basis of wholly untenable complaint/report. In ***Sunitha Jain V. Pavan Kumar Jain***^[6] at Para No.39 it was held that, inherent power of High Court would not embark upon an enquiry as to

whether evidence is reliable or not which is a function of trial Magistrate to appreciate as to the accusation is not sustained or not ultimately. It was also held in ***State of Orissa V. Saroj Kumar Sahu***^[7] para Nos.11 and 14 that though no hard and fast rule can be laid down in exercise of the extraordinary jurisdiction of the High Court, but for to say it is not permissible for the High Court in exercise of the jurisdiction to act as if it was a trial Court but for prima facie to satisfy about existence of sufficient ground of accusation for proceeding or not and to evaluate the material for the limited purpose with reference to documents.

26) In ***Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre & Ors***^[8] it was held at para No.7 that:

“The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

27) In ***Punjab National Bank V. Surender Prasad Sinha***^[9] it was held in para No.6 that:

“It is also salutary to note that judicial process should not be an instrument of oppression or needles harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Migistracy to find whether the concerned accused should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court

would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case of harass them for vendetta.”

28) However, it is the contention of the learned counsel for C.B.I that this is not a fit case to quash the proceedings invoking the inherent powers under Section 482 CrPC. It is further contended that the Petitioner/A3 can be made liable also by virtue of his status even under Company Law as per Sections 5 and 291, as for the offences under the Companies Act, the Managing Director of the Company can be prosecuted by virtue of his position. For more clarity on the scope of the provisions same incorporated below:

“SECTION 5. MEANING OF "OFFICER WHO IS IN DEFAULT: For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

- a) the managing director or managing directors ;
- b) the whole-time director or whole-time directors ;
- c) the manager ;
- d) the secretary ;
- e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ;
- f) any person charged by the Board with the responsibility of complying with that provision:
Provided that the person so charged has given his consent in this behalf to the Board;
- g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors

who may be specified by the Board in this behalf or where no director is so specified, all the directors :

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

“SECTION 291. GENERAL POWERS OF BOARD: (1)

Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting:

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.”

29) Both the Sections speak in relation to the provisions of the Companies Act and not for fastening any legal fiction of vicarious liability to fasten by virtue of status for any IPC offences or offences under any other law. In fact in the case on hand there is no offence under the Companies Act that could be made out muchless to invoke the provision, in the absence of its showing same can be extended to I.P.C offences and offences of corruption also, if involved with any Company offence.

30) Coming to the further contention of the learned counsel for C.B.I to make A3/Petitioner liable by virtue of his status, he placed reliance upon the three Judge Bench expression in

R.K.Dalmia V. Delhi Administration^[10]. In that expression, it was observed that a Director of a Company is not only an agent but is in the possession of a trustee and for that placed reliance on the expression in ***People Bank V. Hari Kishanlal***^[11] holding both Dalmia and Chokkani therefore had dominion over the assests of the Insurance Company, as in ***People's Bank*** it was observed ***Lal Hari Kishan*** is a trustee of all the monies in the Bank. In Palmar's Company Law 20th Edn., at page No.517 it is stated, Directors are not only agents but they are in same sense and to some extent trustees are in the possession of trustees and ***Lord Selborne*** in ***G.E.R7 Company V. Turner***^[12] observed that the Directors are the mere trustees or agents of the Company and trustees of the Company money and principal agent in the transaction which they enter into or on behalf of the Company and concluded in ***R.K.Dalmia*** supra ultimately that ***Dalmia Chukkani*** were entrusted with dominion over the funds of Bharat Insurance Company in the banks. Said R.K.Dalmia placed reliance by two Judge Bench in ***Shiva Narain Laxman V. State of Maharashtra***^[13] where referring to Section 409 I.P.C of the Director of a Company by placed reliance on ***R.K.Dalmia*** supra held that a Director is not only an agent but is in the position of trustee and being a trustee of the assets which has come into his hands, as dominion and control over the same and so far as criminal conspiracy concerned observed in ***Shiva Narain*** supra that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same and the offence can be only proved largely from the inferences to be drawn from acts or illegal omissions committed by the conspirator in

pursuance of a common design. Though the principle laid down in the expressions of ***R.K.Dalmia*** and ***Shiva Narain*** no way in dispute, the allegations therein is for withered away the investments and deposits in the Company while they were Directors or Managing Directors, depriving the depositors benefit. Here in the case on hand so far as A-3/Srinivasan concerned it is not the case of he cheated any of his A-7 company directors or investors or shareholders or depositors, for the allegation of A-7 company invested with A-1 or the entities under the control of A-1 to have same benefit of A-7 through father of A-1 being the then Chief Minister of government among the resources by allotment of Government amount on lease or the allocation of the river waters, in quid-pro-quo to the investments made by A-7 with A-1's controlled entities. If such is the case, the allegation is against A-7 for quid-pro-quo and how A-3 can be made personally liable in the absence of showing by any statutory legal fiction imputing vicarious liability from his position of Vice Chairman and Managing Director that is exactly what is laid down by the expressions.

31) Further even coming to any personnel liability concerned besides what is discussed above, the material on record supra no way makes out any offence against Petitioner/A3 to make him personally liable for the offence of cheating and criminal conspiracy or abatement, muchless for the offence under Section 12 of the Prevention of Corruption Act, as there is no material to sustain any accusation in the police final report with any stray sentence without basis. None of the material discussed supra is suffice to say A-3/petitioner is personally liable from his status as Vice Chairman and Managing Director of India Cements Limited for no complaint muchless any of Directors or shareholders or debenture holders of he cheated India Cements or the share

holders or Directors etc., by privy with A-1 or with any others.

The alleged lapse of investments prior to Board resolutions ratifying and once such is the case any imperfection or dereliction no way sufficient to implicate in a criminal offence by attributing *mens rea* to make the petitioner/A-3 personally liable and there is nothing to show or attribute any dishonest or fraudulent intentions under Sections 24 and 25 I.P.C or wrongful loss or wrongful gain there from as held by the Apex Court in ***Mohd.Ibrahim V. State of Bihar***^[14] particularly at para Nos.24 to 28 by relying upon earlier expressions.

32) In this regard, regarding the basic ingredients required to satisfy for attributing criminal conspiracy, the Apex Court in ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd***^[15] categorically held that *merely on the basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy.* Further the Constitution Bench expression of the Apex Court in ***Bhagwan Swarup Lal Bishan Lal V. State of Maharashtra***^[16] observed that *the offence of conspiracy has to be established like any other offence* but for Section 10 of the Indian Evidence Act introduces the doctrine of agency subject to conditions laid therein are satisfied for act done by one is admissible against co-conspirators. But this Section will come into play only when the Court is satisfied that there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or the actionable wrong that is to say there should be a prima facie evidence that a person was party to the conspiracy before his acts can be used against his co-

conspirators.

33) Coming to the offence of cheating, in **V.P.Srivastava V. Indian Explosives Limited**^[17] referring to several expressions including **Ram Jas V. State of U.P.**^[18], **Medchal Chemicals & Pharma (P) Limited V. Biological E. Ltd**^[19] and **Hira Lal Hari Lal Bhagwati V. C.B.I.**^[20] particularly at paras 20 to 25 held that, it is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making representation or promise and such a culpable intention right at the time of entering into the agreement must be established by showing from facts and that cannot be even be presumed including from any failure to keep his promise subsequently or for mere dereliction of any duty or any omission or lapse. In **Anil Mahajan V. Bhor Industries Limited**^[21] where it is held that to attract the offence of cheating, fraudulent and dishonest intention must be shown to be existing from the inception of the transaction and failure to keep promise at a subsequent stage will attract no offence and mere use of expression cheating in the complaint is of no consequence for no basis to the averment of deciding cheating or fraudulent intention of accused at the time of entering into the transactions. In the other expression of the Apex Court in **Uma Shanker Gopalika V. State of Bihar**^[22], it was held that to constitute the offence of cheating, intention to cheat was shown existing from the inception and if such intention developed later that would not amount to cheating. In the other expression of the Apex Court in **Ram Jas V. State of U.P.**^[23] also it is laid down on the ingredients required

for cheating that, there should be fraudulent or dishonest inducement by deceiving from the inception which is lagging to say no offence made out. The other three Judges Bench expression of the Apex Court in ***Ajay Mitra V. State of M.P.***^[24] it was held that *mensrea* of inducing the persons deceived to deliver property is essential to constitute offence of cheating and in ultimately quashing the F.I.R therein referred the other expressions of ***A.L.Panian Shanmugam V. State of Andhra Pradesh***^[25] of mercantile transactions consignments are delivered on credit and very often the payment cannot be made on due date that does not attract penal consequences. In ***Vimala V. Delhi Administration***^[26] and ***State of U.P V. Ranjit Singh***^[27] it was held further that to constitute the offence of Section 420 I.P.C there should not only the cheating but as a consequence of such cheating the accused should have been dishonestly induced the person deceived and the complaint must be by the person deceived or on his behalf. The criminal culpability to attract for certain specified acts alleged to have been done fraudulently or dishonestly to constitute an offence it cannot be assumed that the person committed the offence merely by alleging or showing that he acted fraudulently unless such a fraudulent act is specifically made an offence under I.P.C or some other law. The expression 'defraud' involves two elements of deceit and injury to the person deceived and such injury is something other than economic loss and it will include any harm caused to any person in body, mind or reputation or such others and it is a non-economic or non-pecuniary loss and the benefit or advantage to the deceiver will almost always cause loss of detriment to the deceived.

34) Even from the expressions as can be seen from the

affidavit of Sri Ponnala Lakshmaiah that was approved in exonerating him from the water allocation, by such water allocation in favour of M/s.India Cements/A-7, there is nothing to say A-3/petitioner by mere Managing Director and Vice President of A-7 supra, is privy to any loss by such allocation to the Government, for no loss to the Government from such allocation within the industrial policy and within the limits, so also by land lease extensions in favour of M/s.India Cements/A-7 there is nothing to say A-3/petitioner by mere Managing Director and Vice President of A-7 supra, is privy to any loss by such lease to the Government within the industrial policy and within the limits. By investments with A-1 by A-7 supra, there is nothing to say A-3/petitioner by mere Managing Director and Vice President of A-7 supra, is privy to any loss by such to the Company and its shareholders or investors, for in fact there were resolutions if not before at least by ratifying the investments made by A-7 supra. Further there is nothing to show the Petitioner /A3 is the instigator or abettor to any of the alleged offence committed by A1 or others to make liable for the offence under Section 12 of the P.C.Act as referred supra from the material on record.

35) Coming even to the legal position till date on Vicarious liability, in ***R.Kalyani V. Janak C.Mehta***^[28] it was held that vicarious liability can be fastened only by reason of a conferment by a statute and not otherwise, and for said purpose a legal fiction has to be created thereby for the I.P.C offences of cheating and forgery or breach of trust of the respondents charged in individual capacity in the absence of showing how personally liable, referring to several expressions and upholding the F.I.R proceedings quashed by the High Court, by the Apex Court for no interference.

36) In ***S.K.Alagh Vs. Stat of U.P.***^[29] it was held that vicarious liability in I.P.C offences does not cast on the party not directly charged for commission of offence unless specifically provided there for like under Sections 34 or 149 I.P.C etc., The relevant paras 20&21 read that:

“20. Indian Penal Code save and except some provisions specifically providing there for, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. A criminal breach of trust is an offence committed by a person to whom the property is entrusted. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically there for. In the absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself, as held in *Sabitha Rama Murthy V. R.B.S.Channabasavaradha*^[30] .

21. We may, in this regard, notice that the provisions of the Essential Commodities Act, Negotiable Instruments Act, Employees' Provident Fund (Miscellaneous Provision) Act, 1952 etc. have created such vicarious liability. It is interesting to note that Section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to Section 405 of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Where a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company.....See Maksud Saiyed v. State of Gujarat”.

37) Apart from the above in ***Maksood Saiyed Vs. State of***

Gujarat^[31], which not only deals with requirement of judicial application of mind even to refer a private complaint for police investigation under Section 156(3) CrPC, but also on the principle of ***alter-ego*** of no vicarious liability in IPC offences on mere status or holding office by persons of an entity, without specific allegations in the complaint to entertain for referring to police for investigation or to record sworn statements as pre-cognizance enquiry to take cognizance or not or even on police final report/charge sheet to take cognizance, as the case maybe, as to how they or any of them individually liable and on what basis.

38) For that it also referred on the principle of ***alter-ego*** of no vicarious liability in IPC offences, the earlier expression of Apex Court in ***Saroj Kumar Poddar Vs. State***^[32], that placed reliance on ***Everest Advertising Private Limited Vs. State Government of NCT of Delhi***^[33] and ***S.M.S. Pharmaceuticals Limited Vs. Neeta Bhalla***^[34] in observing “The Penal Code does not contain any provision for attaching vicarious liability on the part of Managing Director or Director of a Company when the accused is the company. The learned Magistrate did not pose unto himself the correct question as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion of the quash petitioners are personally liable for any offence. The bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Even for the said purpose to fix vicarious liability from a statutory provision, it is obligatory on the part of the complainant to make requisite

allegations which would attract the provisions constituting vicarious liability”.

39) This Court in **Pepsi Foods Limited Vs. Special Judicial Magistrate** ^[35] at para-28 held that summoning of accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have criminal law set into motion. The order of Magistrate summoning the accused must reflect that he had applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations in the complaint and evidence both oral and documentary in support of thereof and to see would that be sufficient for the Complainant to succeed in bringing charge the home to accused.

40) It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Then the learned Magistrate in our opinion should have kept said principle in the mind and thereby held no merits in the appeal impugning the order of the High Court to quash the proceedings.

41) Leave it as it is, so far as the accused other than the entities concerned, from the expressions more particularly from **Maksood Sayeed** and **S.M.S. Pharmaceuticals** supra, law is very clear on the principle of **alter-ego**. Further, in **Keki Hormusji Gharda V. Mehervan Rustom Irani** ^[36] it was held at para17 that:

“The Indian Penal code, save and except some matters does not contemplate any vicarious liability on the part a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions

of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company”.

42) In fact in the three Judges bench expression in ***Standard Chartered Bank V. Director of Enforcement***^[37], it was held that a Company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment, though not expressed any opinion on the question whether a Corporation could be attributed with requisite Mensrea to prove the guilt, the same is later clarified by the subsequent three Judge bench expression in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.***^[38] of a Corporation could be attributed with requisite mensrea to prove the guilt and same is reiterated in several later expressions including in ***National Small Industries Corporation V. Harmeet Singh***^[39] and subsequent expressions following it and mainly in ***Iridium India Telecom Ltd. v. Motorola Inc***^[40] referring to the several expressions of the Apex Court and of American and England Courts in paras 59 to 64 of the expression page Nos.98 to 100 in nutshell that a Company in many ways be like a human body they have a brain and nerve centre which controls what they do. Some of the people in the Company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent directing the mind and will of the Company and control what they

do. The state of mind of these managers is the state of mind of the Company and is treated the law as such. The fault of the manager will be the personal fault of the Company. The knowledge and intention must be imputed to the body corporate. It was concluded therefrom by referring to **Standard Chartered Bank** (para No.6) supra of a Company is liable to be prosecuted and punished for criminal offences in deviation to the earlier authorities in India of Corporations cannot commit a crime, for generally accepted modern rule is that except for such crime as a corporation is held incapable of committing by reason of the fact that they involve personally with malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agent. The criminal intent of the **alter-ego** of the Company that is the personnel group of persons that guide, the business of the Company would be imputed to the Company/corporation. It was the conclusion in **S.M.S Pharmaceuticals** and **Iridium** supra that was again followed in the latest three Judge Bench expression of the Apex Court in **Sunil Bharti Mittal Vs.CBI**^[41]. It was observed in **Sunil Bharti Mittal** supra that the corporate entity, an artificial person acts through its Officers, Directors, Managing Director, Chairman etc, if such fact constitutes an offence involving Mensrea, it would normally be evident and action of that individual who would act on behalf of the Company in particular in relation to criminal conspiracy. However, the cordial principle of criminal jurisprudence is that there is no vicarious liability unless the statute specifically provides so. An individual who has perpetrated the commission of an offence on behalf of a Company can be made as an accused along with the Company, if there is sufficient material on his active role. Second situation of knowledge it may

be implicated is in those cases where statutory regime itself attracts the doctrine of vicarious liability by specifically incorporating by such a provision. It was held referring to **Maharashtra State Electricity Distribution Co. Ltd** *supra* that merely on the basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy.

43) It was held further referring to the Section 141 of N.I.Act in particular as an example at para No.44 of ***Sunil Bharti Mittal*** *supra* and also from the expression of the Apex Court in ***Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd***^[42] that the group of persons that guide the business of the company if the criminal intent that would be imputed to the body corporate and in this back drop Section 141 of the N.I.Act has to be understood. Such a position is therefore because of statutory intendment making it a deemed fiction. In ***Sunil Bharti Mittal*** *supra* it also referred the observations in the three Judge Bench expression of the Apex Court in ***S.M.S.Pharmaceuticals*** *supra* at para No.8 that there is no universal rule that a Director of a Company is in-charge of its every day affairs. It all depends upon the respective roles assigned. A company have managers or secretaries for different Departments and may have more than one Manager or Secretary. In ***Aneeta Hada*** *supra* it is observed with reference to Section 141 of N.I.Act that the deeming fiction therein makes the functionaries of the Companies to be liable as its own signification. In fact before ***Aneeta Hada, S.M.S. Pharmaceuticals, Standard Chartered Bank*** and ***Iridium India*** *supra*, some of which referred in ***Sunil Bharti Mittal supra***, the expression of the Apex Court in

Anil Hada V. India Accrelic Limited^[43] speaks in a case under Section 141 of the N.I.Act that even the Company or Corporation not impleaded as accused the proceedings against a Director can be issued. The same was later held as not good law in **Aneeta Hada (I) V. Godfather Travels & Tours (P) Ltd.**^[44] saying without the Company impleaded as accused on the principle of **Lex non cogit ad impossibilia** and from that **legal snag** if the Company is not made accused, the proceedings against others cannot be survived. The said principle of **Aneeta Hada** (1) then came before three Judge bench expression in **Aneeta Hada** (2) supra, where the **Anil Hada** supra is over ruled and **Aneeta Hada** (1) supra is affirmed in saying at paras 51 to 59 the relevancy of which reads the decision in **Anil Hada** has to be treated not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the Company on the doctrine referred supra. Section 141 of the N.I.Act makes the other persons vicariously liable for commission of an offence ----- For maintaining prosecution under Section 141 of the N.I.Act, arraying of a Company as an accused is imperative. The other categories of offenders can only be brought in the drag net on the touch stone of vicarious liability as the same has to be stipulated in the petition itself as held in **State of Madras V. C.V.Parekh**^[45]. The same question when again came for consideration before the two Judge bench in **Anil Gupta V. Star India Private Limited**^[46], **Aneeta Hada(2)** of two Judge bench referred supra is reiterated in para No.12 in saying the decision in **Anil Hada** supra is over ruled with the clarification as stated in Para No.51 of **Aneeta Hada(2)** and the decision in **U.P. Pollution**

Control Board supra has to be restricted to its own facts. In **S.M.S Pharmaceuticals** supra also it is made clear with reference to section 141 of the N.I.Act that it is necessary to aver that at the time the offence was committed, the person accused was in-charge of and responsible for conduct of business of the Company and without this averment being made in the complaint, the requirements of Section 141 of the N.I.Act cannot be said to be satisfied. **A clear case should be spelled out in the complaint against the persons sought to be made liable to show as incharge of and responsible to the Company for the conduct of its business. Every person connected with the Company thereby shall not fall within the ambit of Section 141 of the N.I.Act but of those persons who were incharge of and responsible for the conduct of business of the Company at the time of commission of the offence.** The liability arises on account of conduct or act or omission on the part of a person and not merely on account of holding an office or a position in a Company. The complaint therefore must disclose the necessary facts which make a person liable, specifically aver that at the time of offence committed, the person accused was incharge of and responsible for conduct of the business of the company. A Director cannot be deemed to be incharge of and responsible to the Company for the conduct of the business for no deemed liability of a Director from that status, unless the aforesaid requirement of Section 141 of the N.I.Act has been averred as a fact in the complaint. In another expression referring to Section 141 of the N.I.Act by the Apex Court in **Saroj Kumar Poddar** supra referring to **S.M.S. Pharmaceuticals** supra apart from other expressions that for dishonour of cheque making of requisite averments in the complaint is a statutory requirement and the

allegations satisfy the same, in the absence of which the proceedings are liable to be quashed. The other expression of the Apex Court two Judge bench in ***National Small Industries Corporation*** supra also referring to ***Parekh*** and ***S.M.S.Pharmaceuticals*** supra among other expressions held that vicarious liability on the part of any Director or other person as incharge and responsible to the conduct of business be specifically averred..... It is not even sufficient to make a bald and cursory statement in a complaint that the Director is incharge of and responsible to the Company for conduct of its business without saying anything more as to his role. The complaint should spell out as to how and in what manner a co-accused was incharge of or responsible to the accused company for conduct of its business. Same is also reiterated in another two Judge Bench expression of the Apex Court in ***Central Bank of India V. Asian Global Limited***^[47] relying upon ***S.M.S. Pharmaceuticals***. Even other latest expression in ***Poojari Ravinder Devi Dasani V. State of Maharashtra***^[48] reiterates the same relying upon ***National Small Industries Corporation*** supra. The same has been reiterated in the latest expression by this Court in ***Narendra Urangi V. M/s.Greenmint India Agritech Pvt. Ltd.***^[49]

44) In ***GHCL Employees Stock Option Trust V. India Infoline Limited***^[50] at para Nos.18 and 19 it was observed by the Apex Court as follows:

“18. From bare perusal of the order passed by the Magistrate, it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the

accused committed breach of trust or cheated the complainant except general and bald allegations made therein.”

19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondent Nos.2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them.

Recently, in the case of **M/s.Thermax Ltd. & Ors. vs. K.M. Johny & Ors.**^[51], while dealing with a similar case, this Court held at para Nos.20 and 21 as under:-

“20. Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1 – Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role.

21. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of ‘vicarious liability’ is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company.”

45) In the latest expression of the Apex Court in **Gunmala**

Sales Private Limited V. Anu Mehta^[52] it is held no doubt a case under Section 138 read with Section 141 of the N.I. Act, that the necessary requirements of the complaint which need to be indicated in the complaint are “how”, “in what manner”, “the role”, “description” and “specific allegation” as to the part played by a person before he could be made an accused. These conditions

are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principle accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable.

46) Having regard to the above propositions which are in one line speak that a bald averment is not at all sufficient even from any statutory legal fiction to make person liable on showing responsible from the status coupled with incharge of day to day affairs, but for a specific allegation to plead and show as to “how”, “in what manner”, “the role”, “description” and “specific allegation” as to the part played by a person before he could be made an accused for vicarious liability, leave about such vicarious liability does not exist for IPC offences. Thus, a Director of a company who stands in a different footing to the Managing Director by his status under Section 141 of the N.I. Act is liable or to be made liable for the offences punishable under Section 138 of the N.I. Act, even from the statutory fiction of vicarious liability under the Act, subject to specific allegations showing how liable for the acts alleged.

47) So far as the I.P.C offences concerned it is held that there is no such statutory fiction or vicarious liability, but for individually made liable for their individual acts, and not merely while holding an office of the Company for acts of the persons concerned with the affairs of the Company are the acts of the Company under the principle of **alter-ego**. It is what is reaffirmed and detailed for the IPC offences and for offences under the prevention of corruption Act, in the latest expression of the Apex Court in **Sunil Bharti Mittal** supra of the concept of ‘vicarious

liability' is unknown to criminal law.

48) In **Sunil Bharti Mittal** *supra*, on facts, the C.B.I. registered the crime, investigated and filed final report. The person not named in the final report as accused by differing to the police Investigating officer's opinion, the learned Magistrate has taken cognizance under Section 190 CrPC after hearing public prosecutor and in issuing process against the non-accused of charge sheet and the same was impugned and the matter reached before the Apex Court on the question when a person not named in the charge sheet as accused though the trial court has adequate powers to take cognizance and summon if found from perusal of charge sheet and documents and other material placed with the charge sheet disclosed sufficient prima facie material to proceed against such person as well, however where there is sufficient material or not be reflected in the order of the learned Magistrate. On facts it was held that the Special Judge for C.B.I. has not stated in the order that after examining of the final report with relevant documents and the statements of the witnesses satisfied on sufficient material incriminating to proceed against the police as well. The learned Special Judge did not record any reasons for his satisfaction to take cognizance on any incriminating material and even C.B.I. did not implicate the appellants in the final report. It is held further that the sine-qua-non of taking cognizance for an offence is application of mind, for Special Judge's satisfaction of the allegations if proved constitute an offence and it is imperative from the complaint or on the police report. The Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion and then only to issue process to say said to have taken cognizance of the offence and the only consideration at this stage

of taking cognizance if any is prima facie case to take from the material or not. It is held further that cognizance of offence and prosecution of offender, are two different things. Section 190 of CrPC empowers taking cognizance of an offence and not to deal with the offenders. Thereby cognizance can be taken even offender is not known or named. When the complaint is filed and F.I.R. is registered and even their names may transform through investigation or in post-complaint enquiry. Thereby a person who is not even joined as an accused in the charge sheet, if there is material to take cognizance, he can be summoned to proceed with; as a Magistrate is not bound and otherwise empowered to ignore the conclusions arrived by the investigating officer, provided apply his mind independently on the facts emerging from investigation to take cognizance of the case and at this stage not permissible to consider any material other than the material covered by the police final report. On the other hand, Section 204 CrPC deals with issuing process after taking cognizance on the private complaint from sworn statement recorded where there is sufficient ground for proceeding as per Section 204 of CrPC which is of immense importance. It was observed in **Sunil Bharathi Mittal** supra that the learned Special Judge on the basis of the material on record, done no such exercise and thereby the impugned order dated 19.03.2013 is held unsustainable so far as it relates to implicating the appellants and summoning them as accused. For that on facts observed, the allegation against the appellants is a ground of additional spectrum by luring condition of 9 lakhs subscribers to 4.50 lakhs subscribers be only charging additional 1% A.G.R. instead of charging 2% AGR which caused loss to government's revenue and further the case of prosecution that this was the result of conspiracy hatched between the then

Minister concerned as well as the accused- cellular operator. The decision taken in haste on 31.01.2002 itself exchanges notes prepared by J.R.Gupta, the then Secretary telecom, on that day, which was agreed 2/5th and thereafter approved by the Minister on the same day. On that basis circular was issued on next day on 01.02.2002 as per the charge sheet, investigation has also revealed that all this was done in haste to help M/s. Bharati Cellular Limited which had come out with Initial Public Offer (IPO) that was opened and it was not getting good response from the public as it had remained under-subscribed. The moment such a decision of allocating additional spectrum was taken on 31.01.2002, on the very next day, the issue got over-subscribed. In that charge sheet filed, Mr.J.R.Gupta was not made accused as no material of any conspiracy or being a part of decision being attributed to him.

49) In this charge sheet, the C.B.I. named Shyamal Ghosh- the complainant and three companies namely Mr.Bharati Cellular Limited, M/s Hatchison Max Telecom(P) Limited and M/s Sterling Cellular Limited as accused persons in respect of offences under Sections 13(2) r/w 13(i)(d) of the P.C.Act and allied offences impleaded as accused persons in this charge sheet one of the two appellants, Sunil Bharathi Mittal Chairman—cum—Managing Director of Bharati Cellular Limited, was interrogated but in the opinion of the C.B.I. case was not made out. The Special Judge in para-2 of the impugned order discussed the submissions of Public Prosecutor in respect of the proceedings who are made accused in the charge sheet and so far as ----- is concerned it has name of 'complaint' who was the public servant and other three accused are corporate entities. The submission of the learned Public Prosecutor is that there is enough incriminating material on record

against them and they may be proceeded against as per law. Immediately thereafter the Special Judge in para-3 of the impugned order recorded his satisfaction on the perusal of the record namely FIR, charge sheet, submissions of witnesses and documents and states that he is satisfied that there is enough incriminating material on record to proceed against the accused persons. Para-30 clearly relatable to para-2. Here the accused persons referred to are those 4 persons whose names are mentioned in para-3 obviously till that stage, appellants were not accused persons as they are not named as such in the charge sheet. After recording satisfaction against said accused persons, discussion about other three individuals including two appellants supporters from para-4 where Special Judge also finds and reference to the decisions which these three persons held/hold in the three cases—(companies) respectively.

50) In para-4 the special Judge did not mention about any incriminating material against them in the statements of witnesses and documents etc. On the other hand, the reason for summoning these persons and proceed against them are specifically described in this paragraph which prima facie are these persons were in control of affairs of the respective companies, as such, they represent the directing mind and will of each company and their state of mind is the state of mind of the companies. Thus, they are described as ‘alter ego’ of their respective cases. It is on this basis these three persons are treated as alter ego of their respective companies and in the opinion of the learned Special Judge, the acts of the companies are “to be attributed and imputed to them”. On the erroneous presumption in law the special Judge/Magistrate

issued summons. For the learned Magistrate/Special Judge, it is always open to invoke special exercise after going through the material on record, if he is satisfied that there is enough incriminating material on record to proceed against he may pass appropriate orders in this behalf. Even if at this stage no such prima facie material is found, if in future such evidence surpasses against the appellant, the special Judge got liberty to exercise his powers under Section 319 of CrPC to rope all or any of the appellants by passing orders in accordance with law. For that conclusion the expressions referred are of ***Dharampal Vs. State***^[53], ***Aneeta Hada Vs. Godfather Travels and Tours (P) Ltd.***^[54], ***Iridium India Telecom Limited***^[55], ***Maksood Sayed supra, Sabita Rama Murthy supra, SMS Pharmaceuticals supra, Standard Chartered Bank supra*** among other expressions.

51) Now coming to the requirement of reasons showing judicial application of mind for taking cognizance from the expressions supra; from non giving reasons whether fatal or not concerned, no doubt in the latest Four Judges Bench expression of ***Sarath Mathew V. IOCV***^[56] in dealing with limitation to count from the date of filing and not from later date of taking cognizance, it was held that the phrase 'taking of cognizance', the application of mind by the learned Magistrate or Court to the suspected offence and whether Magistrate has taken cognizance or not will depend upon the facts and circumstances of each case for cognizance is an act of Court and not defined in Cr.P.C, but for to say Section 190 Cr.P.C empowers a Magistrate to take cognizance either on receiving a complaint or on police report or upon own knowledge and a Magistrate or Judge takes cognizance when he applies his mind or taken judicial notice of the offence

with a view to initiate proceedings in respect of offence which is said to have been committed. No doubt, in this expression it is not visualized of assigning of reasons mandatory but for judicial application of mind and whether there is judicial application of mind or not to be decided from the facts and circumstances of a case on hand it can be culled out there from to say mere omission to assign reasons for cognizance in the order of cognizance no way fatal though reasons are required to be given generally, once on perusal of the material the order of taking cognizance if sustainable otherwise for not to interfere against the cognizance order.

52) In this context it is contended by the learned Counsel for CBI that from the latest Four Judges Bench expression in **Sarath Mathew** supra of what is laid down in **Sunil Bharti Mittal** supra is to understand of reasons are required to be given generally and not that for mere omission to give reasons fatal to quash the order of cognizance taken, if otherwise it is sustainable. Even from that, when there is nothing to show judicial application of mind to the material on record in taking cognizance of the offences under Sections 420 & 120B IPC & Section 12 of the PC Act, so far as the petitioner/A3-Sri N.Srinivasan concerned, the cognizance taken by the special judge for CBI cases requires to be quashed for no basis to sustain the cognizance order from the material on record from what is elaborately discussed supra on facts and law. Thus, the proceedings so far as petitioner/A3 concerned are liable to be quashed for above material on its face when can be held not sufficient to accuse in the police final report or to take cognizance by the learned Special Judge there from against the petitioner/A-3 personally, to say no prima facie material to make him liable to

face the ordeal of trial or even to frame charge against him from the prosecution material placed reliance with the police final report that is the criterion for the charge to be framed as per the settled expression of the Apex Court more particularly from the three Judge bench expression in ***State of Orissa V. Debendranath Padhi***^[57], though so far as the quash petition concerned, the accused is also entitled to bring any additional material in asking the Court to receive to consider and the Court can receive to consider as held by referring to ***Debendranath Padhi*** supra also in the subsequent expressions and in particular in ***Rukmini Narvekar V. Vijaya Satardekar***^[58]. Accordingly the points 1-3 are answered.

53) **Point No IV** : In the result the petition is allowed and the proceedings in CC No 24 of 2013 from the cognizance of the offences under Sections 420 & 120B IPC & Section 12 of the PC Act, taken by the Principal Special Judge for C.B.I Cases, Red Hills, Nampally, Hyderabad so far as the petitioner/A3-Sri N.Srinivasan concerned are quashed for no basis to sustain. The bail bonds of the petitioner/A3-Sri N.Srinivasan if any shall stand cancelled. The miscellaneous petitions pending if any stand closed.

DR.JUSTICE B.SIVA SANKARA RAO

Dt.18.03.2016
ksh

^[1] (2003)8 SCC 319

^[2] AIR 1977 SC 1754

- [\[3\]](#) AIR 1976 SC 1947
- [\[4\]](#) AIR 2000 SC 1869
- [\[5\]](#) (2009)1 SCC 516
- [\[6\]](#) (2008)2 SCC 705
- [\[7\]](#) (2005)13 SCC 540
- [\[8\]](#) AIR 1988 SC 709=(1988)1 SCC 692
- [\[9\]](#) AIR 1992 SC 1815=(1993) Supp. 1 SCC 499
- [\[10\]](#) AIR 1962 SC 1821
- [\[11\]](#) AIR 1936 Lahore 408
- [\[12\]](#) 1972(8) CHA 149
- [\[13\]](#) AIR 1980 SC 419
- [\[14\]](#) (2009)8 SCC 751
- [\[15\]](#) (2010)10 SCC 479
- [\[16\]](#) AIR 1965 SC 682
- [\[17\]](#) (2010)10 SCC 361
- [\[18\]](#) (1970)2 SCC 740
- [\[19\]](#) (2000)3 SCC 269
- [\[20\]](#) (2003)5 SCC 257
- [\[21\]](#) (2006)1 SCC (CrI) 746
- [\[22\]](#) (2006)2 SCC (CrI.) 49
- [\[23\]](#) 1974 CrI.L.J 1261
- [\[24\]](#) 2003 CrI.L.J 1249
- [\[25\]](#) (1991) SCC (CrI.) 84
- [\[26\]](#) AIR 1963 SC 1572
- [\[27\]](#) (1999)2 SCC 617
- [\[28\]](#) (2009)1 SCC 516
- [\[29\]](#) 2008(5)SCC 662
- [\[30\]](#) (2006) 10 SCC 581
- [\[31\]](#) 2008 (5) SCC 668
- [\[32\]](#) 2007(3) SCC 693
- [\[33\]](#) 2007(5) SCC 54
- [\[34\]](#) 2005 4 SCC 70
- [\[35\]](#) 1998(5) SCC 749
- [\[36\]](#) (2009)6 SCC 475
- [\[37\]](#) (2005)4 SCC 530
- [\[38\]](#) 2007 (3) SCALE 245
- [\[39\]](#) (2010)3 SCC 330
- [\[40\]](#) (2011) 1 SCC 74

- [\[41\]](#) (2015) 4 SCC 609
- [\[42\]](#) (2012)5 SCC 661
- [\[43\]](#) (2000)1 SCC 1
- [\[44\]](#) (2008)13 SCC 703
- [\[45\]](#) 1973 SCC 491
- [\[46\]](#) (2014)10 SCC 373
- [\[47\]](#) 2010(2) ALD (CrI.) 564 (SC)
- [\[48\]](#) AIR 2015 SC 675
- [\[49\]](#) 2015(3) L.S 239
- [\[50\]](#) (2013)4 SCC 505
- [\[51\]](#) 2011 (13) SCC 412
- [\[52\]](#) (2015)1 SCC 103
- [\[53\]](#) (2014) 3 SCC 206
- [\[54\]](#) (2012) 5 SCC 661
- [\[55\]](#) (2011)1 SCC 74
- [\[56\]](#) (2014)2 SCC 62
- [\[57\]](#) (2005)1 SCC 568
- [\[58\]](#) 2009 CrI.J 822