

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.326 & 13925 of 2016

COMMON ORDER:

The petitioner in both the petitions by name Sri Ch.Lakshmi Narayana, the then Chief Manager of State Bank of India since retired was arrayed as accused No.1 in C.C.No.23 of 2005 pending trial on the file of III Additional Special Judge for CBI Cases, Hyderabad. It is outcome of crime No.RC/ 11A/ 2003, CBI, Hyderabad, registered against 8 accused for the offences punishable under Sections 120-B & 420 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act (for short 'PC Act'). The charge sheet filed for the above sections against the 8 accused including the petitioner/ A.1, not to mention the names of other accused, A.2-C.V.V. Vijay Kumar Naidu, Proprietor of M/s. S.V. Enterprises, A.3-D.M.K. Naidu, Proprietor of M/s. DMK Excavations & Constructions Private Limited, A.4-YSN Reddy, Proprietor of M/s. SN Reddy Enterprises (though shown in FIR not charge sheeted), K. Ashok Kumar, Managing Director of M/s. Suryodaya Hitech Engineering Private Limited (A.5 as per FIR and A.4 as per corrected charge sheet), Sri M. Madhav Vasu, Proprietor of M/s. Timbermatics (A.6 as per FIR but not charge sheeted), Sri C.C. Mukundan Nambiar, retired AGM, SBI, and B. Sudesh Kumar respectively shown in FIR as A.7 & A.8 and because of the corrections in the charge sheet to array as A.5 & A.6.

2). The allegation is that the petitioner/ A.1 is conspired with other accused by abusing his official position by corrupt or illegal means in sanctioning bank guarantees to various entities among other accused by causing loss of Rs.70.50 lakhs to the SBI, Padmaranagar Branch of Secunderabad in corresponding wrongful gain to other accused viz.,

2a). BG.No.19/ 1996-97 dated 23.12.1997 for Rs.12 lakhs to M/s. S.V. Enterprises (C.V.V. Vijay Kumar Naidu-A.2), on his application to

avail raw material assistance from National Small Industries Corporation (for short, 'NSIC'), the bank guarantee sanctioned for such limit favouring NSIC backed by false or forged equitable mortgage of plot No.388 with a house constructed therein located at SCOHB Society, Saidabad, worth Rs.17.96 lakhs belongs to B.Sudesh Kumar-FIR A.8 and charge sheet A.6. It is averred further that the application for bank guarantee is enclosed with deed of will dated 05.12.1994 signed by B.Srinivasa Rao, father of said Sudesh Kumar, bequeathing said property in his favour and A.2 furnished of trading account, profit and loss account and balance sheet of M/s. S.V. Enterprises for 3 previous years issued by CSN Sarma, Chartered Accountant. It is averred that A.1 knowingly sanctioned the bank guarantee without verifying genuineness and correctness of the entity-S.V. Enterprises and without conducting pre-sanction inspection of properties and without verifying genuineness of the sale deed of properties of ECs and without verifying the end use of funds and disbursed Rs.12 lakhs, that was failed to repay by A.2 and NSIC invoked the bank guarantee for the A.2 who availed raw material assistance scheme of Rs.11.16 lakhs from NSIC. It is averred against A.2 that the financial assistance given by NSIC to A.2 of several amounts credited to M/s Aparajita Enterprises, Hyderabad, to its account maintained with Indian Bank, New Nallakunta Branch, Hyderabad, in the name of Vijay Naidu or Vijay Ch. from invoices and delivery challans of it showing A.2 purchased steel products from it and M/s Aparajita Enterprises address shown in 2 different ways revealed that it is a non-existent entity and did not obtain any trade license from the Municipality and APGST and CST was allotted to SV Enterprises of A.2 located at Bakaram and in the name of M/s Aparajita Enterprises A.2 signed differently and withdrawn the amount credited to M/s Aparajita

Enterprises by cheques issued in the name of his wife Smt. C.Lavanya and siphoned off by floating a fake entity M/s Aparajita Enterprises.

2b). Another bank guarantee No.21/ 97-98 dated 14.02.1998 for Rs.12 lakhs issued to S.V. Enterprises on the application of A.2 dated 14.02.1998 by furnishing sale deed registered document No.509 of Sub Registrar, Banjara Hills, showing for house located at H.No.8-2-293/ K/ 83 (plot No.83) of Jawaharnagar, Jubilee Hills, to one S.Paju and during investigation information obtained from the Sub Registrar, Banjara Hills, revealed that the said document No.509 belongs to different property of different person and A.1 did not verify the genuineness of the document. It is the allegation against A.2 that he availed raw material facility from NSIC and repaid certain amounts to create an impression of doing business genuinely and the assistance obtained on the basis of invoices of fictitious firm M/s Aparajita Enterprises and A.2 failed to repay and NSIC invoked the bank guarantee from which the Bank sustained loss and A.2 benefited.

2c). Bank Guarantee No.22/ 1998-99, dated 20.03.1998 for Rs.8 lakhs in favour of A.2 SV Enterprises on his application dated 19.03.1998 to avail raw material assistance from NSIC, based on mortgage of property covered by sale deed for plot No.6 and the Sub Registrar, Vallabh Nagar, Hyderabad, during investigation confirmed that sale deed is fake and forged one and original sale deed already offered as equitable mortgage to Laxmi Vilas Bank Limited, MG Road, Secunderabad, on 19.10.1996 by M/s. Patel and Company of Musheerabad, Hyderabad and A.2 obtained financial assistance from NSIC by producing invoices in the name of fictitious firm M/s Aparajita Enterprises supra by crediting amounts to it and withdrawn by him either directly or through her wife C.Lavanya and siphoned to him and cause

wrongful loss and gained wrongfully and A.1 sanctioned without verifying genuineness and correctness and without inspection of properties.

2d). Bank guarantee No.25/ 1998-99 dated 12.05.1998 for Rs.12.15 lakhs in favour of A.3-DMK Naidu, Managing Director of DMK Excavations and Constructions Private Limited, located at 110G, Road No.2, Janapriya Nagar, Miyapur, based on its application dated 12.05.1998 by offering 2 houses located at 2-2-485, Amberpet, and plot No.58, S.No.218/ 1 of Malkajgiri and it revealed from investigation with joint Sub Registrar, MJ Market, Hyderabad and Sub Registrar, Vallabhnagar, of 2 sale deeds are fake and the actual owner of 1st house is one S.Krishna Murthy and the actual owner of 2nd house is Smt. A.Kameshwari and her husband Rammohan Rao, and Krishna Murthy stated did not pledge his house and Kameshwari stated the house belongs to her husband and A.1 sanctioned the limit without verifying the genuineness of A.3's entity and the sale deeds and without conducting pre-sanction inspection of properties with reference to sale deeds and ECs and end use of funds and these amounts were also credited to fictitious firm M/s Aparajita Enterprises by NSIC on application of DMK Naidu and A.2-CVV Vijay Kumar Naidu withdrawn the money either by himself or through cheques issued by his wife C.Lavanya and used for his personal gain and municipal authorities did not issue at plot No.89, road No.3, Miyapur, any trade license to DMK Excavation and Constructions Private Limited and when DMK failed to pay, NSIC invoked the bank guarantee and thereby the Bank suffered loss and gain by A.2 and A.3.

2e). Bank Guarantee No.29/ 1998-99 dated 13.07.1998 for Rs.7. lakhs in favour of SN Reddy Enterprises to which YSN Reddy (A.4 as per FIR) a fictitious entity that was also floated by A.2-CVV Vijay Kumar Naidu by his application dated 13.07.1998 seeking the bank guarantee in

favour of NSIC for applying raw material assistance by offering equitable mortgage of property covered by sale deed for plot No.6 & 7, S.No.116, Gachhibowli, Serlingampally Mandal, R.R. District, in the name of Smt. Sadatunnisa Begum and the investigation revealed from enquiry with Joint Sub Registrar, Moosapet, of it is a forged and fake document as Smt. Sadatunnisa Begum stated did not offer said property to any bank as security and M.Venkata Goud, the vendor of the sale deed also disowned and SN Reddy Enterprises never existed at said address and there is no sales tax license. The bank guarantee sanctioned was on 12.07.1998 a day prior to the application by YSN Reddy and A.1 without verifying genuineness and correctness of the entity and without conducting inspection of properties and without verifying genuineness of the sale deed and ECs and the end use of funds and the NSIC which availed raw material assistance on the basis of invoices submitted by fake entity M/s Aparajita Enterprises from the amount credited to its account in Indian Bank, New Nallakunta, A.2 withdrawn either directly or by issuing cheques in the name of his wife C.Lavanya and had wrongful gain and caused wrongful loss to the Bank from NSIC invoked the bank guarantee.

2f). Bank Guarantee No.23/ 1998-99 dated 26.03.1998 for Rs.20 lakhs in favour of M/s.Suryodaya Hitech Engineers Private Limited represented by its Managing Director A.Ashok Kumar (A.5) submitted application dated 27.03.1998 for bank guarantee for raw material assistance from NSIC by offering the property covered by sale deed for plot No.1, S.No.403/ 1, Shaikhpeta, Banjara Hills, and during investigation it revealed that it is a forged and fake document so also the NOC obtained from the District Collector, Hyderabad, and the amounts credited by NSIC to said fake entity M/s Aparajita Enterprises and A.2

siphoned the funds and when failed to pay NSIC invoked the bank guarantee, thereby it caused wrongful loss to the Bank and wrongful gain by A.2 and A.5 and A.1 sanctioned the loan without inspection of properties and without verifying genuineness of the sale deed.

2g). Bank Guarantee No.28/ 1998-99 dated 13.06.1998 for Rs.20 lakhs in favour of M/ s. Timbermatics represented by Sri M.Madhava Vasu (A.6 as per FIR, but not charge sheeted), in saying from said application dated 13.06.1998 for bank guarantee to have raw material assistance from NSIC by offering plot No.70, S.Nos.37 & 41 and house H.No.16-11-511/ D/ 70 constructed therein at Moosarambagh and investigation revealed also from enquiry with Sub Registrar, Azampura, that it is a forged and fake document and the actual owner Vijayalakshmi gave copies of original sale deed to DMK Naidu-A.3 to obtain bank loan and later she dropped the proposal and DMK Naidu, who was having the copies subsequently by using the particulars, created the fake and forged sale deeds and NSIC provided raw material assistance to Timbermatics of Madhava Vasu based on invoices given by M/ s. Forest Integrated Products Industrial Cooperative Society Limited, whose President is M.Madhava Vasu and Treasurer is Haribhai Patel as they failed to repay, NSIC invoked the bank guarantee from which the Bank sustained loss and the others benefited.

3). The charge sheet further discloses said Smt. A.Vijayalakshmi supra lodged a private complaint with X Metropolitan Magistrate Court, Secunderabad, that was referred to Chilakalaguda Police Station against Lakshminarayana-A.1, M.M. Vasu-A.6, DMK Naidu-A.3 and one James and the original sale deed during investigation seized by local police and charge sheet filed from investigation. It is averred in the charge sheet that SBI, Padmaranagar, paid total amount of Rs.94 lakhs to NSIC for

the bank guarantees invoked at various times and considering 25% cash margin deposited by all the 5 firms to the Bank at the time of obtaining bank guarantee, the Bank suffered net loss of Rs.70.50 lakhs. The investigation further revealed that C.C. Mukundan Nambiar (A.7) was instrumental with dishonest and fraudulent intention to cheat the Bank in his assistance to A.2 to A.6 in getting the bank guarantees sanctioned on the basis of fake and forged security by influencing the A.1 and DMK Naidu is proved to have paid Rs.44,000/- by 2 cheques to C.C.Mukundan Nambiar (A.7) as commission for helping and aiding to A.2 to A.6 to complete the transaction. The current account No.693 in the name of M/s Aparajita Enterprises dated 11.09.1997 was opened by Ch. Vijay none other than CVV Vijay Kumar Naidu-A.2 and for opening of account introduced was by M/s. SV Enterprises (current account No.407) of Proprietor concerned of said CVV Vijay Kumar-A.2 and C.Vijay Naidu, C.V. Vijay Kumar and Vijay Ch. with the names of the account are one and the same and the photographs affixed to the account opening forms in different banks also of him and thus amounts through NSIC credited to M/s Aparajita Enterprises of the account of Vijay Kumar-A.2, who encashed and siphoned the amounts. There is meeting of minds between A.2, A.3 & A.5 in committing the fraud by submission of invoices purported to have issued by the fake entity M/s Aparajita Enterprises showing supply of raw material and the cheques received on behalf of A.2, A.3 & A.5 deposited to the account opened by A.2 and siphoned the amounts without actually receiving the raw material from alleged M/s Aparajita Enterprises and thereby along with them, A.1 is also liable. It is further mentioned that an amount of Rs.18.74 lakhs could be recovered by compromise from Suryodaya Hitech Engineering Pvt. Ltd. Thereby A.1 also liable for the substantive offence along

with them and sanction order was issued against A.1 under Section 19(1)(c) of PC Act by the competent authority. The charge sheet further speaks A.2 is in abscondence.

4). It is from said final report in the form of charge sheet submitted on 21.06.2002 and some names of accused persons were deleted and some charge sheeted, but not properly reflected in the charge sheet when presented that was returned by the learned Special Judge on 21.06.2005, and same was resubmitted stating- the array of accused names is corrected by complying with the objections on 29.06.2005 and on 06.07.2005; the learned Special Judge for CBI Cases, Hyderabad, in the cognizance order mentioned as- *taken on file under Sections 120-B, 468, 420, 471 read with 468 IPC and Section 13(2) r/w 13(1)(d) of PC Act, against A.1 to A.6 of the corrected charge sheet.*

5). The learned Spl.Judge later framed 5 charges against the accused persons supra including the petitioner-A.1 of which charges 1 to 4 are common for all accused of the cognizance order viz; u/ secs.120-B, 420, 468, 465 and 471 IPC whereas, so far as the petitioner-A.1 is concerned, framed charge No.5 also under Section 13(2) r/ w 13(1)(d) of PC Act.

6). The subject matter now to answer in the two petitions is from the petitioner impugning all the charges supra, besides the very cognizance order supra and even the very investigation, questioning the competency of the investigating officer.

7). Heard both sides and perused the decisions placed reliance respectively and also the material on record with reference to the respective contentions in the oral and written submissions. The decisions

placed reliance respectively to avoid repetition is chosen to refer contextually in the course of discussion in the decision to be arrived.

8). The points for consideration that arise now to decide are:

i). Whether the cognizance taken by the learned Special Judge for CBI cases, Nampally, Hyderabad for the offences punishable u/ sections 120-B, 468, 420 and 471 r/w. 465 of IPC and Sec.13(2) r/w Sec.13(1)(c) & (d) of the P.C.Act, in C.C. No.23 of 2005, against the petitioner(A1), leave about other accused from the charge sheet filed against them by the CBI, ACB/ SPE, Hyderabad, is unsustainable and is liable to be quashed either for want of sanction for prosecution from legal bar or for want of prima-facie accusation from even face value of the final report material covered by the investigation and if so to what extent and for what offence?

ii). To what result?

9). Coming to the rival contentions on maintainability of the petitions, from earlier the petitioner filed among some other accused revisions against the dismissal of discharge applications, by not raising requirement of sanction for IPC offences, for sanction is there for the offence u/s.13 of the PC Act, when impugned competency of Investigating officer, validity of investigation and validity of sanction order and non attracting of any of the penal provisions to sustain the accusation and continuation of proceedings, disposed of by all such contentions left open to raise during trial, it is needful to consider the scope on the exercise of the inherent powers under Section 482 CrPC by the High Court.

9.a). The three Judge Bench of the Apex Court in Common Cause Vs. Union of India¹, held at Para 179 that the powers that can be exercised by the Supreme Court under Article 32 and by the High Court under Article 226 are plenary and are not even fettered by any legal constraints. No doubt it was observed at Para 178 that there should be accountability and liability of the executive including public servants in administrative matters and there should be transparency in all what they

¹ (2014) 14 SCC 155

do, especially where grant of larges concerned. It was also observed at Para 86 that the officers of the Government would also be liable in damages for their wrongful acts provided the act does not fall within the purview of “act of State”.

9.b). The Apex Court in Pepsi Food Ltd. v. Special Judicial Magistrate² held that the powers conferred on the High Court under Article 226 and 227 of the Constitution of India and under Section 482 CrPC. have no limit, but more the power, more due care and caution should be exercised while invoking these powers.

9.c). It is also as per the well laid down expression of the Apex Court five judge Bench way back in Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, Bombay³ referring to the earlier three judge bench expression in Talab Haji Hussain Vs. Madhukar Purshottam Mondkar⁴ that the High Court is having the inherent power under Section 561-A(old) 482(new) CrPC, where such an order is necessary to secure the end of justice or to prevent abuse of process of Court as this power is always preserved to the High Court under the Code. It was also observed that the inherent power of the High Court is not conferred by CrPC. The power which inheres in the High Court is no way limited or effected by the provisions of CrPC.

9.d). The three Judge Bench of the Apex Court in Krishnan V. Krishnaveni⁵ relying upon the earlier Four Judges Bench expression in V.C.Shukla V. State through C.B.I⁶ that refers the three Judge Bench expression in Madhulimaye v. State of Maharashtra⁷ that where it is found any miscarriage of justice or abuse of process of the Court or

² AIR 1998 SC 128

³ AIR 1967 SC 1639

⁴ 1958 SCR. 1226

⁵ (1997) 4 SCC 241

⁶ (1980) 2 SCR 380=1980 (2) SCC 665

⁷ (1977) 4 SCC 551

required statutory procedure not been complied with or the order passed or sentence imposed requires correction, it is but the duty of the High Court to exercise the inherent powers.

9.e). The latest three Judge Bench of the Apex Court in *Prabhu Chawla v. State of Rajasthan*⁸ held explaining *Mohit v. State of Uttar Pradesh*⁹ that Section 482 CrPC begins with a non-obstante clause to state: “Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. “abuse of the process of the Court or other extraordinary situation excites the court’s jurisdiction. The limitation is self-restraint, nothing more.”

9.f). It was also held by the Apex Court in *Popular Muthaiah Vs State rep. by Inspector of police*¹⁰ that the inherent power is not confined to procedural or adjectival law, but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts *ex debito justitiae* -to mean to do real and substantial justice in the lis for which alone the power exists inherently. The Apex Court in *Popular Muthaiah* (supra) referred the earlier expressions in 1) *Nawabganj Sugar Mills Vs. Union of India*¹¹ holding that, though there are limitations on the powers of the Court, it cannot abandon its inherent powers. *The inherent power has its roots in necessity and its breadth is coextensive with the necessity* and in 2)

⁸ 2016 SCC OnLine SC 905

⁹ (2013) 7 SCC 789

¹⁰ (2006) 7 SCC 296

¹¹ AIR 1976 SC 1152

South Eastern Coal Fields Ltd. Vs State of M.P.¹² holding that *act of court does not confine to act of primary court, but even appellate or revisional or other superior court, as it is an act of court as a whole.* In Popular Muthaiah(supra) it is also held referring to the scope of the Maxim *actus curiae neminem gravabit* -that *this principle is not confined to erroneous act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and the law.*

9.g). In R.Kalyani V. Janak C.Mehta¹³, 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.

9.h). In Sunitha Jain V. Pavan Kumar Jain¹⁴ 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.

9.i). In State of Orissa V. Saroj Kumar Sahu¹⁵ it was also held in 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.

¹² AIR 2003 SC 4482

¹³ (2009) 1 SCC 516

¹⁴ (2008) 2 SCC 705

¹⁵ (2005) 13 SCC 540

9.j). In *Punjab National Bank V. Surender Prasad Sinha*¹⁶ 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 Magistracy 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 to harass them for vendetta.

9.k). Same is the principle also laid down in *Zandu Pharmaceuticl Works Ltd. Vs Mohd. Sharaful Haque*¹⁷, *Amit kapoor Vs Ramesh Chander*¹⁸ and *Rajat Prasad Vs CBI*¹⁹.

9.l). In *Rajib Ranjan and Ors. v. R. Vijaykumar*²⁰ referring to the three Judge Bench expression in *Inder Mohan Goswami and another v. State of Uttaranchal*²¹, it was observed at Para 19, that the Court

¹⁶ (1988) 1 SCC 692

¹⁷ 2005(1) SCC 122

¹⁸ 2012(9) SCC 460

¹⁹ 2014(6) SCC 495

²⁰ (2015) 1 SCC 513

²¹ (2007) 12 SCC 1

reiterated the scope and ambit of power of the High Court under Section 482 of the Code in the following words:

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then he would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases:

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v DPP*, 1964 AC 1254 Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v Humphrys*, 1977 AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained”.

9.m). In Umesh Kumar Vs. State of Andhra Pradesh²² referring to (Pepsi Food Ltd. supra; Ashok Chaturvedi v. Shitulh Chanchani²³; G. Sagar Suri v. State of U.P.²⁴ and Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy²⁵), it was held that the scope of Section 482 CrPC as well defined and the inherent powers could be exercised by the High Court to give effect to an order under the CrPC.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

9.n). There is distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former

²² 2013(10) SCC 591

²³ AIR 1998 SC 2796

²⁴ AIR 2000 SC 754

²⁵ (2011) 12 SCC 437

question can be agitated at the threshold but the latter is a question which has to be raised during trial, as pointed out in Parkash Singh Badal And Anr vs State Of Punjab And Ors²⁶.

9.o). It is laid down by the Apex Court in Chandran Ratnaswami V. K.C. Palanisamy²⁷ that where it is an abuse of process to continue the proceedings, it is the duty of the Court to quash the proceedings in such case by clarifying what is meant by abuse of process of court, that:

“29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of Connelly vs. Director of Public Prosecutions, (1964) 2 All ER 401 (HL) observed: “There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process”. “The power (which is inherent in a court’s jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice.” In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

30. In Hui Chi-Ming vs. The Queen [(1992) 1 AC 34 (PC)], the Privy Council defined the word “abuse of process” as *something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.*

31. In the leading case of Bennett vs. Horseferry Road Magistrates’ Court, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

- (i) where it would be impossible to give the accused a fair trial; or
- (ii) where it would amount to misuse/ manipulation of process because it offends the court’s sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.”

²⁶ (2007) 1 SCC 1
²⁷ (2013)6 SCC 740

9)(p). The Apex Court in Babubhai vs. State of Gujarat and Others²⁸ held that the Investigating Officer cannot be permitted to conduct an investigation in a tainted and biased manner. It was further observed that where non-interference of the Court would ultimately result in failure of justice, the Court must interfere. Same is quoted with approval by the subsequent three Judge Bench in Hema vs. State, through Inspector of Police, Madras.²⁹

9)(q). Thus and for all the above, the quash petition impugning the charges and the very cognizance orders is maintainable.

10). Coming to the scope of law on the offences punishable under sections 120-B, 420, 465, 468 and 471 of IPC:

10)(A). On section 120-B IPC:

10)(A)(a). The Apex Court in State of H.P. Vs Kishan Lal Pardhan³⁰ held at Para-8 on section 120-B IPC that the offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

10)(A)(b). In State Of Tamil Nadu vs J. Jayalalitha³¹ on the scope of charge or discharge for consideration, it was observed by the Apex Court from the facts on record placed by the prosecution that there is sufficient material against Smt.Jayalalitha making out the offences under Sections 120B & 409 IPC r/ w. 13 of the PC Act in her insistence for the proposal and its ultimate approving the tenders to purchase and

²⁸ 2010 (12) SCC 254

²⁹ [2013] 3 S.C.R. 1

³⁰ AIR 1987 SC 773 = 1987 CrLJ 709

³¹ 2000(5)SCC 440

import coal for wrongful gain by causing loss to State exchequer even with no necessity that too for high price, despite the Secretary concerned of the State Govt. raised strong objection for the proposal and even Secretary , Ministry of Coal raised objection also on the poor quality by its ignorance and even by deviation of conditions of Central Government for rooting through it and the discharge by trial court held unsustainable, that too when all concerned officials were charged. The scope of Section 10 Evidence Act considered is by relying upon the observations of the three Judge Bench of the Apex Court in State vs. Nalini³² that the first condition which is almost the opening lock of that provision is the existence of 'reasonable ground to believe' that the conspirators have conspired together.

10)(A)(c). In Ram Narain Poply Vs. CBI³³, the three Judge Bench of the Apex Court held on Section 120B IPC that the elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they; become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. The encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members

³² 1999 (5) SCC 253

³³ 2003 CrLJ 4801

wherever and whenever any member of the conspiracy acts in furtherance of the common design.

10)(A)(d). The Apex Court in *V.C. Shukla v. State (Delhi Admn.)* supra, held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

10)(A)(e). In *State (N.C.T. of Delhi) Vs. Navjot Sandhu@ Afsan Guru*³⁴ it was totally considered the scope of criminal conspiracy from Sections 120B & 43 IPC and Section 10 of the Evidence Act by observed from para 86, referring to aims and objects in introducing in IPC by 1913

³⁴ 2005 SCC (CrI) 1715

amendment, with observation of similar to the definition in Halsbury`s laws of England and American concept of criminal conspiracy, Russell on crimes, Harisngn Gour on Penal Law, some of the foreign expressions, besides that of the Apex Court earlier including from Sardar Singh Caveeshar³⁵, Major E.G. Barsay³⁶, Yash Pal Mittal³⁷, V.C.Shukla supra, Mohd. Usman³⁸, Kishan Lal Pardhan supra, Kehar Singh³⁹, Ajay Agarwal⁴⁰, Nalini supra, Ferozuddin⁴¹, Mohd. Khalid⁴², that few bits here and there cannot be suffice, agreement can be inferred from any sold facts and circumstances to consider there from act of one as act of all, it requires some kind of physical manifestation of agreement like transmission of thoughts and sharing of unlawful design by meetings and communications to commit the act, prior to the act. For that, there has to be cogent and convincing evidence against each of the accused. It is one who commits an over act with knowledge of conspiracy is guilty and one who tacitly consents to the object of the conspiracy can also be made liable. The Court in appreciation must take care to see that the acts and conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability cannot be fastened by way of analogy or by extension of a common law principle. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another, and have made a partnership in crime. Beyond the mere fact of agreement, the

³⁵ AIR 1957 SC 747

³⁶ AIR 1961 SC 1762

³⁷ 1977 (4) SCC 540

³⁸ 1981 (2) SCC 443

³⁹ 1988 (3) SCC 609

⁴⁰ 1993 (3) SCC 609

⁴¹ 2001 (7) SCC 596

⁴² 2002 (7) SCC 334

necessary *mens rea* for proving that a person is guilty of conspiring to commit an offence be established.

10)(A)(f). The Apex Court in Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd⁴³ 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.

10)(A)(g). The Constitution Bench expression of the Apex Court in Bhagwan Swarup Lal Bishan Lal V. State of Maharashtra⁴⁴ way back 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

10)(A)(h). In Abuthagir Vs State⁴⁵ referring to Mohd. Khalid, Devander Pal Singh and Kehar Singh supra, it was held that the elements of conspiracy to be (a). an object to be accomplished, (b). a plan or scheme embodying means to accomplish that object, (c). an agreement or understanding between two or more of the accused whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, and (d). in the jurisdiction where the statute required an overt act. The Court must enquire whether the two or

⁴³ 2010 (10) SCC 479

⁴⁴ AIR 1965 SC 682

⁴⁵ 2009 CrLJ 3987

persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the later does.

10)(A)(i). In *Mir Nagvi Askari vs CBI*⁴⁶ it was held on requirements and proof of Criminal conspiracy that it is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.....Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of minds of two or more persons for **doing** or causing to be done an illegal act or an act by illegal means. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/ or by necessary implication-[See *Mohammad Usman supra*]. The following passage, from

⁴⁶2009 15 SCC 643

Russell on Crimes, (12th Edn. Vol 1), cited by Jagannatha Shetty, J. in Kehar Singh supra, brings out the legal position succinctly:

"The gist of the offence of conspiracy then lies, not in doing the act, or affecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough"

10)(A)(j). Further it was noted in Kehar Singh (supra) that to establish the offence of criminal conspiracy `it is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.' In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.

10)(A)(k). This Court in Maharashtra v. Som Nath Thapa⁴⁷ supra opined that it is necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."-[See also K.R. Purushothaman v. State of Kerala⁴⁸. Since we

⁴⁷ [(1996) 4 SCC 659]

⁴⁸ 2005 12 SCC 631

have dealt with the law with respect to criminal conspiracy in detail in *R. Venkatkrishnan v. Central Bureau of Investigation-* (Criminal Appeal 76 of 2004 decided today) we need not deal with it here at once again.

We may however notice that this court most recently in *Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh and Anr. v. C.B.I. through its Director*⁴⁹, after taking recourse to law governing the field noted thus:

"55. The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy."

10)(B) On Section 420 IPC:

10)(B)(a). Coming to Section 420 IPC, the Apex Court in *Anil Mahajan Vs. Bhore Industries Limited*⁵⁰ 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.

10)(B)(b). The other expression of the Apex Court in *Uma Shanker Gopalika Vs. State of Bihar*⁵¹, it was held that breach of contract would amount to cheating if only intention to cheat was existing from the inception and if such intention developed later that would not amount to cheating.

10)(B)(c). The other expression of the Apex Court in *Ram Jas Vs. State of U.P.*⁵² also it is laid down on the ingredients required for the

⁴⁹ 2008 (14) SCALE 240

⁵⁰ 2005 10 SCC 228

⁵¹ (2005) 10 SCC 336

⁵² AIR 1974 SC 1811

offence of cheating that there should be fraudulent or dishonest inducement by deceiving from the inception.

10)(B)(d). In *SVL.Murthy vs. State-CBI*⁵³ while holding the ingredients required for the offence of cheating should be fraudulent or dishonest inducement by deceiving from the inception by referring to catena of expressions, so far as criminal conspiracy, it is held the prosecution must show that there had been meeting of minds at the time of the facility applied for and granted.

10)(B)(e). The three Judge Bench of the Apex Court in *Ajay Mitra v. State of M.P.*⁵⁴ held that mensrea of inducing the persons deceived to deliver property is essential to constitute offence of cheating and in ultimately quashing the FIR therein by referring to the other expressions.

10)(B)(f). In *A.L. Panian Shanmugam Vs. State of Andhra Pradesh*⁵⁵ it was held in the mercantile transactions, consignments which are delivered on credit and very often the payment cannot be made on due date, that does not attract penal consequences.

10)(B)(g). In *Bishan Das v. State of Punjab*⁵⁶ it was held that mere issuing of false certificate does not constitute offence of cheating but for on showing it was issued with dishonest intention for wrongful gain.

10)(B)(h). In *V.P.Srivastava V. Indian Explosives Limited*⁵⁷ referring to several expressions including *Ram Jas supra*, *Medchal Chemicals & Pharma (P) Limited V. Biological E. Ltd*⁵⁸ and *Hira Lal Hari Lal Bhagwati V. C.B.I*⁵⁹ 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

⁵³ (2009) 6 SCC 77

⁵⁴ (2003) 3 SCC 11

⁵⁵ 1991 SCC (CrI.) 84

⁵⁶ (2014) 15 SCC 242

⁵⁷ 2010 (10) SCC 361

⁵⁸ 2000 (3) SCC 269

⁵⁹ 2003 (5) SCC 257

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.

10)(B)(i). In *Vimala V. Delhi Administration*⁶⁰ and *State of U.P V. Ranjit Singh*⁶¹ 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.

10)(B)(j).In *Mohd. Ibrahim Vs. State of Bihar*⁶² the Apex Court held referring to Section 415, 420, 463, 471 & 25 IPC in relation to the offence of cheating and on the allegations of forgery including for the purpose of cheating and using as genuine a forged document that the criminal culpability cannot be presumed merely by alleging that accused acted fraudulently, unless the fraudulent act is specifically made out

⁶⁰ AIR 1963 SC 1572

⁶¹ 1999 (2) SCC 617

⁶² (2009) 8 SCC 751

from specific averments and as to what offence therefrom it constitutes either under IPC or some other law to sustain the accusation.

10)(C). On forgery, including forgery for purpose of cheating or using as genuine a forged document u/Sections 465, 468 & 471 IPC:

10)(C)(a). The Apex Court in *Indian Bank vs M/s. Satyam Fibres (I) Pvt. Ltd.*⁶³, quoted thus:

"25. Forgery has its origin in the French word 'Forger', which signifies: 'to frame or fashion a thing as the smith doth his worke upon the anvill. And it is used in our law for the fraudulent making and publishing of false writings to the prejudice of another mans right (Termes de la Ley) (Stroud's Judicial Dictionary, Fifth Edition Vol. 2).

26. In Webster Comprehensive Dictionary, International Edition, 'Forgery' is defined as: 'The act of falsely making or materially altering with intent to defraud; any writing which, if genuine, might be of legal efficacy or the foundation of a legal liability.'

27. This Definition was adopted in *Rembert vs. State*, 25 Am. Rep. 639. In another case, namely, *State vs. Phelps* 34 Am. Dec. 672, it was laid down that forgery is the false making of any written instrument, for the purpose of fraud or deceit. This decision appears to be based on the meaning of forgery as set out in Tomlin's Law Dictionary.

28. From the above, it would be seen that fraud is an essential ingredient of forgery.

29. Forgery under the Indian Penal Code is an offence which has been defined in Section 463, while Section 464 deals with the making of a false document. Section 465 deals with the making of a false document. Section 465 prescribes punishment for forgery. 'Forged document' is defined in Section 470 while Section 471 deals with the crime of using as genuine, the forged document.

30. Forgery and Fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts.

31. The Privy Council in *Satish Chandra Chatterjee vs. Kumar Satish Kantha Roy & Ors.* Air 1923 PC 73, laid down as under:

"Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who made them--proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicious and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused or fraud must necessarily be completely unraveled and cleared up and made plain before a verdict can be properly found against him. If this were not so many a clever and dexterous knave would escape."

⁶³ (1996) 5 SCC 550

10)(C)(b). In Mohammed Ibrahim supra quoted thus:

“463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below:

Explanation 1-A man's signature of his own name may amount to forgery.

Explanation 2-The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of `false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or

fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted, much less Section 420 IPC"

10)(C)(c). The Apex Court in *S.W. Palanitkar Vs. State of Bihar*⁶⁴, held that every act may not result in a penal consequence unless there is evidence of mental act of fraudulent intention. Further in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating, including forgery for purpose of cheating by its using as genuine. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. The Court must consider from facts and circumstances the intentions and actions and to see whether the uncontroversial allegations made by prosecution prima-facie establish the offence. The above view in *Palanitkar's* case was referred to and followed in *Rashmi Jain vs. State of Uttar Pradesh & Anr.*⁶⁵.

10)(C)(d). Coming to maintainability of police report, with out private complaint for offences of forgery from Section 195 CrPC:

10)(C)(d)(i). A plain reading of Section 195(1)(ii) and (iii) CrPC. would show that for the offences mentioned therein the Court has to take cognizance only from complaint is in writing filed by the Court or some other Court to which that Court is subordinate before which the

⁶⁴ (2002) 1 SCC 241

⁶⁵ (2014) 13 SCC 553

original documents in question is found to be stolen and substituted with forged ones, of the accused before that Court if found to have committed any offence.

10)(C)(d)(ii). So far as Sections 463, 465, 468, 471 IPC is concerned, Sections 463 & 464 IPC defines forgery and making of a false document, whereas Sections 465 to 471 IPC define punishment for forgery and for other aggravated forms of forgery like forgery for purpose of cheating etc. and using as genuine a forged document. In the light of the phrase of any offence described in Section 463 IPC, section 468 also will be hit by the provisions of Section 195(1)(b)(ii) of the CrPC the same was also laid down by this Court in Vishnu Kumar V. State of A.P.⁶⁶

10)(C)(d)(iii). Further, the 5 Judges bench expression of the Apex Court in Iqbal Singh Marwah V. Meenakshi Marwah⁶⁷ held that the bar under Section 195(1)(b) Cr.P.C would be attracted for the offences enumerated in the provision have been committed with respect to a document after it has been produced or given in evidence and during the time when the document is in custodia legis and not for forged document produced in a Court. It is held referring to the earlier expressions, particularly of Sachida Nand Singh V. State of Bihar⁶⁸ by approving the law laid down in Sachidanand Singh. It is held that Section 195(1) Cr.P.C in respect of particular offences is a sort of exception to the general provision Section 190 Cr.P.C of power of Magistrate to take cognizance of an offence under any of the three modes. The procedure for filing a complaint by Court contemplated by Section 195(1) Cr.P.C is given in Section 340 Cr.P.C. As per Section 340 Cr.P.C, the Court is not bound to make a complaint regarding commission of an offence referred

⁶⁶ 1980(2) APLJ 59

⁶⁷ 2005 CrI.J 2161

⁶⁸ 1998 CrLJ 1565

to in Section 195(1)(b) Cr.P.C, if the Court is of the opinion that interest of Justice requires and not in every case. Any interpretation which leads to a situation where a victim of a crime is rendered remediless has to be discarded. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such recourse is rarely adopted. Same proposition is reiterated in a later expression of the Apex Court in C.P.Subhash V. Inspector of Police, Chennai (CrI.A.No.176 of 2013).

11). Before coming to the other merits on facts with reference to the ingredients required to be made out prima-facie to sustain the accusation for the offences punishable under sections 120-B r/w 420, 465,468 and 471 of IPC, so far as the requirement of prior sanction from competent authority to take cognizance for the offences supra punishable under IPC and Sections 13(2) r/w 13(1)(c) & (d) of the PC Act, in C.C. No.23 of 2005, by the special judge for CBI cases, for the offences allegedly committed by the petitioner-A1 as officer of the Nationalized Bank by abusing his official position, concerned;

11(i). The learned judge on the office note with rubber stamp matter, simply filled gaps and signed and not even applied his mind to take cognizance of the offences separately against whom and what offence made out and not even considered any sanction under Section 197 CrPC for IPC offences granted or not and required or not before taking cognizance for the same besides the PC Act offences, where there is no office note even of sanction for offence U/ S 13(2) r/w 13(1)© & (d) of the P C Act was only given and not for IPC offences.

11(ii). From the above material that is even not in dispute by either side, though reasons are required to be given generally in the order taking cognizance of any offence and against any respective

accused where more than one, the mere omission to give reasons is no way fatal to quash the order of cognizance taken, if otherwise it is sustainable from perusal of the material on record, as laid down by this Court in N.Srinivasan Vs The State - CBI⁶⁹ at paras 51&52, referring to the three Judge Bench expression in Sunil Bharti Mittal Vs The State- CBI⁷⁰ and Four Judge Bench expression in Sarath Mathew Vs IOCV⁷¹.

11(iii). Even considering by keeping said principle in mind, there is a non-application of mind by the learned Special Judge as to the mandatory requirement of prior sanction under Section 197 CrPC, to take cognizance even for the offences punishable under sections 120-B, 420, 465, 468 and 471 of IPC against the petitioner-A1, leave about requirement of private complaint and police investigation bar if any from Section 195 CrPC for the offences punishable under sections 465, 468 and 471 of IPC, petitioner-A1, from the very prosecution charge sheet allegations taken on its face value, committed the alleged offences while discharge of his official duties as the then Officer of the Bank in sanction of the Bank Guarantee facility, by abusing his official position, with dishonest intention by allegedly colluded with other accused to benefit the other accused to have wrongful gain and by causing loss to the Bank. The impugned cognizance order of the learned judge for the offences punishable under sections 120-B, 420, 420 465, 468 and 471 of IPC against the petitioner-A1, is thus unsustainable and without jurisdiction, but for to the extent of taking cognizance for the offence punishable under section 13(2) r/w 13(1)(c) & (d) of the P C Act against him from prior sanction of the competent authority produced to validate the same, no doubt with out prejudice to all the available defences of the accused on sustainability of said sanction order for left

⁶⁹ CrLP.7584 of 2015, dt. 18.03.2016.

⁷⁰ (2015) 4 SCC 609

⁷¹ (2014) 2 SCC 62

open such a contention during trial to raise as even from said sanction order of the competent authority produced, there is nothing to show it also covers specifically sanction for the IPC offences to take fresh cognizance there from.

12). In this regard for more clarity to substantiate the conclusion, it is needful to reproduce Section 197 CrPC and Section 197 CrPC Section 19 PC Act with relevant case law.

12)(a). Section 197 CrPC with title 'Prosecution of Judges and public servants' reads as follows:-

"(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: 1 Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) 1 Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the

Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

12)(b). Section 19 of the PC Act with title “Previous sanction necessary for prosecution” reads as follows:

“(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error,

omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

12)(c). From the above, the difference between the two provisions is that sanction under Section 197 CrPC is mandatory even to take cognizance after retirement of the public servant for the acts done in discharge of official duties for the IPC offences. Whereas under Section 19 of the PC Act, the emphasis is on the words "*who is employed*" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed.

12)(d). No sanction under Section 197 CrPC is required for the PC Act offences and the law is clear in this regard from C.K. Jaffer Sharief v. State⁷², where it was based on the allegation against the appellant-

⁷² (2013) 1 SCC 205

accused-Jaffer Sharief, former Union Railway Minister and ex-officio head of RITES (Rail India Technical and Economic Services Ltd.) and IRCON (Indian Railway Construction Co.Ltd.), public sector undertakings, at relevant time, that he had prevailed upon RITES and IRCON to take four employees on "deputation", despite neither RITES nor IRCON had any pending business in London and that none of four persons had performed any duty pertaining to RITES or IRCON while they were in London, yet to and fro air fare of all four persons was paid by above two public sector undertakings, which deputation and sending them to London is for the sole purpose in connection with medical treatment of appellant and thereby the appellant had abused his office and caused pecuniary loss to the two public sector undertakings by arranging visits of four persons in question to London without any public interest, from the closure final report filed by CBI from refusal of sanction to prosecute, that was declined to accept by the Special Judge with a direction to further investigate and submit entire material afresh for sanction and as sanction again declined a supplemental closure final report again was filed by CBI. The Learned Special Judge, CBI again having declined to accept the closure report, took cognizance of the offences punishable under Sections 13(2) r/w S. 13(1)(d) of PC Act, vide order dated 26.07.2008 observing that sanction under section 19 of the PC Act is not required as the petitioner had ceased to be a public servant on 10.11.2000. Thereafter, an application dated 04.09.2008 was submitted by the petitioner in the trial Court seeking discharge on the ground of lack of sanction under section 197 CrPC to prosecute him. Same was dismissed on 27.01.2010 saying: "...Thus, the act of accused, being beyond the scope and range of his official duty, would not be covered under the purported discharge of his duty. The application

dated 04.09.2008 for discharge is thus dismissed" The High Court also dismissed his application by affirming the order of trial court and thereby he moved the Apex Court.

12)(e). The Apex Court in Jaffer Sharief *supra* observed that, there is merit in the contention of the learned counsel for CBI that the sanction under section 197 CrPC is actually not required when the offences committed are under the PC Act.However, if the act complained of covered by the IPC offences is directly connected with his official duty, so that it could be claimed to have been done by virtue of his office, then the sanction would necessarily be required. In other words, if the offence is entirely unconnected with the official duty, there can be no protection but, if it is committed within the scope of the official duty or in excess of it, then the protection is certainly available. The Apex Court ultimately dismissed his appeal holding that on consideration of totality of materials on record, there is no reason to allow his appeal, for there is *prima facie* accusation for the PC Act offences.

12)(f). As also held in *Subramaniam Swamy v. Manmohan Singh and another*⁷³ in case where the person is not holding the said office as he might have retired, superannuated, be discharged or dismissed then the question of removing would not arise.

12)(g). The same view was expressed in *Parkash Singh Badal supra* by negating the argument of even though some of the accused persons had ceased to be Ministers, they continued to be the Members of the Legislative Assembly and one of them was a Member of Parliament and as such cognizance could not be taken against them without prior sanction. It was also held that the embargo contained in Section 19(1) of the PC Act operates only against the taking of cognizance by the

⁷³ (2012) 3 SCC 64

Court in respect of the offences punishable under Sections 7, 10, 11, 13 and 15 of the PC Act committed by a public servant.

12)(h). In Subramaniam Swamy *supra*, it was held therefrom that there is no bar to the filing of a private complaint for prosecution of the concerned public servant and for that grant of sanction by the Competent Authority.

12)(i). In Kalicharan Mahapatra vs. State of Orissa⁷⁴, the Court compared Section 19 of P.C. Act with Section 197 of the Code. After considering several decisions on the point and also considering Section 6 of the old P.C. Act, 1947 which is almost identical with Section 19 of the P.C. Act, 1988 and also noting Law Commission's Report, at paragraph 13 of Kalicharan (*supra*) came to the following conclusions:

"13. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

12)(j). The above passage in Kalicharan (*supra*) has been quoted with approval in Lalu Prasad vs. State of Bihar⁷⁵ at paragraph 9, page 54. In paragraph 10, (page 54) it was held in Lalu Prasad (*supra*) that "Section 197 of the Code and Section 19 of the Act operate in conceptually different fields".

12)(k). Thus from the competent authorities concerned either separate sanctions or common sanction for PC Act offences and IPC/other penal law offences and by specifically referring to it is required.

⁷⁴ (1998) 6 SCC 411

⁷⁵ 2007 (1) SCC 49

12)(l). In *Rakesh Kumar Mishra*⁷⁶ it was held in this regard and on the scope of Section 197 CrPC that the policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties, without sanction. Further, the words "when any person who is or was a public servant" employed in 197 CrPC were based on the observation at paragraph 15.123 of the 41st Report of the Law Commission of "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". Above position was highlighted in *R.Balakrishna Pillai* supra of 1996 and reiterated in the later expressions in *State of M.P. vs. M.P. Gupta*⁷⁷, *State of Orissa* through *Kumar Raghvendra Singh and Ors. vs. Ganesh Chandra Jew*⁷⁸ and *Shri S.K. Lutshi and Anr. vs. Shri Primal Debnath*⁷⁹.

12)(m). As per Section 197(1) supra the sanction is mandatory from the government concerned of the public servant, the accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of official duty and without such previous sanction, no Court shall take cognizance such alleging offences.

⁷⁶ 2006 (1) SCC 557

⁷⁷ [2004] 2 SCC 349

⁷⁸ [2004] 8 SCC 40

⁷⁹ [2004] 8 SCC 31

12)(n). On the scope of sanction whether required or not to decide for prosecution on the acts alleged as offence committed by a public servant and the stage when to raise and the way how to understand the expressions with reference to facts, the Apex Court in N.K.Ganguly Vs. CBI, New Delhi⁸⁰, while saying a decision is an authority for what it actually decides and reference to a particular sentence in the context of the factual scenario cannot be read out of context, held referring to the earlier expressions right from that of Federal Court in Hori Ram Singh⁸¹, of Privy Council in H.H.B. Gill⁸², of Calcutta High Court in Abani Kumar Benarji⁸³, of the Apex Court in R.R.Chari-I⁸⁴, also of the Apex Court in Sreekantaiah⁸⁵, also of the Apex Court in Amrit Singh⁸⁶, also of the Apex Court in Matajog Dobey⁸⁷, also of the Apex Court in K.Satwanth Singh⁸⁸, also of the Apex Court in R.R.Chari-II⁸⁹, also of the Apex Court in Bajnath⁹⁰, also of the Apex Court in B.Saha⁹¹, also of the Apex Court in R.S.Nayak⁹², also of the Apex Court in R.Balakrishna pillai⁹³, also of the Apex Court in Abdul Wahab Ansari⁹⁴, also of the Apex Court in Rakesh Kumar Mishra supra, also of the Apex Court in Sankaran Moitra⁹⁵, also of the Apex Court in Prakash Singh Badal⁹⁶ and also of the Apex Court in Sheetla Sahai⁹⁷ and by quoted with approval Hori Ram Singh supra among other including the three judge bench of this Court in

⁸⁰ 2016(2) SCC 143

⁸¹ AIR 1939 43

⁸² AIR 1948 128

⁸³ AIR 1950 437

⁸⁴ AIR 1951 207

⁸⁵ AIR 1955 287

⁸⁶ AIR 1955 309

⁸⁷ AIR 1956 44

⁸⁸ AIR 1960 266

⁸⁹ AIR 1962 1573

⁹⁰ AIR 1966 220

⁹¹ 1979 (4) SCC 177

⁹² 1984 (2) SCC 183

⁹³ 1996 (1) SCC 478

⁹⁴ 2000 (8) SCC 500

⁹⁵ 2006 (4) SCC 584

⁹⁶ 2007 (1) SCC 1

⁹⁷ 2009 (8) SCC 617

the case of Amrik Singh supra and of the Constitution Bench in B.Saha supra that the issue of requirement of prior sanction under Section 197 of CrPC can be raised at any stage of the proceedings. It was also held referring to the above among other including H.H.B.Gill supra, three judge bench in Baijnath supra and another Constitution bench in Matajog Dobey supra, that Prior sanction for taking cognizance is required in the three situations of, a) the act complained of attached to the official character of the person doing it; b) cases in which the official character of the person gave him an opportunity for the commission of the crime; and c) the offence was committed while the accused was actually engaged in the performance of official duties. It can be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. No doubt, there must be a reasonable connection between the act and the discharge of official duty to have the protection. If the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

12)(o). The three judge Bench expression of Apex Court in P.K.Pradhan Vs. State of Sikkim Rep. by the CBI⁹⁸ held at paras-5 to 16 by referring to several of the earlier expressions right from Hori Ramsingh, HHB Gill, Amrik Singh, Sreekantiah Ramayya Munipalli, Matajog Dobey, Omprakash Gupta, B.Saha, Baijnath Gupta, Abdul

⁹⁸ AIR 2001 SC 2547

Vahab Ansari, K.Satwant Singh supra, at para- 5 held that the legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the Statute from taking cognizance. It is well settled that the question of sanction u/ sec. 197 of CrPC can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, any appeal. In Rajib Ranjan Vs. R.Vijakumar (supra) at paras 14 to 18, it is observed that sanction is necessary if the offence alleged against the public servant is committed by him after acting or purporting to act in the discharge of his official duties as held in Buddi Kota Subbar Rao Vs. K.Prakasham⁹⁹ (supra) para-6 of the act or omission on facts found a reasonable connection to the discharge of his duty by the accused, sanction is required.

12)(p). In Anil Kumar vs M.K. Aiyappa supra, it was observed referring to Subramaniam Swamy supra the expression “cognizance” which appears in Section 197 CrPC came up for consideration before a three-Judge Bench in State of Uttar Pradesh v. Paras Nath Singh¹⁰⁰, and this Court expressed the following view:

“6.....So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been

⁹⁹ 1993 3 SCC 339

¹⁰⁰ (2009) 6 SCC 372

committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

12)(q). In the case of General Officer, Commanding v. CBI¹⁰¹, the Apex Court held that-If the law requires sanction and the court proceeds against a public servant without sanction; the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.

12)(r). It was also quoted with approval N.K.Ganguly supra, another Constitution bench in R.S.Nayak supra that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts, before according sanction and grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants.

12)(s). By referring to or relying upon the other expressions supra including in R.Balakrishna Pillai, Abdul Wahab Ansari, Shankaran Moitra and Sheetla Sahai supra it was held that when the acts

¹⁰¹ [2012] 5 SCR 599

constituting the offence were alleged to have been committed in discharge of his official duty, it was not open to the Special Judge court to take cognizance of the offences without obtaining the previous sanction of the Government by the respondent-CBI. It was held therefrom that it is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused.

12)(t). Coming to facts of that case, it was held that in the instant case, since the allegations made against the Appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, previous sanction from the Central Government under Section 197 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence, by the learned Special Judge. The proceedings therefore quashed for want of previous sanction and by holding the cognizance taken is not legal and said issue can be raised by the accused appellant at any stage and even no bar for not raised after taking cognizance and while framing charges.

12)(u). It is the well settled proposition of law that Court cannot ignore while taking cognizance any non-compliance with mandatory requirements. In fact, in dealing with the offence under Section 7 of the P.C.Act, the Apex Court in State of Karnataka through CBI Vs. C.Nagarajaswamy¹⁰², held that once it is mandatory for taking cognizance sanction as required under law by a statutory provision, ordinarily, the question has to be dealt with at the stage of taking cognizance. Even cognizance was taken in ignorance of it or erroneously,

¹⁰² 2005(8)SCC 37

once the same comes to the Court's notice at any later stage, a finding to that effect has to be given by the Court and the accused is also entitled to take such plea at any point of time including, even in hearing the appeal before the appellate Court once sanction from competent authority is required under law. When all the mandatory requirements of the statutory formalities not complied with, the cognizance cannot be taken by the Court practically and as such for the non-compliance the entire proceedings vitiate to revert the clock back to pre cognizance stage, if at all to proceed therefrom further. Same is the conclusion from *State of Goa Vs. Babu Thomas*¹⁰³ holding that when sanction is required from the act connected with the duty of the public servant, taking cognizance by a Court without sanction is incompetent and the error was so fundamental that invalidates the proceedings right from the stage of cognizance.

12)(v). In this regard even from the decisions placed reliance by the learned special Public Prosecutor for CBI, in *Umesh Kumar supra*, what was held is that the High Court in exercise of the inherent powers under Section 482 CrPC can only evaluate the material on record to the prima facie satisfaction of existence of ground for framing charges and proceeding with trial or not. Same also held at para 10 of *Kishan Lal Pardhan supra*.

12)(w). Even in *State of Tamilnadu Vs Mariya Anton Vijay*¹⁰⁴ it was while holding the High Court got inherent powers under Section 482 CrPC to exercise, however held on the facts in dispute as to arms and ammunition seized from the vessels of accused is covered by the penal provisions of the Arms Act as contending by the Prosecution or exempted from the penal provisions of the Arms Act as contending by the accused

¹⁰³ 2015 (3) ALT (CrI.) 143 SC

¹⁰⁴ 2015(9)SCC 294

is a matter to decide during trial and quashing the proceedings is held thereby unsustainable for same is in ignorance of the guidelines well laid down in State of Haryana Vs. Bhajan Lal¹⁰⁵ and State of M.P. Vs. S.B. Joshi.¹⁰⁶ For that conclusion referred the observations in Joshi supra referring to earlier expressions including Bhajan Lal supra among other in saying instead of the High Court considering existence of prima-facie case from averments and accusation as to sufficient ground to frame charges and proceed with trial or not, went wrong in appreciating and weighing the material of the prosecution as if it is a mini trial. In fact by referring to earlier expressions, at para 7 of Joshi supra, which is part of para 55 of Mariya Anton Vijay supra, it is observed that Court in a quash proceeding under Section 482 CrPC, is required to evaluate the material and documents on record of the prosecution with a view to find out from its face value whether disclosing existence of ingredients of the alleged offence.

12)(x). From the above, at the cost of repetition of material facts, from the very charge sheet filed did not even mention as to what offence made out against which of the accused among several penal provisions and the cognizance order dt.06.07.2005 referred supra also no way even reflects, that shows the cognizance order is the outcome of non application of judicial mind to the facts and also from the need to decide by verifying the sanction order as to for what offences sanction was given against A.1.

12)(y). The sanction order dated 04.03.2005, issued by the Chief General Manager, reflects the charge sheet material only basically. the charge sheet material basically not showing but for simply using the word conspired as to what overt acts of A.1 makes out case of conspiracy

¹⁰⁵ 1992(supp) 1 SCC 335 paras 102 & 103

¹⁰⁶ 2000 2 SCC 57 paras 4-7

if so with what accused other than saying from the securities furnished as equitable mortgage are not genuine that caused loss to the Bank, from lack of due care by A.1 in its acceptance without verification even from any Bank legal advisor opinion in relying on it. The basic difference between negligence and lack of care is different to conspiracy and criminal offence. For that the specific acts and the circumstances to be spelt out and what role therein makes out against A.1 so to say. No doubt, the sanction order no way speaks any IPC offences made out by according sanction for that also but for to the PC Act offence u/ sec.13, by even saying A.1-Ch. Lakshminarayana conspired with A.2-C.V.V. Vijay Kumar Naidu, A.3-D.M.K. Naidu, YSN Reddy-A.4, K. Ashok Kumar (A.5 as per FIR and A.4 as per charge sheet), Sri M. Madhav Vasu (A.6 as per FIR), C.C. Mukundan Nambiar (A.7 as per FIR) and B. Sudesh Kumar (A.8 as per FIR) and sanctioned the bank guarantees based on fake securities without verification of genuineness of security offered as equitable mortgage and bonafides of the depositors of title deeds as collateral security, by abusing his official position as public servant and passed on pecuniary advantage to said other accused persons by not following the prescribed norms of the Bank and committed criminal misconduct in causing wrongful loss of Rs.70.50 lakhs and thereby after application of mind accorded sanction under Section 19(1)(c) of PC Act, for prosecution of Ch.Lakshmi Narayana for the offence under Section 13(2) r/ w 13(1)(d) PC Act, for taking cognizance of said offence by the Court of competent jurisdiction.

12)(z). Thus the sanction order dated 04.03.2005 speaks only sanction for the prosecution of A.1-Lakshmi Narayana, the then Chief Manager, SBI, Zonal Office and also the Chief Manager, SBI Padmaraonagar branch, for the offence punishable under Section 13(2)

read with Section 13(1)(d) PC Act, and not at all for any of the offences under Sections 120-B or 420 or 468 or 471 r/w 468 IPC. So far as taking of cognizance by the learned Special Judge for CBI Cases on 06.07.2005 concerned, at the cost of repetition from the above, it is to say, the cognizance order did not even reflect any application of mind to the sanction order.

13. The impugment of the very sanction order and very competency of the investigation officer in attacking the investigation also besides the contention of the none of the penal provisions covered by the charges or cognizance order are sustainable from outcome of non-application of mind, practically these are covered by earlier revision orders of left open during trial such contentions and those aspects again raised in the present quash petitions, how far to interfere is to discuss later, even taken the sanction order is duly accorded and sustainable and the investigation otherwise sustainable if taken so, this Court cannot ignore that the taking of cognizance could be only for the PC Act offence and cannot be for IPC offences, that too when applied for sanction pursuant to the police final report, the sanction accorded is not for IPC offences, but for the PC Act offences and that too, the act alleged against the petitioner is in discharge of his duties in sanctioning the bank guarantees. The wording of Section 197 (1) CrPC so far as IPC offences concerned is very clear of no Court shall take cognizance except with previous sanction, of such offence alleged against the public servant while acting or purporting to act in discharging his official duty. The allegations so far as against the petitioner/ A.1 is as Chief Manager of SBI Padmaraonagar Branch, Secunderabad, he sanctioned the bank guarantees in favour of NSIC from whom the other accused availed raw material assistance scheme benefit by showing the bank guarantee that

was sanctioned based on properties by deposit of title deed given as collateral security. Once such is the case, it is an act in the discharge of his official duty and nothing beyond to allege against A.1. Once such is the case, the so called cognizance for alleged conspiracy or for the alleged cheating or using as genuine a forged document based on forged document, for want of sanction not sustainable as the wording is very clear of the person who is employed or as the case may be was at the time of commission of the alleged offence employed and even a subsequent retirement will not cure the defect of want of sanction to prosecute for the IPC offences. The charges framed by the trial Court so far as petitioner/ A.1 concerned are dated 16.08.2016 by as many as 5 in number, of which Charge No.1 against A.1 to A.6 under Section 120-B IPC and Charge No.2 against A.1 to A.6 under Section 420 IPC, Charge No.3 against A.1 to A.6 under Section 468 IPC, Charge No.4 against A.1 to A.6 under Sections 465 and 471 IPC, and all the charges thereby so far as against A.1 for want of sanction are **not** sustainable.

14. Suffice to say the Special Court could not have been taken cognizance of the IPC offences against the Petitioner-A1 for want of sanction under Section 197 of CrPC as a prerequisite and as such from right of accused to raise the same at any stage and also duty of Court, which term include not only trial court but also revision or appellate or other superior court, to decide and give finding thereon immediately from such objection raised impugning cognizance, the continuance of proceedings for all the IPC offences against the accused then amounts to abuse of process and as such, to that extent the proceedings right from taking cognizance are liable to be quashed.

15). In fact in Bhajan Lal supra one of the guidelines for quashing of the proceedings speaks (No. 6 of the 7 guidelines) from any legal bar

engrafted by any provision of the Code or other Act concerned to the institution or cognizance or continuation of the proceedings.

16). Thus the taking cognizance of the offences punishable under sections 120-B, 420, 468, 465 and 471 of IPC against the petitioner-A.1, for the very prosecution charge sheet allegations taken on its face value are that the petitioner-A1 in discharge of his official duties committed the alleged acts, from the mandatory requirement of prior sanction under Section 197 CrPC that is lacking, the proceedings are unsustainable and are liable to be quashed, with out necessity of going into other merits of how far the accusation against him otherwise for the offences punishable under sections 120-B, 420, 468,465 and 471 of IPC are made out and sustainable and even for arguments sake taken made out, irrespective of no direct material to attract the offences under Sections 420, 465,468 IPC and 120B IPC and the contention of the petitioner that power to sanction bank guarantee by accepting collateral security is not with any dishonest intention or abuse of his official position for he acted bonafides and even for the amounts required to be credited to creditors of the entity/entities is not an offence and there is no any offence committed by him, much less any offences of forgery or forgery for purpose of cheating or using as genuine any forged document and there is no element of cheating on his part to deceive the Bank to cause wrongful loss and there is no abuse of his position and there is no criminal misconduct on his part in his actions, but for at best lack of more care as observed in the departmental proceedings after full dressed and elaborate enquiry with minor punishment for such alleged negligence, which even made final no way to use against him for any offence to make out herein and there is no conspiracy of him with any

accused and there is nothing even remotely with any overt act to show any privy of him with other accused.

17. From the above, coming to the attracting of the offence punishable under section 13(2) r/w 13(1)(c) & (d) of the P C Act against him from prior sanction of the competent authority produced and cognizance taken and its sustainability as to whether the materials brought on record form sufficient basis for framing of charge under Section 13(1)(c) & (d) read with Section 13(2) of the PC Act concerned, section 13(1) (d) of the P C Act covers a public servant who obtains for himself or for any other person, any valuable thing or pecuniary advantage, by corrupt or illegal means or by abusing his official position or while holding office - as a public servant. section 13(1) (d) of the P.C.Act covers if a public servant *dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do*. There can be no crime without a guilty mind from reading of the above. For more clarity it is needful to reproduce Section 13 of the PC Act.

17)(a). Section 13 with title "*Criminal misconduct by a public servant*" reads that:

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person *any gratification other than legal remuneration as a motive or reward* such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, *any valuable thing without consideration or for a consideration which he knows to be inadequate from any person* whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with

the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he *dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do*; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

17)(b). In the case of *State v. A. Parthiban*¹⁰⁷, the Supreme Court held as under: Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1) (d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1) (d) of the Act.

¹⁰⁷ (2006) 11 SCC 473

17)(c). In *S.P. Bhatnagar Vs State*¹⁰⁸ it was held that it is for the prosecution to prove affirmatively that the accused acted dishonestly by corrupt or illegal means or by abusing his position and obtained any pecuniary advantage for some other person and deliberately caused loss to the department as held in *S.K.Kale vs State*¹⁰⁹ and *M.N.Nambiar Vs State*¹¹⁰.

17)(d). In *Sheetla Sahai supra* on the scope of section 13(2) r/w 13(1)(c) & (d) of the P.C.Act r/w. 120B IPC to make out prima-facie, it was observed referring to *Bharat Petroleum Corp. Ltd. vs. T.K. Raju*¹¹¹ that: In *Inspector Prem Chand v. Govt. of N.C.T. of Delhi & Ors.*¹¹², this Court observed: "In *State of Punjab and Ors. Vs. Ram Singh Ex. Constable*¹¹³, it was stated:

In *Black's Law Dictionary*, Sixth Edition at page 999,

Misconduct has been defined thus: 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.'

Misconduct in office has been defined as: "Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

In *P. Ramanatha Aiyar's Law Lexicon*, 3rd edition, at page 3027, the term 'misconduct' has been defined as under: "The term 'misconduct' implies, a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

54. Even under the Act, an offence cannot be said to have been committed only because the public servant has

¹⁰⁸ AIR 1979 SC 826

¹⁰⁹ AIR 1977 SC 822

¹¹⁰ AIR 1963 SC 1116

¹¹¹ [2006 (3) SCC 143]

¹¹² [2007 AIR SCW 2532]

¹¹³ [1992 (4) SCC 54]

obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a sine qua non...

On facts it was held: ..The materials brought on record do not suggest in any manner whatsoever that the respondent Nos. 1 to 7 either had abused their position or had obtained pecuniary advantage for the respondent Nos. 8, 9 and 10, which was without any public interest.

55. Whether, on the one hand, the dam should be constructed within a time frame fixed by the World Bank is a public interest or whether sticking to the terms of the contract which may lead to abandonment of work by the contractors would be a public interest is a matter over which a decision was required to be taken, particularly when the authorities proceeded on the basis that they had made advertisements and called for the tender on a wrong premise, viz., the stones available in the quarry in question for supply of requisite quality of stone was not in requisite quantity.

56. It is also interesting to notice that the prosecution had proceeded against the officials in a pick and choose manner. We may notice the following statements made in the counter-affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the government, viz., M.N. Nadkarni who worked as Chief Engineer till 24.03.1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19.06.1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision, viz., Shri J.R. Malhotra and Mr. R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.

57. In Soma Chakravarty (supra), whereupon strong reliance has been placed by Mr. Tulsi, this Court opined: "23. In a case of this nature, the learned Special Judge also should have considered the question having regard to the "doctrine of parity" in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completely exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same

charges including the charge of being a party to the larger conspiracy."

58. There cannot be any doubt whatsoever that the tests for the purpose of framing of charge and the one for recording a judgment of conviction are different. A distinction must be borne in mind that whereas at the time of framing of the charge, the court may take into consideration the fact as to whether the accused might have committed the offence or not; at the time of recording a judgment of conviction, the prosecution is required to prove beyond reasonable doubt that the accused has committed the offence.

59. In this case, the probative value of the materials on record has not been gone into. The materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr. Tulsi that where the entire materials collected during investigation have been placed before the court as part of the chargesheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused. The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, Sub-section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless. The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial- See Som Nath Thapa supra

60. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants.

66. Thus, in this case, sanction for prosecution in terms of Section 197 of the Code of Criminal Procedure was required to be obtained".

17)(e). From the above position of law, coming back to the further relevant facts on record, from the prosecution allegations on its face value but for using the word 'conspired', there is nothing in this regard there from to attribute any criminal conspiracy and cheating against the petitioner for nothing shown of he is involved by any agreement with other accused to conspire and privy and to cheat the ----, for which even from there is no prior sanction to take cognizance, the cognizance order is held unsustainable to sub serve the ends of justice. However and there from in so far as the PC Act offences referred supra concerned, there is nothing to quash for once the allegations show attracting of Section 13 of PC Act, this Court cannot ignore the face value of the allegations and conduct a roving enquiry as a mini trial with reference to the documents including on the submissions

.....apart from the CBI accusing the petitioner in charge sheeting as a pick and choose by leaving others responsible without accusationing them etc., apart from not undertaking any meticulous discussion with reference to the provisions and Rules from the judicial restraint in considering the scope of the lis for not a mini trial to undertake but for left open all such contentions for those are the matters that are required to be considered in full dressed trial, and it is made clear that any of the above observations no way prejudice any such right of defence of the petitioner and also of any other accused; the quash petition to that extent of accusation under Section 13 of PC Act is dismissed for this Court is unable to quash for nothing shown within the meaning of its continuation is an abuse of process, though the same is the contention, from what is an abuse of process.

17)(f). No doubt, the counsel for the accused placed reliance on para-52 of the expression of the Apex Court in C.Chengareddy Vs. State of A.P.¹¹⁴ that:

“52....There have been some irregularities committed in the matter of allotment of work to the appellant or breach of codal provisions, circulars and departmental instructions, for preparation of estimates etc. and those irregularities give rise to a strong suspicion in regard to the bonafides of the officials of the department and their link with the appellant, but that suspicion

¹¹⁴ (1996) 10 SCC 193

cannot be a substitute of proof. The courts below appear to have drawn inferences by placing the burden of proving innocence on the appellant which is an impermissible course. In our opinion none of the circumstances relied upon by the prosecution against the appellant can be said to have been proved satisfactorily and all those circumstances, which are not of any clinching nature, even if held to be proved do not complete the chain of evidence so complete as to lead to an irresistible conclusion consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with his innocence. The prosecution has not established the case against the appellant beyond a reasonable doubt. This appeal, there-fore, succeeds and is allowed. The conviction and sentence of the appellant is hereby set aside.”

18. In this regard, this Court cannot ignore the fact that it is not the quash petition for first time without earlier impugning the cognizance and charges. When such is the case, how far the earlier order the Court can interfere and ignore or review is a matter for consideration. In this regard, it is needful to mention that the petitioner/ A.1 earlier filed CrI.MP.No.1834 of 2007 under Section 239 CrPC., at the post-cognizance stage of CC.No.23 of 2005 supra impugning the cognizance order in seeking to discharge, that was ended in dismissal on 16.03.2011, maintained CrI.RC.No.1868 of 2011. The CrI.RC.No.1868 of 2011, along with similar discharge applications of A.5 (K.Ashok Kumar) and A.7 (CC.Mukundan Nambiar) were ended in dismissal, the revisions maintained by them in CrI.RC.Nos.1580 and 1699 of 2012 came for common disposal before another single Judge of this Court covered by order dated 30.12.2015, wherein it is observed that the allegation so far as A.1-Lakshminarayana is concerned, he being the Chief Manager of SBI, Padmarao Nagar Branch, conspired with other accused by abusing his official capacity and based on forged and fake documents furnished by A.2 to A.6 of charge sheet, sanctioned Bank guarantees in favour of NSIC for availing raw-material assistance from NSIC by A.2 to A.6, respectively, and failed to pay to NSIC, the NSIC invoked the Bank guarantees from which the Bank stated sustained loss. The trial Court in

dismissing the discharge applications, observed that there are specific allegations and there is a prima-facie case to frame charges. It is the contention of the petitioner/ A.1 in his discharge application of he sanctioned the Bank guarantees as per the norms, permission and approval of the officials concerned also there and the allegations made against him are baseless. The Apex Court in State of Bihar Vs. Dhirendra Prasad Shrivastava and Others¹¹⁵ observed in the facts of that case of the allegations prima-facie show accused put to trial to determine truth or otherwise for at that stage, there is no principle of mini-trial, but for to accept allegations on face value, as if correct, to sustain the accusation to charge or not and that is the standard of accusation prima-facie made out or not to consider for discharge or to charge, as the case may be. The petitioner/ A.1 while working as Chief Manager, SBI, Padmarao Nagar Branch, alleged conspiracy with other accused by abusing his official position in sanctioning the Bank guarantees in favour of NSIC to benefit the financial assistance from NSIC to avail by A.2 to A.6, based on false and fake invoices and documents and what is contended by A.1 of he followed the legal formalities and no objections were raised by audit party during periodical audit about the sanction of Bank guarantees and it is not he that disbursed the amounts covered by Bank guarantees in favour of NSIC, but for the successor and it is not the duty of the Chief Manager to conduct any pre-sanction inspection of properties and verify genuineness of documents covered by properties and entitled to be discharged and even, but for LW.5 – Y. Krishna Rao, who stated the plot pledged by the borrowers, was detected later by him, however, disbursed instead of withholding and Sri B.V.R. Chowdhary, Chief Manager, LW.4 is along with petitioner/ A.1, a co-signatory, but not shown as accused by the

¹¹⁵ Laws (SC)-2014-12-91

Investigating Agency. Though, the said Krishna Rao and B.V.R. Chowdary, if at all to be shown as co-accused and suits filed by the Bank for recovery of amounts before the DRT were decreed, thereby there is no question of Bank sustaining loss, as alleged, and the Departmental enquiry initiated was ended in finality by order dated 09.02.2001 imposing punishment of reduction in time scale by 2 stages for 2 years with cumulative effect for the so called negligence by treating the period of suspension of duty and even from the departmental enquiry, there is nothing to show any malafide or conspiracy by A.1, but for observation of lack of due care and diligence required from the negligence.

18(a). It was observed by this court in the revisions common order that all these above aspects raised by him are to be considered during trial.

18(b). Coming to the other contention of the Investigating Officer, who carried out the investigation and filed the charge sheet is not a competent officer as per the provisions of the Delhi Special Police Establishment Act, it was observed that for he is the officer working on deputation from RPF, that is also required to be considered during trial and cannot be adjudicated at this stage.

18(c). It was concluded by this court in the revisions common order from the above that thereby there is nothing to interfere with the impugned dismissal order of the discharge application passed by the trial Court.

19. There from, it is the submission of the learned Special Public Prosecutor for CBI that in view of the dismissal of the discharge application by trial court that was even assailed in revision, the petitioner/ A.1 went unsuccessful and the same issues cannot be re-

agitated, for not an appeal against the order, for cannot sit in review of that. The further submissions of the learned Special Public Prosecutor are that as per the expression of the Apex Court in *Bharat Parikh Vs. CBI*¹¹⁶, the issue as to non-compliance of supply of copies, material documents under Section 207 CrPC cannot be agitated after charges framed from the participation and hearing based on the prosecution material and accused cannot be allowed to produce any documents in defence, as held by the Apex Court in *State of Orissa Vs. Debendra Nath Padhi*¹¹⁷ and it is only where a case comes under the circumstances enumerated in *State of Haryana Vs. Bhajan Lal*¹¹⁸ to secure ends of justice, the proceedings can be quashed, otherwise accused be put to trial and thereby the two quash petitions are liable to be dismissed.

20. So far as competency of the Investigating Officer concerned, the petitioner/ A.1 raised that aspect and in the discharge application went unsuccessful, so also in the impugned revision before another Bench of this Court covered by order dated 30.12.2015 in CrI.RC.No.1868 of 2011 referred supra. Thereby that aspect now again cannot be asked to be considered herein, but for such a defence is left open to the petitioner/ A.1 during trial as observed by the revision common order referred supra of another bench of this court, that too when the submissions show the case is a part-heard one and out of 73 witnesses cited, more than 9 to 10 witnesses examined on behalf of the prosecution and the petitioner/ A.1 also cross-examined them.

21. The two quash petitions of the petitioner/ A.1 maintained are mainly on the grounds that:

¹¹⁶ (2008) 10 SCC 109

¹¹⁷ 2005 (1) SCC 568

¹¹⁸ 1992 Supp (1) SCC 335

21a). So far as Crl.P.No.13925 of 2016 are that there is no evidence available to attribute malafide or lapses of serious nature on the part of petitioner/ A.1 to charge sheet him or to frame any charge. The Bank guarantees issued by the SBI, Padmarao Nagar Branch, were reported for trial and tried by the controllers of the Bank, who are superiors and there is no criminality on the part of petitioner/ A.1 or any privy with other accused, that too the continuation of prosecution is abuse of process even after Departmental enquiry and disciplinary proceedings reached finality by order dated 09.02.2001 by reduction of time-scale by two stages for a period of two years with cumulative effect for alleged negligence from lack of due care and not on any ground of he is privy with any criminal mind nor had any pecuniary advantage or intention to cause loss to the Bank and there is no any offence of cheating on his part and there is no forgery of any document on his part and there is no using as genuine any forged document on his part much less any forgery for purpose of cheating to attract any of the offences and there is no misconduct or abuse of official position on his part in sanctioning the Bank guarantees and thereby all the charges are groundless. It is also the other contention that as per the CVC guidelines in the Office Order No.45/ 7/ 04 dated 05.07.2004, the Public Sector Banks shall report to the CBI for investigation of the cases of fraud to the value of Rs.1.00 Crore or more and the Bank issued prosecution sanction order dated 04.03.2005 in violation of the CVC order of the charge sheet signed by CBI officials on 28.03.2005 and the Departmental enquiry and punishment not even intimated to the CBI and the sanction order did not reflect the same and the sanction is laconic and there is no material to prosecute the petitioner/ A.1.

21b). So far as CrI.P.No.326 of 2016 is concerned, it is the contention that besides reiterating the above contentions, stated that the very cognizance is irrational and unsustainable and the proceedings are liable to be quashed and the CBI dropped some of the accused, including A.6, by name Sri M.M. Vasu, and not dropped the case against A.1 is also unsustainable.

22. From the above, so far as requirement of sanction for the IPC offences under Section 197 CrPC concerned, this issue was not raised earlier. Had it been raised earlier and answered in either way by left open to consider during trial, it would be different. The issue involved in the expression in Bharat Parikh supra has no application to the case on hand. Even that expression clearly speaks on the face value if the prosecution is not sustainable from the allegations it is a case for quashing, otherwise it amounts to abuse of process. What is observed of only from the prosecution material whether the accusation is sustainable or groundless to be considered to frame a charge and not by permitting the accused to put any material. In fact for that conclusion in Bharat Parikh supra it referred 3 Judge Bench in Debendra Nath padhi supra. However, referring to Debendra Nath Padhi supra, a subsequent 2 Judge Bench in Rukmini Narvekar Vs. Vijaya Satardekar and Others¹¹⁹ categorically held that accused is also entitled at that stage to place any cogent material for the Court to consider and even the trial Court can consider in exceptional cases and the subsequent expressions referring to it clearly say accused is entitled to put any cogent material of defence in a quash proceedings for the High Court to consider the same also. Thus the decision of Bharat Parikh supra also has no application to the facts. The other decision placed reliance by the learned counsel

¹¹⁹ (2008) 14 SCC 1

for CBI is State of Delhi Vs. Gyan Devi and Others¹²⁰ is on the area that during trial of the case, quashing of the proceeding by shifting to medical evidence on the facts held as not sustainable. There is no general principle that once the trial commenced, the quashing of proceedings are unsustainable.

23. In fact, the Apex Court in several of the expressions referred above including in Nagaraj aswamy Supra held that prior sanction is sine-qua-non and the question can be dealt with at the stage of taking cognizance by the Court or even cognizance taken erroneously. Once the same came to the notice of the Court at any later stage, a finding to that effect has to be given by the Court for accused is entitled to take such a plea always at any point of time, including even at post-framing of charges and during trial or even at the stage of hearing of the appeal against conviction of want of sanction, once the sanction is mandatorily required. In that case, lack of sanction under Section 19 of PC Act was raised and the finding was given for that. Here, for the IPC offences, once even sanction is required under Section 197 CrPC, and that is lacking as discussed supra, Charges 1 to 4 against petitioner/ A.1 are unsustainable.

24. Once such is the case, so far as IPC offences concerned as the very order of sanction under Section 19 of PC Act is only for the offences under Section 13(2) r/w 13(1)(d) PC Act and even asked for IPC offences it was not granted, the learned Special Judge could not have taken cognizance and even accused not raised, once it is the duty of the Court to apply its mind for taking cognizance, it could have been considered for not to take cognizance and even taken cognizance erroneously, at the time of framing of the charges even the trial Court ought to have

¹²⁰ (2000) 8 SCC 239

considered even accused not raised the same, for the very competency of the Court to take cognizance is from the mandatory requirement of sanction only in the facts and when it is lacking, thus the very cognizance order is unsustainable so also the framing of charges 1-5 and even charges framed and case trial is in progress that is no way a bar as held in Nagarajswamy supra. It is thus a clear case to hold that for want of sanction for the IPC offences under Section 197 CrPC from the competent authority, the charge Nos.1 to 5 against the petitioner/ A.1 are unsustainable.

25. So far as charge No.5 for the offence under Section 13(2) read with 13(1)(d) PC Act is concerned, as discharge application was dismissed from specifically raised the ground of no offence made out, including on competency of the Investigating Officer and accused went unsuccessful even by maintaining revision and the case trial is in progress by left open all defences available to the accused including as to no prima facie accusation to attract the offence under Section 13(2) read with 13(1)(d) PC Act, as observed by the revision order of this Court referred supra earlier of defence left open, this Court again by invoking the inherent power, not chosen to that extent to sit against the earlier revision order to review the same, leave about its maintainability before the same Judge even, for accused if at all aggrieved, he could have availed any remedy elsewhere against the impugned revision order of another Bench of this Court.

26. Accordingly and in the result, both the criminal petitions are allowed in part, viz.,

a) by quashing the cognizance order of the learned Special Judge for the offences punishable under Sections 120-B, 420, 468, 465 & 471 IPC for want of sanction to take cognizance, apart from the ingredients

constituting the offences under Sections 120-B, 420, 465 & 468 IPC prima facie not made out from the facts in so far as against the petitioner/ A.1; and

b) The petitions are dismissed in so far as the cognizance order of the learned Special Judge for the offence punishable under Section 13 of PC Act, against the petitioner/ A.1 which is without prejudice to any of the defence of the petitioner/ A.1 in trial. It is made clear that the charges so far framed in relation to the above pursuant to the cognizance order, said charges other than for the offence punishable under Section 13 of PC Act, are also unsustainable, for all proceedings pursuant to the cognizance order goes without any further clarification for want of sanction, apart from most of the IPC offences covered by the cognizance order held not made out supra.

27. Consequently, miscellaneous petitions, if any in these petitions shall stand closed.

Date: 01.06.2017
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JUSTICE Dr. B.SIVA SANKARA RAO