

BAIL SLIP

The Petitioner/Accused No.15 namely P.Vijayaraghavan, aged 41 years, S/o.Palanisamy, was directed to be released on bail as per order dated 19.06.2012 in CrI.OP.No.14457 of 2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:10.04-2017

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THE HON'BLE JUSTICE T. MATHIVANAN

Criminal Revision No.1071 of 2016
Against
CrI.M.P.No.960 of 2014
in
C.C.No.64 of 2001

(On the file of the Special Judge for CBI cases
(VIII Addl Judge), City Civil Court, Chennai)

&
CrI.M.P.No.10823 of 2016
In
CrI.O.P.No.14457 of 2012

P. Vijayaraghavan,
S/o .Pakriswamy,
Anai Vadapathy,
Ammayappan Post,
Tiruvarur District

... Petitioner/ A 15

-Vs-

The State,
Rep. by Inspector of Police,
CBI/BS & FC Bangalore ... Respondent / Complainant

Criminal Revision is filed to set aside the impugned order, dated 29.04.2016 and made in CrI.M.P.No.960 of 2014 in C.C.No.64 of 2001, on the file of the learned Principal Special Judge for CBI cases (VIII Addl Judge), City Civil Court, Chennai.

Appearance

For Petitioner:- Mr.M.Ramakrishnan, learned counsel
for M/s.Waraon & Sai Rams

For Respondent:- Mr. K.Srinivasan, Spl. Public
Prosecutor for CBI (cases)

ORDER

Invoking the provisions of Sections 397 & 401 of the Code of Criminal Procedure, this Criminal Revision is filed by the petitioner/A15 to set aside the impugned order, dated 29.04.2016 and made in CrI.M.P.No.960 of 2014 in C.C.No.64 of 2001, on the file of the learned Special Judge for CBI cases (VIII Addl. Judge), City Civil Court, Chennai) dismissing the petition for discharging him from the charges u/s. 239 CRPL.

2. It is manifested from the records, that on 19.11.1996 the Central Bureau of Investigation (CBI) Bank Securities and Frauds Cell (BS&FC) Bangalore Branch had registered a case in Crime No. RC 8(E)/96/BLR under Section 120-B r/w 409 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and substantive offences thereof against M/s. MVR Exports P .Ltd., and 22 others based on an information to the effect that the accused public servants, viz., officials of Indian Bank were parties to a criminal conspiracy with the private persons during the period 1988-1996 at Chennai and Singapore to dishonestly commit criminal breach of trust and in pursuance of the said criminal conspiracy the accused public servants by corrupt or illegal means or by abusing their official position and dishonestly indulged in indiscriminate lending to the accused firms/companies by breaching the norms and the regulations of the banking system on the basis of false information/suppression of information by the private persons and thereby caused wrongful pecuniary loss to the Indian Bank, Muthialpet Branch, Chennai to the extent of Rs.71.15 crores and corresponding wrongful gain to themselves or for others.

3. Another case was also registered on the same day in Crime No.9(E)/96/BLR under Section 120-B r/w 409 and Section 13(2) r/w 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 and substantive offences.

4. This case in Crime No.9(E)/96/BLR was registered against Mr. M.Gopalakrishnan and 5 others on the basis of a source information to the effect that the public servants who

were senior executives of Indian Bank were parties to a criminal conspiracy hatched at Chennai during the year 1988-1995 with Mr. G.Balakrishnan, proprietor Maxwell Promotion and Director Maxwell Exim Private Ltd., Mr. V.Rajkumar, Power of Attorney holder for Maxwell Promotion and Maxwell Exim Private Ltd., to commit criminal breach of trust and to dishonestly obtain valuable thing or pecuniary advantage for themselves or others and in pursuance of the conspiracy the senior executives of Indian Bank had recommended/granted various credit facilities such as Medium Term Loans (MTL), Import Letters of Credit (ILC), Foreign Bills Purchase etc., to Maxwell Promotion initially and Maxwell Exim P.Ltd., . Later in connection with import/export business in cashew nuts through Indian Bank, Muthialpet Branch, Chennai by corrupt or illegal means or by abusing their official position and without proper appraisal, disregarding manual of instructions and other banking norms and at times beyond delegated powers which resulted in a wrongful loss to the tune of Rs.119.40 crores to the bank as on 02.08.1996.

5. Based on the facts revealed from the investigation both the cases were clubbed together and a combined final report was filed on 12.09.2001 against 20 accused.

6. The petitioner, Mr. P. Vijayaraghavan, son of Mr. Pakkrisamy has been ranked as A15.

7. It is significant to note here that the case in Crime No.8(E)/96/BLR and the other case in Crime No.9(E)/96/BLR were registered on 19.11.1996. After completion of the investigation both the cases were clubbed together and a combined final report was filed on 12.09.2001 i.e. after passing of five years. Even after passing of 16 years, till the date of pronouncement of this order, i.e. till 10.04.2017, no charge is framed against the accused persons.

8. Under these circumstance in order to ascertain the status of the case, this Court on 07.03.2017 has directed the Registry of this Court to call for a report from the learned Special Judge for CBI cases (VIII Addl Judge), City Civil Court, Chennai). In pursuance of this direction, the learned Special Judge for CBI cases (VIII Addl Judge), City Civil Court, Chennai has submitted a report in Dis No.214/2017, dated 10.03.2017, from which the following facts are recalled.

(a) In this case in CC No.64 of 2001, charge sheet has been filed against 20 accused for the alleged offence under Section 120-B r/w 409 IPC and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988;

(b) Out of the aforesaid 20 accused A-17 M.A. Joseph Xavier Basil was absconding right from the filing of charge sheet

and hence the case against him was split up and numbered as CC No.9/2003 and subsequently entered in Long Pending Register (LPR);

(c) A-14 V.R.Usha was discharged by the Hon'ble High Court in Crl.R.C.No.734 of 2013 and SLP.No.10400 of 2014 is pending before the Hon'ble Supreme Court;

(d) A-16 B.Chandramouli was discharged by the Hon'ble High Court, Madras vide order dated 07.10.2016 and made in Crl.R..No.840 of 2016;

(e) As on date there are 17 accused in CC No.64 of 2001 against whom charges have to be framed;

(f) A-15 P.Vijayaraghavan is the petitioner in Crl.M.P.No.10823/2016 in Crl.O.PNo.14457 of 2012 which is pending before the Hon'ble High Court, Madras;

9. From the report submitted by the learned Special Judge for CBI cases, this court understands that A-14 Tmt. V.R.Usha, and A-16 Thiru.B.Chandramouli were already discharged in pursuance of the orders of this Court in Crl.R.C.No.734 of 2013 and in Crl.R.C.No.840 of 2016 respectively.

10. The petitioner herein (A-15) is the similarly placed accused on par with A-14 Tmt. V.R.Usha and Mr. B.Chandramouli (A-16). It is pertinent to note that A-14 Tmt. V.R.Usha and the petitioner herein (A-15) are the Directors of Mountamount Company located at Singapore. It is alleged that both of them have committed the offence under Section 120-B r/w 420 IPC. No other charges under the Prevention of Corruption Act, 1988 are leveled against them as they are private individuals. When A-14 Tmt. V.R.Usha was discharged from the charges, the dismissal of the petition in Crl.M.P.No.960 of 2014 filed by the petitioner (A-15) under Section 239 of the Code of Criminal Procedure is very unfortunate which offends the Article 14 of the Constitution of India.

11. On coming to the given case on hand, as it is stated in the opening paragraph of this Judgment, totally 20 accused have been included in the final report. A1 to A4 are the bank officials. Mr.M.Gopalakrishnan is the formerly Chairman and Managing Director of Indian Bank; A-2 Mr.N.Kumarasamy is the formerly credit monitoring officer, Indian Bank, Chennai; A-3 Mr. K.Kubernathan is the then Manager, Indian Bank, Muthialpet Branch, Chennai; A-4 Mr. V.Srinivasan is the then Branch Manager, Indian Bank, Muthialpet Branch, Chennai; A-5 is M/s. MVR Industries Ltd., through its Managing Director Mr. S.P.Vairavan (A-8) ;A-6 is M/s. Maxwell Exim through its Director Mr. G.Balakrishnan (A-11) A-14 is Tmt. V.R.Usha, wife

of Mr. M. Varatharajaloo (A7) and is the Director of M/s. Mountamount (Singapore) Private Ltd; A-15 Mr. P.Vijayaraghavan, (petitioner herein) is also the Director of M/s.Mountamount Singapore Private Ltd. ,having its registered Office at Block No.423, Pasir Ris Drive6 at Singapore; A-16 Mr. B.Chandramouli is the Director of M/s. Sadeco Sarl Pvt. Ltd., Singapore. As adumbrated supra A-14 and A-16 were already discharged from the clutches of charges.

12. The case of the prosecution is that , A-5 M/s. MVR Industries Ltd., (MVR) through its Managing Director Mr. Vairavan (A-8) and A-6 M/s. Maxwell Exim through its Director Mr. G.Balakrishnan (A-11) incorporated and carrying on business in India, had approached the Indian Bank, Muthialpet Branch, Chennai and availed certain credit facilities including bill discounting facilities during the course of their business. The said companies thereafter discounted the export bills with the Indian Bank, Muthialpet Branch, Chennai and received monies. These loans were not subsequently repaid by the above said two companies to the Indian Bank, Muthialpet Branch, Chennai. It is alleged that the export proceeds were not realized by A-5 and A-6 viz., M/s. MVR Industries Ltd., and M/s. Maxwell Exim respectively as the purchasers situate outside India had committed default in the payment. It is further alleged that the company under the name and style of M/s. Mountamount Private Ltd., (MOM) incorporated under the laws of republic of Singapore in which A14 Tmt. V.R. Usha and the petitioner /A-15 Mr. P.Vijayaraghavan were the Directors at the relevant point of time, was among one of the companies who had committed default in the repayment of the export proceeds to MVR and Maxwell.

13. The two companies viz., M/s. MVR Industries Ltd., (MVR) and M/s. Maxwell Exim (A-5 & A-6) are incorporated under the provisions of the Companies Act, 1956 in India and engaged in the business of import and export of raw cashew nuts and process cashew kernels.

14. According to the prosecution A1 to A20 including the petitioner (A-15) herein were parties to a criminal conspiracy hatched between 1988-1995 or thereabout at Chennai, Singapore and elsewhere and the object of which was to do or cause to be done various illegal acts, viz., to cheat Indian Bank, Muthialpet Branch, Chennai, a nationalized bank in the matter of sanctioning, realizing and availing of various credit facilities such as packing credits, foreign bill purchase, import letters of credit, medium term loans, overdrafts in connection with import/export business in cashew nuts/kernels in favour of M/s.MVR Exports / M/s. MVR Industries Ltd., and M/s.Maxwell Promotion /Maxwell Exim P Ltd., Chennai :

(a) by dishonest concealment of facts that the MVR Group

Companies in India and Mountamount Group companies in Singapore are belonged to the same group by fraudulently or dishonestly inducing the bank to discount foreign bills using the same bill of lading which had already been financed;

(b) by making imports through group companies to India against LCs, while exports to the same group companies were not against LCs by non-repatriating export proceeds despite the same having been realized in Singapore;

(c) by not providing funds to meet import bills on due dates forcing development of LCs on the bank,;

(d) by non-payment of term loan installments on due dates and non-clearance of overdrafts by A-5 to A-17, to commit criminal misconduct by the public servants by corrupt or illegal means or by abuse of their official position as public servants or while they(A-1 to A-4) holding office as public servants without any public interest obtain for themselves or for any other person any valuable thing or pecuniary advantage;

(e) by recommending/sanctioning credit limits without proper appraisal, ignoring banking norms, RBI guidelines, exceeding delegated powers, violating board directions, despite glaring adverse features in the conduct of the account, without ensuring proper end use of funds and safeguarding the interests of the bank by A-1 to A-4, the public servants to accept or obtain for themselves or for their close relatives, viz., A-18 to A-20 named above valuable thing without consideration from persons whom they knew to have been concerned in business transacted or having any connection with the official functions of themselves or from any person whom they knew to be interested in or related to the person so concerned and the accused A-18 R.Ramesh , A-19, Jayakumar & A-20 Kala Kumaraswamy to abet the aforesaid offence of public servants obtaining valuable thing without consideration from persons concerned in business transacted by them by accepting Rs. 15 lakhs and Rs.5 lakhs in demand drafts and an Ambassador Nova Car respectively.

15. It is also alleged that in pursuance of the aforesaid criminal conspiracy, M/s.MVR Industries Private Ltd., (A-5), represented by Mr.S.P.Vairavan (A-8) and M/s.Maxwell Exim P Ltd.,(A-6) represented by Mr.G.Balakrishnan (A11) had submitted applications for credit facilities through authorized representatives by fraudulently concealing material facts that the Singapore based companies were their group companies and dishonestly induced the Indian Bank, Muthialpet Branch, Chennai to part with facilities like FBP, PC and Import LC in connection

with import and export business. These companies after having availed the facilities dishonestly had failed to realise export proceeds, provide funds for meeting LC liabilities on due dates and repay term loan instalments and clear overdrafts and thereby caused wrongful loss to the tune of Rs.190.55 crores (71.75 lakhs) in the account of M/s.MVR Industries Limited and (Rs.119.40 crores) in the account of M/s.Maxwell Exim Private Limited as on 02.08.1996 to Indian Bank, Muthialpet Branch, Chennai.

16. Further, it is alleged that the investigation in this case reveals that A5 to A17 had cheated the Indian Bank, Muthialpet Branch, Chennai to the tune of (Rs.190.55 crores) i.e. (71.75 lakhs) in the account of M/s.MVR Industries Limited and Rs.119.40 crores in the account of M/s.Maxwell Exim Private Limited, as on 02.08.1996 in pursuance of the criminal conspiracy and had therefore committed the offence punishable under Section 420 IPC.

17. The specific charge leveled against the petitioner / A-15 is under Section 120 B r/w 420 IPC. Though, A1 to A4, the senior executives of the Indian Bank, Muthialpet Branch, Chennai have been facing the charges under Sections 11, 12 & 13 (2) r/w 13 (1) (d) of the prevention of Corruption Act, 1988 besides, the charges under Section 120 B r/w 420 IPC, attribution of the charges under the provisions of the Prevention of Corruption Act, 1988 against the petitioner cannot be made, as he is neither a public servant nor is he connected with any offence in respect of transactions contemplated.

18. The petitioner herein (A15), according to his counsel Mr. Ramakrishnan did not have any direct contact with the Indian Bank, Muthialpet Branch, Chennai and he never availed any kind of loan from the said Bank, either for his company, Mountamount, (Singapore) Pvt. Ltd. or for himself. As stated in the preceding paragraphs the petitioner herein was a nominee director at the relevant point of time and A-14 Smt. V. R. Usha was also one of the directors of the said company.

19. For academic interest, let this court take a few lines from the final report with reference to A14 Tmt. V. R. Usha and A15 Mr. Vijayaraghavan, Petitioner herein.

20. Tmt. V. R. Usha (A14) is the second wife of Mr. Varatharajaloo (A7). She held passport no. B174373 which was issued on 8.3.1996 by the High Commission at Singapore. She was the director of Mountamount, (Singapore) Pvt. Ltd. from 8.1.1990 to 17.1.1990, 18.12.1990 to 11.8.1992 and again from 12.3.1993 till the company was wound up. She was controlling the affairs

of the company especially the banking operations with Indian Bank, Singapore Branch. She enjoyed permanent residents status in Singapore and her Singapore Identity Card No. is S2643430J.

21. Mr. P. Vijayaraghavan (A15) is the nephew of Mr. M. Varatharajaloo (A7). He was the director of Mountamount (Singapore) P. Ltd. from 21.6.1990 till the date of winding up of the company. He held republic of Singapore D/E card for long term pass holders bearing No. FF273556.

22. It is also to be noted that A16 Mr. D. Chandramouli, an Indian National was the Director of M/s. Sadeco Sarl Pvt. Ltd. Singapore during the period from 8.7.1993 to 4.1.1995.

23. It is to be reiterated that A14 Tmt. V.R. Usha one of the directors of Mountamount (Singapore) P. Ltd. and Mr. B. Chandramouli (A16) Director of Sadeco Sarl Pvt. Ltd., Singapore were already discharged from the charges by this court vide its order dated 29.4.2014 (Crl RC No. 734/2013) and 7102016 (Crl RC 840/2016). Mr. Ramakrishnan, Learned Counsel appearing for the petitioner / A15 has adverted to that the petitioner had nothing to do with Indian Bank, Muthialpet Branch, Chennai and hence He has also maintained that he could not be held liable without making the company Mountamount (Singapore) Pvt. Ltd. as an accused in this case. Even he could not vicariously be held liable to answer the charges under Section 120 (B) Read with 420 IPC.

24. This Court was informed that against the order of discharge, dated 29.04.2014 and made in Crl.R.C.No.734 of 2013 in favour of A-14 Tmt. Usha a Special Leave Petition in SLP No.10400 of 2014 has been pending before the Supreme Court. Fortunately, no stay has been granted.

25. With reference to bringing the petitioner/A-15 under the ambit of the provisions of Section 120-B r/w 420 IPC without making the company Mountamount (Singapore) P. Ltd. as an accused in this case, this Court would like to have reference to SHARAD KUMAR SANGHI Vs SANGITA (2015) 12 Supreme Court Cases 781: (2016) 1 Supreme Court Cases (crl.) 159 wherein a vehicle was purchased by the respondent from the company. He came to know that the invoice of the vehicle contained a different engine number than the engine that was fitted into the vehicle. On further enquiry it was found that in the course of transit from the company to Bhopal, the said vehicle had met with an accident as a result of which the engine of the vehicle was replaced by another engine. Consequently, the respondent filed a criminal complaint under Section 200 of Criminal Procedure Code alleging that the said company represented by its Managing Director suppressed the information and deliberately committed the offence of cheating.. The Judicial Magistrate concerned took cognizance of the offence against the Managing Director S.

Application filed under Section 482 of Cr.PC before the High Court seeking the relief of quashment of criminal proceedings against him on the ground that the learned Judicial Magistrate had no jurisdiction and without making the company as party to the criminal proceedings no offence is against him. On hearing the appeal, a Division Bench of the Apex Court has held that

"though the allegations are against the company, the company has not been made a party and therefore, the allegations are restricted to the Managing Director. The allegations are vague and in fact, the same are principally levelled against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability."

26. Mr. Ramakrishnan has contended that the petitioner/A-15 had never transacted with the Indian Bank, Muthialpet Branch, Chennai. In deed the company, Mountamount (Singapore) P. Ltd. was having commercial transactions with A-5 MVR Industries Pvt. Ltd., and A-6 Maxwell Exim Pvt. Ltd. Of course, the commercial transactions between Mountamount (Singapore) P. Ltd. and A-5 M/s. M V R Industries Ltd. (MVR) and A6 M/s. Maxwell Exim Pvt. Ltd. was only civil in nature and this could not be coloured with criminal liability.

27. It may be relevant to note here that the petitioner herein has been facing the charges of criminal conspiracy and cheating i.e. the charges under Section 120-B r/w 420 IPC.

28. With regard to the offence of cheating, Section 415 of IPC defines, that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

29. In *Rajesh bajaaj vs State of Delhi* (1999) 3 SCC 259: 1999 SCC (Cri.) 401, a Division Bench of Hon'ble Supreme Court after quoting Section 415 IPC proceeded to consider the main allegation of the offence in the following lines:

"A bare reading of the definition of cheating would suggest

that there are two elements thereof, namely, deception and dishonest intention to do or omit to do something. In order to bring a case within the first part of Section 415, it is essential, in the first place, that the person, who delivers the property should have been deceived before he makes the delivery; and in the second place that he should have been induced to do so fraudulently or dishonestly. Where property is fraudulently or dishonestly obtained, Section 415 would bring the said act within the ambit of cheating provided the property is to be obtained by deception."

30. On coming to the given case on hand, the principal allegation is that the two companies viz., A-5 M/s. M V R Industries Ltd. (MVR) and A6 M/s. Maxwell Exim had approached the Indian Bank, Muthialpet Branch, Chennai and availed certain credit facilities including bill discounting facilities during the course of their business. The loan amounts were subsequently not repaid by them, as the purchasers outside India had committed default in the payment. Even as per the final report, the company Mountamount (Singapore) Private Ltd., had never induced the Indian Bank, Muthialpet Branch, Chennai either fraudulently or dishonestly to lend the loan amount to A-5 and A-6 Companies. Here, according to the prosecution, the Indian Bank, Muthialpet Branch, Chennai was said to have been deceived by the accused persons including the petitioner herein. Since there is no vestiges to show that the petitioner or his company had induced either fraudulently or dishonestly to disburse the loan amount to A-5 & A-6 companies, where the question of cheating would arise?.

31. Secondly, as held by the Apex Court in Rajesh bajaj's case cited supra, the petitioner/A-15 or his company cannot be brought either under the First Part or under the Second Part of Section 415 IPC. Hence, the charge under Section 420 IPC could not be attributed as against the petitioner. It is the admitted fact by the prosecution that M/s MVR Industries Private Ltd., (MVR) (A5) and M/s. Maxwell Exim (A6) had approached the Indian Bank, Muthialpet Branch, Chennai and availed certain credit facilities. However the default in making repayment of the loan alleged to have been committed by A-5 and A-6 companies cannot be attributed to the petitioner/A-15 and therefore, it cannot be heard to say that the Indian Bank Muthialpet Branch, Chennai was deceived either fraudulently or dishonestly by the petitioner herein.

32. The ingredients of Section 420 of the Penal Code are as follows:-

- " (i) There must be deception i.e. the accused must have deceived someone;
- (ii) That by the said deception. The accused must induce a person.

- (a) to deliver any property; or
- (b) to make, alter or destroy the whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property.
- (iii) That the accused did so dishonestly."

Apparently, the First Information Report does not contain any allegation against the petitioner. The principal allegations therein are only against A-1 to A-4 and A-5 & A-6.

33. The allegation as against the petitioner in the final report are for the commission of offence under general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created.

34. In *Hira Lal Hari Lal Bhagwati vs C.B.I., New Delhi* (2003) 5 SCC 257: 2003 SCC (Crl.) 1121 in paragraph Nos.33 and 40 it is held by the Hon'ble Supreme Court as follows:

"33. Likewise the ingredients of Section 420 of the Indian Penal Code are also not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial as has been held by this Court in *G.Sagar Suri V State of UP*. In this case, this Court held that: (SCC pp.642-43, para 7-8)

Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings was not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused, it is a serious matter...

40. It is settled laws, by catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. (See also

Vir Prakash Sharma v Anil Kumar Agarwal)"

35. Regarding vicarious liability, Hon'ble Mr. Justice B.Sinha while speaking on behalf of a Division Bench of the Apex Court in (S.K. Alagh Vs. State of Uttar Pradesh & Others (2008) 5 SCC 662) has held that vicarious liability cannot be fastened on MD, Director or other Officers of a Company which is accused of commission of offence under Section 406 IPC the complainant, a wholesale dealer of a company, after termination of dealership by the company had sent demand drafts to the company for supply of goods. The demand drafts made by the complainant for supply of goods on the ground that dealership was subsequently reiterated by the company. The proprietor of the dealer firm thereafter had filed a complaint before CJM alleging commission of offence under Section 406 by the Company and its , MD the appellant on the ground that the company with mala fide intention neither supplied the goods nor returned the money. Subsequently, the appellant had filed a petition before the High Court under Section 482 Cr.P.C for quashing the criminal proceedings. That petition was dismissed by the High Court holding that prima facie offence under Section 406 was made out against the appellant On hearing the Appeal, while penning down the Judgment Hon'ble Mr. Justice S.B.Sinha has observed that Penal Code , save and except some provisions specially providing therefor does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of offence.

36. As admittedly, drafts were drawn in the name of the company, even if the applicant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction it provides specifically therefor. In the absence of any provisions 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. (See Sabitha Ramamurthy v R.B.S.Channabasavaradhya (2006 10 SCC 581: (2007) 1 SCC (Crl) 62) His Lordship has also observed that :

"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. Whereas 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 and Ors. [2007 (11) SCALE 318]}".

37. In Sunil Bharti Mittal Vs Central Bureau of Investigation, (2003) 5 SCC 257: 2003 SCC (Cr1.) 1121: Criminal Appeal No.34 of 2015 (arising out of a Special Leave Petition (Cr1) No.2961 of 2013, a three Judges Bench of the Hon'ble Supreme Court headed by Hon'ble Chief Justice, in the opening paragraph of the Judgment, has held that

"It may be appropriate at this stage to notice the observations made by MacNaghten, J. in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. 1972 AC 153: (AC p.156):

"A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention - indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should [pic]deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

38. The principle has been reiterated by Lord Denning in Bolton (H.L.) (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd. in the following words: (AC p.172):

"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. 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 the directing 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 by the law as such. So you will find that in cases where the law requires personal fault as a

condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. (AC at pp. 713, 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty."

.....

From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the company"

The ratio applied in this case is

"Circumstances when Director/Person in charge of the affairs of the company can also be prosecuted, when the company is an accused person:

No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."

(See also R. Kalyani v. Janak C. Mehta, (2009)1 SCC 516)

39. In the present case, when the company viz., Mountamount (Singapore) Private Ltd., is not an accused and the

petitioner/A-15 alone has been made as an accused to face the charge under Section 120-B r/w 420 IPC. When the Company is not an offender and when the company is not prosecuted for the alleged offences, vicarious liability cannot be attributed to the petitioner/A-15.

40. As already discussed in the foregoing paragraphs the ingredients of the provisions of Section 120-B IPC cannot be invoked in this case as against the petitioner/A15 because there was no pre-meeting of mind between the petitioner/A-15 and A-1 to A-4 being the senior executives of the Indian Bank, Muthialpet Branch, Chennai. The essential ingredients to constitute an offence of criminal conspiracy is :

- (1). there must be an agreement between two or more persons; ; and
- (2). that the agreement should be (i) for doing an illegal act. or(ii) for doing by illegal means;(iii) or for breaking the law i.e. an act which is made punishable by this Court;
- (3) that the agreement to do illegal act must be between two and more persons

41. To constitute an offence of criminal conspiracy, the prosecution must establish through evidence of direct or in the absence of direct indirect (sustentative) evidence may also be let in to prove the offence. But in this case neither direct nor circumstantial evidence is available to establish the charge of criminal conspiracy as against the petitioner, as he was not having any agreement or pre meeting of mind with A-1 to A-4 to commit the offence of cheating. In the absence of any prima facie case to make out a case of criminal conspiracy or the offence under Section 420 IPC the petitioner cannot be roped into the criminality.

42. On the other hand, Mr. K.Srinivasan, learned Special Prosecutor has vehemently refuted the arguments advanced by Mr. Ramakrishnan. He has contended that the conspiracy which was hatched between the senior executives of Indian Bank, Muthialpet Branch, Chennai viz., A-1 to A-4, M/s. MVR Industries Private Ltd., (A5) and . M/s. Maxwell Exim (A6) and the other accused including the petitioner/A-15 herein was a triangular conspiracy. According to Mr.K.Srinivasan, A-1 to A-4 being the public servants and the senior executives of the Indian Bank, Muthialpet Branch, Chennai are on the one corner, the companies viz., Mountamount (Singapore) P. Ltd. and M/s. Maxwell Exim private ltd., (A-6) are on the other corner. The petitioner and the other co accused are on the remaining third corner. Therefore, according to him, the conspiracy entered into between A-1 to A-4 on the one art ; A-5 & A-6 on the other part and the remaining accused on the other part was a triangular, in shape.

43. Mr. K.Srinivasan has also contended that the

petitioner/A-15 was one of the Directors of Mountamount (Singapore) P. Ltd and he was a party to the conspiracy hatched at Chennai along with other accused and in pursuance thereof, he had cheated the Indian Bank, Muthialpet Branch, Chennai. He has further contended that he had concealed the fact that MVR Group Companies in India and Mountamount (Singapore) P. Ltd were belonged to the same group and he had also dishonestly induced the bank to discount foreign bills using some bill of lading which had already been financed by making imports through group of companies in India against LCs while exports to the same group of companies were not against LCS, by non repatriating export proceeds despite the same having been realized in Singapore. H had also not provided funds to meet the import bills on due dates forcing development of LCs on the bank. Secondly he would contend that the petitioner/A-15 was the nephew of 7th accused Mr. Varadarajaloo, who was the key accused in 21 cases of CBI, Enforcement of Directorate of CCIW/CID/Chennai. He has also maintained that the petitioner had hatched a criminal conspiracy against the Indian Bank, Muthialpet Branch, Chennai during the year 1988-1996 at Chennai and at other places and in pursuance of the said conspiracy, he was in connivance with the officials of Indian Bank and availed huge credit facilities from the Indian Bank Muthialpet Branch, Chennai and thereby he along with other accused had cheated the Indian Bank Muthialpet Branch, Chennai to the extent of Rs.190.55 croers.

44. Learned Additional Special Public Prosecutor has further submitted that the 7th accused Mr. Varadarajaloo, a native of Thiruvarur in Tamil Nadu had floated M/s. MVR Exports private Ltd.,, M/s. Maxwell Promotion, M/s. Maxwell Exim Pvt Ltd., at Chennai through his friends, close relatives, employees during the year 1984-1990. Similarly he had floated three companies in Singapore under the name and style of Mountamount (Singapore) P. Ltd, Nagova Exim Private Ltd., and Sadeco Sarl Private Ltd., during the year 1990-92. He would further submit that Tmt. V.R.Usha (A-14) was the second wife of Mr. Varadarajaloo (A-7) and the petitioner (A-15) was his nephew. Both A-14 Tmt. V.R.Usha and the petitioner (A-15), Vijayaraghavan were made as the Directors of Mountamount (Singapore) P. Ltd. A-16 Mr.R. Chandramouli was made to be the Director of M/s. Sadeco Sarl Private Ltd., from 08.07.1993 to 04.07.1995 while A-17 Mr. M.A.Joseph Xavier Basil was made as the Director of M/s. Nagova Exim Private Ltd., Singapore from 05.03.1992 to the date of the winding up of the company.

45. Mr. K.Srinivasan has fairly admitted that A-14 Tmt. V.R.Usha and A-16 Mr. R.Chandramouli were discharged from the charges by this Court. However, he has submitted that A-17 Mr. M.A.Joseph Xavier Basil had been absconding and till date his

whereabouts were not known and therefore, the case against him was split out and entered into the Long Pending Register (LPR). Mr. K.Srinivasan, has also emphasized that M/s. MVR Exports Private Ltd., M/s. Maxwell Promotion, M/s. Maxwell Exim Pvt Ltd. had approached the Indian Bank, Muthialpet Branch, Chennai for packing credit facilities with sales contracts and had signed with Singapore based companies. Similarly on behalf of the Singapore based companies, the purchase/sale contracts were signed by Mr. P.Vijayaraghavan the petitioner herein (A-15) , Tmt. V.R.Usha (A-14) (since discharged), Mr. R.Chandramouli (A-16) (since discharged) and Mr. M.A.Joseph Xavier Basil (A-17). Therefore, he has urged that the impugned order might not be disturbed.

46. Thirdly, the learned Additional Special Public Prosecutor has argued that Mountamount (Singapore) P. Ltd; had drawn bills under the LCs through Mr. P.Vijayaraghavan, the petitioner/A-15, Tmt. V.R.Usha etc., and they were accepted on behalf of M/s. .Maxwell Exim Pvt Ltd. and that the bills drawn under DA terms became due for payment on various dates.

47. He has further contended that the main beneficiaries of transfer of funds in Indian Bank, Muthialpet Branch, Chennai are in the Accounts of M/s. MVR Exports Private Ltd., /MVR Industries Private Ltd., and M/s.Maxwell Promotion and M/s. Maxwell Exim Private Ltd., where Varadarajaloo (A-7) Tmt. V.R.Usha (A-14) and the petitioner (A-15), Vijayaraghavan and Mr. R.Chandramouli were all the Directors. Finally, he would therefore submit that the petitioner was liable for the offence committed under Section 120-B r/w 420 IPC and Sections 11,12 & 13(2) r/w 13(1) of the Prevention of Corruption Act, 1988. With regard to vicarious liability, he has submitted that if a company had committed the offence, its officers were also liable to answer for the charges. He has also invited the attention of this Court to the impugned order passed by the Special Court. In paragraph 13 the learned Special Judge has made reference to Shivanarayana Lakshminarayana Joshi Vs State of Maharashtra (1980) SCC 465, wherein it was held that " a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, "if such inference is possible". Paragraph 15 of the impugned order reveals that at the time of hearing the learned Special Judge was appraised that the petitioner was not a Director/shareholder/ Manager/Secretary/ borrower/guarantor of the loans availed by MVR and Maxwell from the Indian Bank at any point of time and therefore, the inclusion of the petitioner in the present charge sheet as an accused was wholly unwarranted and it was nothing but an abuse of process of Court. Learned trial Judge has answered that the documents

i.e. D32, D 34, D 42, D105 to 108, D 175, D 176, D 257 to D 266, D 385, D 391 and the witnesses LWs, 2,7,8, 10,13,43,46,47,52,54,58 to 60, 62 and 64 shows the deep root involvement of the petitioner/A-15 in the day to day affairs of business of M/s.Mountamount (Singapore) Pvt. Ltd., and the petitioner/A-15 had also executed loan documents and made correspondence as a Director of M/s.Mountamount (Singapore) Pvt. Ltd., with the Indian Bank to adjust over dues in their packing credit amounts.

48. The arguments advanced by the Learned Additional Special Public Prosecutor is not able to be countenanced. Because, there is no iota of evidence to show that the Petitioner, either personally or through somebody had an agreement to conspire with the senior executives of Indian Bank, Muthialpet Branch.

49. From the materials available on record, this court considers that the Petitioner had not cheated the Indian Bank, Muthialpet Branch. It is admitted fact that the entire loan amount of Rs.190.55 crores was repaid towards full and final settlement by M/s. MVR Pvt. Ltd. and M/s. Maxwell Exim Pvt. Ltd. at Chennai to the Indian Bank and it is apparent from the records that no amount is due to the Indian Bank and as such the arguments that the Indian Bank, Muthialpet Branch has suffered with monetary loss is not sustainable. Further the question of criminal conspiracy said to have been entered into between the Petitioner and the other accused persons has not been answered by the prosecution. The Petitioner has not disputed the signing of the contract between M/s. MVR Industries Pvt. Ltd. and M/s. Maxwell Exim Pvt. Ltd. on behalf of M/s. Mountamount (Singapore) Pvt. Ltd. This does not mean that the Petitioner is personally liable to answer for the credit facilities availed by M/s. MVR Industries Pvt. Ltd. and M/s. Maxwell Exim Pvt. Ltd. from the Indian Bank, Muthialpet Branch. As submitted by Mr. Ramakrishnan without making the M/s. Mountamount (Singapore) Pvt. Ltd. company as an accused in this case, the Petitioner cannot be implicated.

50. This court has also gone through the documents viz. D32, D34, D42, D105 to D108, D175, D176, D257 to D266, D385 and D391. This court has also perused the statements of prosecution witnesses viz. LWs 2,7,8,10,13,46,47,52,54,58 to 60,62 & 64. From the perusal of the above said documents as well as the statements of witnesses this court is of view that no incriminating material is available to connect the Petitioner in the criminality. All are about the commercial transactions which took place between M/s. MVR Industries Pvt. Ltd., M/s. Maxwell Exim Pvt. Ltd. and M/s. Mountamount (Singapore) Pvt. Ltd., and not with the Indian Bank, Muthialpet Branch, Chennai.

51. In this connection, Mr. Ramakrishnan, learned counsel for the petitioner has submitted that the petitioner had been implicated in the charge sheet only in a vicarious liability capacity for certain acts purportedly committed by him in his capacity as Director of M/s.Mountamount (Singapore) Pvt. Ltd., acting for and on behalf of the said company and the failure to name the said company as an accused in the charge sheet is fatal in nature. Secondly, Mr. Ramakrishnan has submitted that the petitioner could not be arrayed as an accused in his personal capacity when the company not being named as an accused, since the liability if any of the petitioner company could only be an inference in nature and not otherwise.

52. Thirdly, he would contend that there was no whisper or allegations in the final report that the petitioner company had been involved in any of the transactions relating to the company viz., MVR and Maxwell Exim Pvt. Ltd., with the Indian Bank, Muthialpet Branch, Chennai at any point of time. Fourthly, he would contend that M/s.Mountamount (Singapore) Pvt. Ltd., was a foreign entity incorporated under the laws of Singapore and therefore, the acts attributed to the petitioner were only between M/s.Mountamount (Singapore) Pvt. Ltd., and the Singapore Indian Bank, which took place in foreign soil outside the territorial jurisdiction of India and therefore it could not be the subject matter of this final report.

53. However, the learned Special Judge has concluded that the documents and the statements of the witnesses enlisted in paragraph 21 of the order would go to show the deep root involvement of the petitioner/A-15 in the day to day affairs of the business of M/s.Mountamount (Singapore) Private Ltd., and he had executed loan documents and made correspondence as a Director of M/s.Mountamount (Singapore) Private Ltd., with the Indian Bank to adjust the over dues in their packing credit amounts.

54. This finding is absolutely wrong because even the prosecution itself has conceded that A-5 MVR and A-6 Maxwell Companies had alone approached the Indian Bank, Muthialpet Branch, Chennai to avail credit facilities and it is the specific case of the prosecution that, since the purchasers, viz., M/s.Mountamount (Singapore) Private Ltd., Nagova Exim Private Ltd., and Sadeco Sarl Private Ltd. at Singapore had failed to repay the purchase amount to A-5 & A-6 Companies, they (A5 & A6 companies) were not able to repay the loan amount to the Indian Bank, Muthialpet Branch, Chennai. This itself would prove the fact that the petitioner was not having direct contact with the Indian Bank, Muthialpet Branch Chennai and he had been operating his account in respect of M/s.Mountamount (Singapore) Private Ltd., which could not be connected with the transactions said to have taken place between the Indian Bank,

Muthialpet Branch, Chennai and MVR and M/s. Maxwell Exim Private Ltd. in India.

55. As argued by Mr. Ramakrishnan, since the petitioner had not been acting in his individual capacity and acted on behalf of the company without naming M/s.Mountamount (Singapore) Private Ltd., as an accused in the final report,, the petitioner could not be implicated as an accused alleging that he is having vicarious liability to answer for the charges under Section 120-B r/w 420 IPC and therefore, this Court is of the view that the charge sheet is defective.

56. The next argument advanced by Mr. Ramakrishnan would be, that the learned Special Judge ought not to have accepted the final report in the absence of prior sanction from the Central Government .

57. Admittedly, there is no sanction from the Central Government under Section 188 of the Code of Criminal Procedure to carry on the investigation in respect of the transactions alleged to have been taken place between M/s.Mountamount (Singapore) Private Ltd., with the Indian Bank at Singapore. As already discussed in the foregoing paragraphs the petitioner/A-15 has been implicated in this case as an accused in his individual capacity as one of the Directors of M/s.Mountamount (Singapore) Private Ltd., in respect of certain transactions which the said company was having with the Indian Bank, Singapore. The transactions with a foreign company at Singapore, availing of loans in foreign currency from a Bank in Singapore could be the subject matter of investigation as the respondent/CBI had no territorial jurisdiction to enquire into the same. The offence alleged to have been committed by two foreign entities in foreign soil would not confer jurisdiction on the respondent/CBI to enquire into the same unless prior sanction of the Government of India was obtained under Section 188 of the Code of Criminal Procedure.

58. Section 188 of the Code of Criminal Procedure contemplates the offence outside India. It enacts that when an offence is committed outside India-

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

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be

inquired into or tried in India except with the previous sanction of the Central Government.

59. In the final report at paragraph No.13.38, it is stated that the investigation disclosed that the foreign purchase limit was sanctioned to M/s.MVR Exports/MVR Industries by the Indian Bank through its Muthialpet Branch, Chennai from 1988 and it was enhanced time and again and by 1995, the total sanctioned limit in this account was Rs.19.50 crores. During the period 1988-1995, the branch purchased a total of 701 foreign bills, several of them became overdue for payment and were subsequently adjusted. As on 29.02.1996, 89 foreign bills purchased by the branch worth Rs.30.13 crores remained overdue. Of this 89 foreign bills 47 bills amounting to Rs.14.26 crores were drawn on M/s.Mountamount (Singapore) Private Ltd., 22 bills amounting to Rs.8.75 crores were drawn on Nagova Exim Pvt. Ltd., and 20 bills amounting to Rs.6.55 crores were drawn on Sadeco Sarl Private Ltd., These bills were purchased by the Indian Bank, Muthialpet Branch, Chennai during the period between September 1994 and August, 1995.

60. In the last paragraph of the final report, it is stated that:

"since the major areas of wrongful loss caused to the bank were non realization of export proceeds and development of LCs, foreign investigation was required to be conducted in respect of the imports and exports of M/s. MVR Industry Ltd., and M/s. Maxwell Exim P Ltd., Investigation also necessitated enquiries with recipients of funds from the accounts of the Singapore based companies of the group. As such this Hon'ble Court was requested to issue LRs to 28 foreign countries including Singapore, the Netherlands, Nigeria, Hong Kong covering exporters of raw cashew nuts to India, importers of cashew kernels from India and recipients of funds from the accounts of Singapore based companies of MVR group. This Hon'ble Court was pleased to issue LRs as prayed for. The replies to the LRs are yet to be received from these countries. The result of the foreign investigation depending upon the outcome of the investigation through LR would be submitted to this Hon'ble Court through reports under Section 173(8) of Code of Criminal Procedure, 1973."

61. The last paragraph of the final report filed by the prosecuting agency discloses the fact that the final report is not in accordance with the provisions of sub sections (1) and 2 (i) of Sec. 173 of the Code of Criminal Procedure. It is the settled proposition of law that the Court concerned shall not receive a defective charge sheet or incomplete charge sheet. Section 173(1) of the Code of Criminal procedure enacts that

every investigation under this Chapter shall be completed without unnecessary delay. Section 173(2)(i) says that as soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-...

62. It may be relevant to note here the Police as an Investigating Agency to investigate the cases as per the procedures laid down in the law. After completion of the investigation, the case file is sent to the concerned Court for judicial verdict. Police prepares and presents the final report as per Section 173(2)(i) of the Cr. PC. Here, the phrase 'after completion of investigation' is to be underlined. As afore stated the prosecuting agency in the last paragraph says that a request was made to the concerned Court to issue Letters of Rogatory so as to enable the Investigating Authority to undertake foreign investigation with reference to the recipients of funds from the accounts of the Singapore based companies. Since the Letters of Rogatory is yet to be received by the Investigating authority, Mr. Ramakrishnan, learned counsel for the petitioner has contended that it could be stated as 'the final report', as it was an 'incomplete' one .

63. This Court, in this connection would like to have reference to Thota Venkateswarlu Vs State of Andhra Pradesh and another ((2011) 9 Supreme Court Cases 527) In this case, a three Judges Bench of the Hon'ble Supreme Court headed by Hon'ble Mr. Justice Altamas Kabir has held that requirement of previous sanction of Central Government for inquiring into or trying such offences in India is not necessary at the time of inquiry. However, such fetters are imposed only when the state of trial is reached. With regard to Section 188 Cr.PC. it is held that the proviso regarding sanction, is a fetter on powers of Investigating Authority. However, such fetters are imposed only when the stage of trial is reached which clearly indicates that no sanction is required till the commencement of trial. Accordingly, up to the stage of taking cognizance no previous sanction would be required from the Central Government in terms of Section 188 proviso. However, trial cannot proceed beyond cognizance stage without such previous sanction.

64. As clarified by the Apex Court in the above said decision, for taking cognizance of the offence no previous sanction of the Central Government is required under Sec. 188 CR.P.C. However, for the purpose of continuing the investigation in foreign countries such as Singapore, Netherlands, Nigeria, Hungary the Court ought to have issued 'letters of Rogatory' on the basis of the request which may be made by the Investigating Authority. Since "Letters of Rogatory" is yet to be issued and the investigation in the above

said foreign countries is yet to commence, as argued by Mr. Ramakrishnan, the report filed by the Investigating Authority is incomplete and it cannot be termed as final report, but it might be termed as 'interim report', that is why the Investigating Officer himself has stated in the last paragraph of the report that the result of the foreign investigation, depend upon the outcome of the investigation through LR (Letters of Rogatory) would be submitted to the Court through reports under Section 173(8) of the Code of Criminal Procedure. Sec. 173(8) says about further report.

65. During the course of arguments, it was brought to the notice of this Court, that during the pendency of the above proceedings the Indian Bank had received a sum of Rs.180 crores towards final settlement of the liability of MVR and M/s.Maxwell Exim Private Ltd., and the borrowers of the Indian Bank stood had fully settled and the loan account was accordingly closed. Thus, as on date M/s. MVR and M/s.Maxwell Exim P Ltd., do not have any subsisting liability to the Indian Bank. Therefore the cause of action for the complaint no longer subsists and the continuation of criminal conspiracy would be an abuse of process of Court.

66. It has therefore become necessary for this Court to make reference to the Orders dated 29.04.2014 and made in CrI.R.C. No.734 of 2013 as well as to the orders dated 02.09.2016 and made in CrI.R.C.No.840 of 2016. The order made in CrI.R.C.No.734 of 2013 dated 29.04.2014 relates to Tmt.V.R.Usha (A-14) one of the Directors of M/s.Mountamount (Singapore) Private Ltd., whereas the order, dated 02.09.2016 (made in CrI.R.C.No.840 of 2016) relates to Mr.R.Chandramouli (A16), who is said to be the Director of M/s Sadeco Sarl Private Ltd. in Singapore.

67. In the petition in CrI.RC.No.734 of 2013, a learned single Judge of this Court in paragraph No.24 of the order has observed that

"that apart, in this case, it is not in dispute that the entire amount borrowed by the two borrowing companies namely A5 and A6 was fully repaid and the Indian Bank had accepted the same as full settlement of all its dues. It is needless to point here that the power of the High Court in quashing a criminal proceedings or first information report or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. It has to be exercised by the High Court in accordance with the guidelines engrafted in the provisions of Sec. 482 CR.P.C viz., (1) to secure the ends of justice or (ii) to prevent abuse of the process of any Court".

68. Similarly paragraphs 25 to 28 of the above order are also very much essential for the disposal of this criminal revision, which are extracted here under:-

"25. It is also settled by the Hon'ble Supreme Court in Gian Singh Vs. State of Punjab and another (2012-7- Supreme -1- (three judges bench) that any compromise between the victim and the offender in relation to the offences under Special Statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc. cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavor stand on different footing for the purpose of quashing particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transaction or the offences arising out of matrimony relating to dowry etc. or the family disputes whether the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, this court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.

69. In this case, as the entire amount has admittedly been settled, it would be unfair and contrary to the interest of justice to continue with the criminal proceedings and continuations of the criminal proceedings would tantamount to abuse of process of law despite settlement of the amounts due to the bank. It is appropriate that criminal case is put to an end considering the subsequent event that has taken place in this case.

70. In the latest decision of the Hon'ble Supreme Court reported in 2014-2 MLJ-Crl-124-SC cited supra, a three judges bench decision of the Hon'ble Supreme Court held that having regard to the fact that civil liability of the accused to pay the amount to the bank has already been settled amicably and no subsisting grievance of the bank in this regard has been brought to the notice of the court, the offence under Section 420 of IPC being compoundable, the power of the Hon'ble Supreme Court could be exercised and put an end to the criminal proceedings by quashing the proceedings.

71. In the present case also by applying the dictum laid down by the Hon'ble Supreme Court, having regard to the fact that the liability to the bank had been fully settled and the accounts of A5 and A6 having been closed pursuant to the payment and in the light of the discussion made in the preceding paragraphs, to prevent the abuse of process of law and to serve the ends of justice, the criminal proceedings as against the Revision Petitioner/A14 can be put to an end. In the light of

the such settlement of dues to the bank, it is unlikely that the prosecution will succeed in the matter. To continue with the proceedings, therefore, would be a futile exercise as against the Revision Petitioner".

72. In the common order dated 7.10.2016 made in Criminal R.C. Nos. 709 / 2013 & 840/2016 and Criminal M.P. Nos. 6369 & 6370 / 2016, the Learned Judge of this court in paragraph no. 23 with regard to A16 has observed as under:-

(A16 as discussed in the preceding paragraphs is the Director of M/s. Sadeco Sarl Pvt. Ltd., Singapore relating to the Criminal R.C.No. 840/2016)

Para no. 23 of the above said order is extracted as under:-

"23. However, I find that so far as the 16th accused (petitioner in Crl. R.C. No. 840/2016) is concerned, similarly placed accused viz., 14th accused, who was a director of M/s. Mountamount (Singapore) Pvt. Ltd., was discharged by this court by order dt. 29.4.2014 in Crl. R.C. No. 734 of 2013. Further, the learned Special Public Prosecutor has fairly submitted that though as against the said order dated 29.4.2014, an appeal in SLP No. 10400/2014 was preferred before the Hon'ble Supreme Court, the Hon'ble Supreme Court has not granted any interim stay of the order. Further, the petitioner / A16 has been charged for the offence punishable under Section 120B IPC r/w 420 IPC and not for any other offence. But the court has wrongly taken cognizance under the provisions of the Prevention of Corruption Act also as against the petitioner /A16. Hence, this court is of the view that having discharged a similarly placed accused viz., 14th accused, the petitioner herein/ A16 is also entitled for similar relief. Hence, on this sole ground, the Crl. R.C. No. 840 of 2016 is allowed".

73. From the order dt. 29.4.2016 made in Crl. R.C.No. 734/2013 and from the common order dated 7.10.2016 and made in criminal R.C.No. 709/2013 and 840/2016 particularly Crl. R.C.No. 840/2016, A14 Tmt. V.R. Usha one of the directors of M/s. Mountamount (Singapore) Pvt. Ltd. and A16 Director of Sadeco Sarl have already been discharged.

74. In so far as the Petitioner herein (A15) is concerned, he is the similarly placed accused on par with A14 Tmt. V.R. Usha, as she is also one of the directors of M/s. Mountamount (Singapore) Pvt. Ltd. Company. He has also been facing the charge under section 120 B r/w. 420 IPC. Since he is a private individual and not in any way connected with the Indian Bank, Muthialpet Branch, Chennai he cannot be termed as a Public Servant and therefore the provisions of sections 11, 12 & 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act 1988 are not attracted against him. As observed by the Learned Judges in

Criminal Revision 734/2013 and 840/2016, since he has been facing the charge under section 120 (B) r/w 420 IPC there cannot be any restriction or impediment in discharging him from the clutches of the charges.

75. Admittedly, in the Special Leave Petition in SLP No. 10400/2014 which is preferred against the order dated 29.4.2014 in Crl. R.C. No. 734/2013 the Hon'ble Supreme Court has not granted any stay. Now that SLP is pending on the file of Supreme Court of India. Since the petitioner herein / A15 has been facing the charge under section 120 (B) r/w 420 IPC the Learned Special Judge had wrongly taken cognizance of the offences under the provisions of Prevention of Corruption Act also.

76. Now it is the admitted fact that A5 & A6 companies have settled all their disputes with the Indian Bank, Muthialpet Branch, Chennai. It can be recorded as against this Petitioner also as the offence under section 420 of IPC is compoundable with the permission of the court. The only submission made by Mr. K. Srinivasan, Spl. P.P is that the senior executives of the Indian Bank, Muthialpet Branch, Chennai viz. A1 to A4 could not be discharged as they have been facing the charges under the Prevention of Corruption Act 1988 which is a special statute under which the provisions of section 320 Cr.P.C could not be invoked. It is the settled proposition that in view of section 320 (9) Cr.P.C compounding of an offence has to be in accordance with section 320 Cr.P.C and in no other manner.

77. In Central Bureau of Investigation Vs. Sadhu Ram Singla and ors. (Criminal Appeal No. 396/2017 decided on 23.2.2017) a company under the name and style of 'M/s. Rom Industries Ltd., Mansa Road, Bhatinda, Punjab -Respondent No. 3 therein was dealing with State Bank of Patiala, Bhatinda (City) Branch since 1976. The said company had availed several credit facilities and finally to the limit of Rs. 10 crores in Feb'1995 which was sanctioned on 9.3.1995.

78. The law was taken into motion when FIR was registered on 28.12.2001 at Police Station, SIU (X)/ SPE / CBI, New Delhi under section 120 (B) r/w 420, 467, 468, 471 of IPC against the Board of Directors including respondent nos. 1 & 2 therein. Charge sheet was filed before the Learned Special Judicial Magistrate, CBI, Patiala, Punjab against the accused persons under section 420/471 r/w. section 120 B of IPC, for having entered into criminal conspiracy between 1995 to 1996 and causing loss to State Bank of Patiala to the extent of Rs. 28.49 Crores through false stock statements, forged bank guarantee and dishonest misuse of funds generated.

79. During the pendency of the proceedings, a compromise was arrived at between the bank and the respondent company under one time settlement scheme of the bank. An application filed by the

respondent no. 1 for compounding of offences under section 320 (2) of IPC was dismissed by the Trial Court on the ground that Section 471 r/w. 468 of IPC is a non compoundable offence. Thereafter the respondents had approached the High Court invoking the provisions of section 482 of Cr.P.C for quashing the FIR and also the resultant proceedings pending on the file of Special Judicial Magistrate, CBI, Patiala, Punjab, on the basis of aforesaid settlement. The High Court based on the decision of the full bench judgement in the case of Kulwinder Singh & Ors. Vs. State of Punjab & another 2007 (4) CTC 769, and on the basis of settlement of dispute, quashed the criminal proceedings against the respondents. Now the question arose before the Supreme Court was no longer resintegra i.e whether FIR and the consequential proceedings alleging non compoundable offences could be quashed by the High Court in exercise of its jurisdiction under section 482 of Cr.P.C on the basis of the settlement arrived at between the complainant and the respondents - Accused.

80. While penning down the judgment Hon'ble Mr. Justice Pinaki Chandra Ghose has observed in para 39 as follows:-

"39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice." Lastly, reliance was placed upon another judgment of this Court in Central Bureau of Investigation Vs. Maninder Singh, (2016) 1 SCC 389, wherein it was held by this Court:

"19. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi case, (2014) 15 SCC 29, the order of the High Court cannot be sustained." Resisting the aforesaid submissions it was canvassed by Mr. Bishwajit Bhattacharya, learned senior counsel appearing for the respondents that High Court has judiciously and rightly considered the facts and circumstances of the present case. Relying upon the judgment of this Court in Gian Singh Vs. State of Punjab & Anr., (2012) 10 SCC 303, learned senior counsel appearing for the respondents strenuously urged that the offences in the present case are not heinous offences. He further drew our attention towards the relevant part of Full Bench judgment of the High Court in Kulwinder Singh & Ors. Vs. State of Punjab & Anr. (supra), which was reproduced in the impugned judgment and the same is reproduced hereunder:

"26. In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney
HYPERLINK "https://indiankanoon.org/doc/297418/"&HYPERLINK
"https://indiankanoon.org/doc/297418/" Ors., (1980) 1 SCC 63,
Hon'ble Krishna Iyer, J. aptly summed up the essence of
compromise in the following words :-

The finest hour of justice arrives propitiously when
parties, despite falling apart, bury the hatchet and weave a
sense of fellowship or reunion.

81. The power to do complete justice is the very essence of
every judicial justice dispensation system. It cannot be diluted
by distorted perceptions and is not a slave to anything; except
to the caution and circumspection, the standards of which the
Court sets before it, in exercise of such plenary and unfettered
power inherently vested in it while donning the cloak of
compassion to achieve the ends of justice. No embargo, be in the
shape of Section 320(9) of the Cr.P.C. or any other such
curtailment, can whittle down the power under Section 482 of the
Cr.P.C." Since the present case pertains to the crucial doctrine
of judicial restraint, we are of the considered opinion that
encroaching into the right of the other organ of the government
would tantamount clear violation of the rule of law which is one
of the basic structure of the Constitution of India. We wish to
supply emphasis on para 21 of the Manoj Sharma's case (supra)
which is as follows:

"21. Ordinarily, we would have agreed with Mr. B.B.
Singh. The doctrine of judicial restraint which has been
emphasised repeatedly by this Court e.g. in Aravali Golf
Club v. Chander Hass (2008) 1 SCC 683 and Govt. of A.P.
v. P. Laxmi Devi (2008) 4 SCC 720, restricts the power of
the Court and does not permit the Court to ordinarily
encroach into the legislative or executive domain. As
observed by this Court in the above decisions, there is a
broad separation of powers in the Constitution and it
would not be proper for one organ of the State to
encroach into the domain of another organ." Having
carefully considered the singular facts and circumstances
of the present case, and also the law relating to the
continuance of criminal cases where the complainant and
the accused had settled their differences and had arrived
at an amicable arrangement, we see no reason to differ
with the view taken in Manoj Sharma's case (supra) and
several decisions of this Court delivered thereafter with
respect to the doctrine of judicial restraint. In
concluding hereinabove, we are not unmindful of the view
recorded in the decisions cited at the Bar that depending
on the attendant facts, continuance of the criminal
proceedings, after a compromise has been arrived at
between the complainant and the accused, would amount to
abuse of process of Court and an exercise in futility

since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties.

In view of the discussion we made in the preceding paragraphs, in our opinion, it would be proper to keep the said point of law open. However, in the given facts, we dismiss this appeal".

82. In the given case on hand as already observed the offence under section 420 IPC can be compounded with the permission of the court. As admitted by the Learned Special Public Prosecutor for CBI cases entire due was settled and hence there is no loss caused to Indian Bank, Muthialpet Branch. Since the Petitioner has been facing the charges only under section 120-B r/w. 420 of IPC and the entire loan amount was repaid towards full and final settlement the petitioner /A15 can also be discharged from the clutches of the charges as in the case of A14 & A16.

83. Since the averments of the final report do not make out a prima facie case against the Petitioner / A15, no charge could be framed against him u/s. 120-B r/w. 420 IPC. Even if the Learned Special Judge is allowed to frame charges against the petitioner, this would be a futile exercise and abuse of the process of court as the chance of conviction is remote.

84. With reference to this point this court would like to place reliance upon the following two decisions:- (i) State of West Bengal and others vs. Swapan Kumar Guha (1982) 1 SCC 561 : 1982 SCC (Cri) 283 and (ii) State of Hariyana Vs. Bhajanlal 1982 supp. (1) SCC 335 : 1982 SCC (Cri) 426.

In Swapan Kumar Guha's case cited 1st supra, a three Judges Bench of the Hon'ble Apex Court headed by His Lordship Hon'ble Mr. Justice Chandrachud, Y.V. Chief Justice (as he then was) has held that whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the Court has mainly to take into consideration the complaint or the F.I.R. and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it

will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

85. The proposition in Swapan Kumar Guha's Case was reiterated with the approval in State of Haryana Vs. Bhajan Lal, cited second supra. In this case, a Division Bench of the Apex Court in paragraph 8.1 has observed that "in the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein such power under Section 482 of Code for quashing of an FIR should be exercised".

86. The Apex Court has enlisted seven kinds of circumstances where this Court may be justified in exercising such jurisdiction of which circumstances nos. (e) & (g) are very much relevant and more suitable to the present case on hand.

Clause (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

Clause (g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

87. In the given case on hand no ingredients either to constitute an offence of criminal conspiracy under Section 120 (B) or an offence of cheating under Section 420 IPC are made out as against the Petitioner / A15. Hence this Court finds that even if the allegations levelled in the final report are taken on their face value and accepted in their entirety, they do not prima facie constitute any offence or make out a case against the Petitioner / A 15.

88. Having regard to all the relevant facts and circumstances, this court finds that the criminal revision filed by the Petitioner is deserved to be allowed.

89. Accordingly this Criminal Revision is allowed and the impugned order dated 29.4.2016 and made in criminal M.P. No. 960/2014 in C.C. No. 64/2001 is set aside and the petition in Criminal M.P. No. 960/2014 is allowed. The Petitioner / A15 is discharged from the clutches of charges concerned in C.C. No.

64/2001 pending on the file of Learned Special Judge for CBI Cases (VIII Additional Judge), City Civil Court, Chennai.

90. It appears that the Petitioner herein has filed a petition in Criminal M.P. No. 10823 /2016 seeking a direction to the Learned Special Judge for CBI Cases (VIII Additional Principal Special Judge) to return his original passport which was impounded at the time of granting bail in his favour in Criminal O.P. No. 14457/2012. Since he is discharged from the charges, impounding of his passport with related documents is no longer required. Hence the Learned Special Judge for CBI Cases is hereby directed to return his original passport along with related documents forthwith to the Petitioner as the same is no longer required for any other purpose. With this direction the petition in Criminal M.P. No. 10823/2016 is disposed of.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The VIII Additional Principal Special Judge,
for CBI Cases,
City Civil Court,
Chennai

2.The Inspector of Police
CBI/BS/FC
Bangalore

3.The Superintendent Central Prison,
Puzhal II Chennai

4. The Public Prosecutor
High Court, Madras

+1 cc to Mr.K.Srinivasan Advocate sr 21835

Criminal Revision No.1071 of 2016 against
Crl.M.P.No.960 of 2014 in
C.C.No.64 of 2001

nmi(co)

aa27/03/2018