THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Crl.R.C.No.745 of 2017

ORDER:

This criminal revision case is filed, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity) seeking discharge of the petitioners-A34, 35, 40, 41, 43, 45 to 49 & 51 after setting aside the orders, dated 30.11.2016, of the learned Special Judge for trial of SPE & ACB Cases, Karimnagar, whereby the requests of the petitioners herein to discharge each of them were rejected while dismissing the petition filed under Section 239 of the Code.

2. Heard the submissions of Sri M. Raja Malla Reddy, learned counsel for the petitioners, and of Sri C. Pratap Reddy, learned Public Prosecutor (TG), representing the respondent-State. I have perused the material record.

3. To begin with, it is to be noted that against the present petitioners/accused herein and some others, a case in Crime No.3 of 2006 was registered, on 09.06.2007, by the Crime Investigation Department and after investigation, a charge sheet was filed for the offences punishable under Sections 120-B, 419, 420, 466, 468, 471, 477(A), 201, 109 IPC and Section 13(1)(d) of Prevention of Corruption Act, 1988 ('the PC Act', for short).

4. The details of all the accused arrayed in the crime at the relevant time are as follows: 'A1, Sarva Shankariah @ Shanker was a Senior Assistant in the Office of the Assistant Director of Animal Husbandry, Karimangar. A2, Muddasani Veeramallu, S/o.Muthaiah was an Attender in the Office of Special Dy.Collector, Land Acquisition, SRSP LMD Colony, Karimangar. A3, Nakka Edwin, S/o.N. Premaiah, was an Attender in the High Court of Andhra Pradesh. A4, Vemuganti Srinivasa Rao, S/o.Mohan Rao was a Junior Assistant in Senior Civil Judge's Court, Karimnagar. A5 G.Laxmi Narayana, S/o.Mallaiah was a Superintendent in the Office of Special Dy.Collector, L.A. Unit, SRSP, LMD

Colony, Karmanagar. A6, K. Satya Narayana, S/o.Narahari, was a senior Assistant in the Office of Special Deputy Collector, L.A. Unit, SRSP, LMD Colony, Karmnagar. A7, D. Rangaswamy, S/o.Rajaram, is a Superintendent in Senior Civil Judge's Court, Karimnagar. A8, T. Prabhakar Reddy, S/o.Ramchandra Reddy, was a Superintendent in the Senior Civil Judge's Court, Karmnagar. A9, Raziuddin, S/o.Rafiuddin, was a Senior Assistant in the District Court, Karimnagar. A10, Dayala Mallaiah, S/o.D. Bhoomaiah, was a Government Pleader at Senior Civil Judge's Court, Karimnagar. A11, Sarva Kanakaiah, S/o.Sarva Ramaiah is the elder brother of A1. A12, Mohd. Abdul Majeed, S/o. Mohd.Abdul Wahed was Special Deputy Collector (since retired), LMD, Karimnagar. A13, V. Venkateswara Rao, S/o. Tirumala Rao, was Special Deputy Collector, Land Protection Officer, Office of District Collector, Hyderabad. A14, Chinta Maruthi Rao, S/o. late C. Narsaiah, was Special Deputy Collector, since retired, Land Acquisition Unit, SRSP. A15, Vemuganti Srikanth Rao, S/o.late V.V. Narsimha Rao, was an advocate of Karimnagar. A16, P. Ramakrishna, S/o.P.Koteshwar Rao, was Superintendent, Office of Special Collector, SRSP, Tarnaka. A17, Dr. P. Laxminarayana, S/o.late P. Kanakaiah, is the Special Collector (since retired), SRSP, Tarnaka. A18, C. Ramesh Sagar Rao, S/o.C. Rama Rao, is an advocate, Hyderabad. A19, C. Trilochan Rao, S/.o C. Narahar Rao, is advocate, Karimnagar (since died). A20, K.V. Vijay Kumar, S/o. late K. Sanyasi Rao, was the Senior Civil Judge, Karimnagar. A21, D.Abbulu, S/o.D. Narsaiah, is the Senior Civil Judge, Karimnagar. Vide orders, dated 24.03.2009 in Crl.P.No.7821 of 2007 and batch, this Court quashed the proceedings in C.C.No.59 of 2007 against A20 & A21. A22, T. Rama Rao, S/o.Narayan Rao, was P.A. to Special Collector (Retired), SRSP, Tarnaka, Hyderabad. A23, G. Janardhan Rao, S/o.Venkataiah, is PA to Special Collector, SRSP, Tarnaka, Hyderabad. A24, J.T.Amarnath, S/o.late J. Tulasi Ram, is Senior Assistant in the Office of the Special Collector, SRSP, Tarnaka, Hyderabad. A25, P. Thirupathamma, W/o. K. Srinivas, is in-charge record keeper in Senior Civil Judge's Court, Karimnagar. A26, Swarna Venkateswerlu, S/o.Manikkaiah, is the Special Deputy Collector, L.A. LMD, Karimnagar/original *de facto* complainant-informant. A27 to A52 are the beneficiaries of the land acquisition and are parties to various land acquisition OPs. A53, M. Narsimhulu, is retired Spl.Dy.Collector, LA, LMD colony, Karimnagar. A54, Bollabathula Laxmana Murthy, is the then Senior Assistant (Bench clerk), District Court, Karimnagar. A55, K. Mallesh, is the Superintendent (the then Superintendent, II Addl.District Court, Karimnagar).'

5. Amongst all the accused, A20 & A21, the then Presiding Officers of the Senior Civil Courts, Karimnagar, were discharged vide common orders, dated 24.03.2009 in Crl.P.No.7821 of 2007 and batch. A12 & A14 were discharged by orders, dated 03.02.2011, in Crl.P.No.3696 of 2009. A7 was discharged vide orders, dated 27.01.2012, in Crl.P.No.699 of 2008. Though, *vide* the common orders related to the discharge of judicial Officers, A13 was also discharged by allowing his Crl.P.No.1408 of 2008, however, in the Criminal Appeal (Crl.A.No.1114 of 2012) preferred by the State, the Supreme Court has set aside the order discharging A13 by allowing the said appeal and by observing as follows: 'This order shall not prevent the respondent or prejudice him in any way in urging all such grounds as are open to him both on facts and in law at the time of framing of the charges before the trial court. We also make it clear that while examining whether any charges have to be framed against the respondent, the trial court shall remain uninfluenced by the observations made by the High Court in the impugned judgment, which we have set aside by this order.'

6. Be it noted that the present petitioners are the beneficiaries.

7. The case in a nutshell is this: 'In land acquisition cases relating to lands of Hasnapur village of Karimnagar District, fake appeal judgments & orders and decrees of the High Court were brought into existence by A1 in conspiracy and

in connivance with the other accused working in the Offices of the Special Deputy Collector, Land Acquisition; LMD, Karimnagar; Special Collector, Sri Ram Sagar Project (SRSP), Tarnaka, Hyderabad; Senior Civil Court, Karimnagar; and, also with advocates; Government Pleader of Senior Civil Court, Karimnagar; and, beneficiaries who received compensations on the basis of such forged/fake judgments/orders/decrees of the Courts. The conspiracy and connivance and the acts done pursuant thereto was to claim compensation @ Rs.25,000/- per acre irrespective of the category of land and entitlement of the claimants/beneficiaries. The lands were acquired for Sri Ram Sagar Project (SRSP). A1, who was working as a Typist in Animal Husbandary Department, was instrumental in fabricating certain judgments/orders/decrees of the Courts and in swindling huge money of about rupees three crores from the State exchequer in conspiracy and in connivance with the other accused persons working in the above said Offices and the other accused. Fake judgments were used in a fraudulent manner in processing the cases for payment of compensation amounts in connivance of A2, A5, A6, 12 to 14, 16, 17, 22 to 24 and 26 with A1 and the beneficiaries of such payments who were arraigned as A27 to A52 and conspiracy amongst the accused. According to the contents of the charge sheet and material on record, in six cases there were partial enhancement of compensation by the High Court but not to the extent of Rs.25,000/- per acre but compensation was eventually paid at higher rate. In two cases, the judgments of the Senior Civil Judge's Court, Karimnagar, were confirmed by the High Court. In three cases, the High Court dismissed appeals for default. In three cases no appeals were filed by the claimants and the appeal numbers mentioned against OPs do not relate to the appeal numbers of the High Court. In 14 cases, no appeals were preferred either by the claimants or the LAO/Government and the A.S. numbers mentioned in the fake/fabricated appeal judgments of the High Court relate to OPs of other Districts but not of Karimnagar District. Basing on the fake judgments/orders/decrees, all the accused including the present petitioners allegedly facilitated payment of compensation amount which is more than due and payable to the claimants/beneficiaries. Further, though Sarva Shankaraiah, S/o.Rukmaiah died, on 25.10.2000, by consuming poison, Sarva Shankaraiah, S/o.Ramaiah, that is, A1, opened an SB Account in the name of the deceased Sarva Shankaraiah, S/o.Rukmaiah and got filed cheque petition in O.P.No.887 of 1982 in the name of the said deceased and received compensation through SBH, Mankammathota Branch, Karimnagar, impersonating the deceased who is his namesake.'

8. The case of the present petitioners-accused herein in support of their request for their discharge and the submissions made on their behalf, in brief, are as follows:

The petitioners have not committed any offences as alleged by the prosecution. The Land Acquisition Officer acquired the lands of the petitioners in Hasnapur village for the purpose of development of Lower Manair Dam. He fixed the compensation and passed an Award. The petitioners received the compensation amounts under protest as per Section 18 of the L.A. Act. Therefore, the LAO referred the matter to the Subordinate Court, Karimnagar. The Court has enhanced the compensation amount awarded by the LAO. The petitioners received the enhanced compensation amounts from the Court. After some years, A1 approached the petitioners and informed them that, on his efforts, the High Court enhanced the compensation and that the amounts were deposited into Civil Court and that the Spl.Dy.Collector, Land Acquisition Unit, LMD, Karimnagar, *suo motu* obtained the sanction of enhanced compensation alleged to have been awarded by the High Court and deposited the amount into Court on the purported judgments and decrees. The petitioners believed the statement of A1 and agreed to part with 50% of compensation amount if they received the enhanced compensation as stated by

A1. The petitioners do not know the several implications involved in withdrawal of the amounts through the respective bank accounts, the details of which are already in the Court files. At the instance of A1, the petitioners received cheques towards the compensation amounts and encashed the same. A1 collected 50% of the compensation which purportedly belonged to the these petitioners-beneficiaries. The petitioners had no knowledge of the dubious acts of A1 and his connivance with the officials of Land Acquisition Office and others. The LAO also deposited the compensation amounts into Court along with D form showing the apportionment of compensation amounts in respect of each beneficiary. It appeared to be a genuine and *bona fide* one. The petitioners received the same not knowing that the said amount was part of the defrauded amount. The petitioners till date are having no knowledge as to whether or not the enhanced compensation which was deposited in the Bank accounts was the actual enhanced compensation, that is, the compensation ehanced by the High Court or not. The petitioners were made to believe that the amount they obtained was a genuine and *bona fide* amount and that they are entitled to the same. A1 induced the claimants and made them to believe that the amounts transferred to their Bank accounts without their efforts are their enhanced compensation amounts and hence, they utilised the same lawfully. Therefore, the petitioners have no animus or mens rea. In-fact the Government did not resort to recovery of the defrauded amount from Land Acquisition Office officials under Article 273 of the A.P. Financial Code. There is no material much less legal evidence on record to implicate the petitioners in the case and frame charges against them. The material record does not show the involvement of the petitioners. There is also no oral or documentary evidence to establish the ingredients of the offences alleged against the petitioners and there is no *prima facie* case against the petitioners, who are the beneficiaries. The trial Court ought to have seen that the material record and the documents filed would clearly show that there is no sufficient ground for proceeding against the petitioners. The trial Court ought to have seen that no allegation is made against the petitioners in the charge sheet and as such it ought to have discharged the petitioners. The trial Court ought to have seen that at the time of framing charges it has to consider the material with a view to find out whether or not there is a ground for presuming that the accused has committed the offence but not for arriving at a conclusion that the trial is likely to lead to conviction. The trial Court ought to have seen that the petitioners being illiterates are not aware of the alleged fraud involved in the land acquisition compensation payment. The trial Court ought to have seen that though the court cannot make roving enquiry into the pros and cons of the evidence, it ought to have seen that there is no evidence to proceed against the petitioners for the offences alleged against them. Hence, the order impugned is liable to be set aside and the petitioners are entitled to be discharged.

9. On the other hand, learned Public Prosecutor while supporting the orders of the trial Court has drawn the attention of this Court to the various averments in the charge sheet and other material record showing the complicity of the petitioners/accused herein and stated that a strong case existed for laying a charge sheet and putting the accused to trial. He further contended that huge financial loss was caused to the Government by use of fake and fabricated court judgments/orders and decrees and that A1 in conspiracy and in connivance with the other accused including the advocates and beneficiaries caused huge loss in a sum of more than rupees three crores to the Government and that, therefore, the ingredients of the offences with which the respective accused are proposed to be charged are made out and the contention that the proposed charges are groundless is devoid of merit. He, therefore, prayed for dismissal of the revision case.

10. Dealing with the first contention that even if the allegations in the charge sheet are taken on their face value no *prima facie* case much les a strong case is made out against the petitioners, it is necessary to refer to infra the relevant averments in the charge sheet related to the complicity of the present petitioners/accused herein.

> 103. The investigation established that the beneficiaries/accused (A27 to A52) knowingly conspired and connived with SDCs (A12 to A14, A26), Spl.Collector (A17) and their staff (A2, A5, A6, A16, A22, A23, A24), court staff (A4, A7 to A9, A25) Government Pleader (A10) and Advocates (A15, A18, A19(expired) of Karimnagar and Hyderabad and filed applications making false declarations for the sanction of decretal amounts mentioned in the fake judgments without actually preferring appeals and withdrew the alleged compensation twice in the cases mentioned above.
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> 111(k) A27 to A52 (beneficiaries/claimants) committed offences punishable under Section 120(B), 471 & 420 IPC.

11. Be it also noted that A26 on the directions of the Government filed a report/complaint with the police and that report set the criminal law into motion. It is discernable from the facts, submissions and material record that land of a total extent of 1892.17 guntas and 200 houses situated in Hasnapur village of Karimnagar Mandal and District were acquired in the years 1977 to 1982 and in all eight awards were passed by the then LAO determining the market values @ Rs.1,320/- to Rs.2,920/- for the acquired dry and wet lands and that in certain of the matters, in which the beneficiaries whose lands were acquired were not satisfied with the compensation determined, references were made to the civil Court and that the compensation was enhanced in some of the cases depending upon the classification and nature of the lands and that in some cases, compensation was determined at Rs.3,500/- to Rs.5,000/- or Rs.7,500/- and that in certain matters compensation was enhanced to Rs.85,000/- per acre and that the Supreme Court eventually fixed the compensation at Rs.25,000/- per acre in those cases and that later the High

Court in some similar cases fixed the compensation @ Rs.25,000/- per acre. It is also borne out by record that 29 judgments and decrees were forged as if such judgments were rendered and decrees were granted by the High Court. Under the said forged judgments and decrees it was shown as if compensation was enhanced by the High Court. The fake judgments and decrees were introduced into case files of Land acquisition officials to facilitate release of necessary funds from the Government and for deposit of the same to the credit of Civil Court deposits as and when such funds are released.' It is also borne out by record that fake judgments and decrees were inserted in 26 OP records of Senior Civil Court to facilitate the beneficiaries to withdraw the amounts deposited to the credit of respective OPs by filing cheque petitions. Eventually, on the processing and clearing of the files by officers concerned, Government deposited more than three Crores of rupees to the credit of civil Court deposits for satisfying the claims under the fake judgments & orders and decrees. Through the cheque petitions filed by the beneficiaries, the said amounts were allowed to be withdrawn. Thus, on account of the creation of fake judgments & orders and decrees and introduction of the same in the records of the land acquisition offices and of the senior Civil Court, Government was made to deposit amounts illegally to the credit of civil court deposits and such deposited amounts were allowed to be withdrawn by the beneficiaries on the basis of such fake judgments & orders and decrees. In some cases, on the basis of fake judgments & orders and decrees, opinions were obtained from the learned Government Pleaders and even the learned Advocate General, to the effect that the cases are not fit cases to prefer appeals. While processing the files, the accused concerned intentionally failed to detect the fake judgments even though they contained embossed seal of the High Court and stamp of copyist department despite the fact that original judgments only contain the embossed seal but not the certified copy and that the certified copies contain the stamp and details of delivery. Even before the execution petitions were filed, the compensation claims of the beneficiaries in these cases based on fake judgments/orders/decrees were processed and proposals were made for release of compensation to the beneficiaries basing on the fake judgments/orders/decrees and funds were eventually received from the Government for payment to such beneficiaries. The other accused and the petitioners failed to cross check their own records as to whether appeals or cross objections are filed though in three cases viz., OP.Nos.912/82, 971/82, 988/82, it was falsely mentioned that cross objections were filed by claimants while in fact no such cross objections were filed in the appeals preferred by the LAO and the appeals preferred by the LAO were dismissed confirming the orders of the civil Court. The petitioners-beneficiaries had intentionally withdrawn the amounts though they have knowledge of the fake judgments.

12. Thus a plain perusal and bare consideration of the above and other contents of the charge sheet, the supporting and the other material on record, discloses that A1 created and brought into existence some fake appellate judgments or orders/decrees of the High Court against the judgments in the matters on the file of the Senior Civil Court, Karimnagar, by using his official typewriter and with the help of A3, who worked as Attender in the High Court and who affixed rubber stamps and embossed seals on the fake judgments/orders and decrees of the High Court, and in conspiracy with A2, another Attender, who got inserted the fake appellate judgments/orders and decrees in the files of Office of the Special Deputy Collector, Land Acquisition Unit, LMD, Karimnagar, and in conspiracy with A5, who worked by then as a Senior Assistant in the Office of the Special Deputy Collector and who got processed the files pertaining to land acquisition cases; and, thereafter, with the help of A4, who worked as a Record Assistant in the Senior Civil Court, Karimnagar, got inserted the fake appellate judgments/decrees in the records of the OPs on the file of the said Court; later, with the help of A7, Superintendent in the Office of Senior Civil Court got endorsed false notings on

the cheque petitions. All the acts were done having conspired and connived with the other accused, that is, A2, A5, A6, A12, A13, A14, A16, A17, A22, A23, A24 and A26, who worked in the department of revenue, and A4, A7 to A9, A10, A20, A21, A25, who are the staff concerned of the Court and A27 to A52 the beneficiaries and others and caused financial loss to the Government by facilitating payment of more compensation amounts than are actually due and payment of compensation amounts twice in some cases. It was alleged in the charge sheet that A1 committed offences punishable under Sections 409, 419, 420, 468, 471, 201 read with 120(B) of IPC and Section 13(1)(d)(ii) of the PC Act. A2 committed offences punishable under Sections 466, 468, 471, 420 read with 120(B) of IPC. A4, A7, A8, A9 and A25 committed offences punishable under Sections 120(B), 201, 466, 468, 471 & 420 IPC read with 109 IPC and Section 13(1)(d)(ii) of the P.C.Act. A12, A13, A4, A16, A17, A22, A23, A24 committed offences punishable under Sections 120(B), 201, 466, 468, 471 & 420 read with Section 109 IPC and Section 13(1)(d)(ii) of the P.C.Act. A15 committed offences punishable under Sections 120(B), 471, 201 and 420 read with 109 IPC. A18 committed offences punishable under Section 120(B), 471, 201, 419 and 420 read with 109 IPC. A5 committed offences punishable under Sections 466, 468, 471, 201, 120(B) & 420 read with 109 IPC & Section 13(1)(d)(ii) of the P.C.Act. A10 committed offences punishable under Sections 120(B), 466, 468, 471, 420 read with 109 IPC and Section 13(1)(d)(ii) of the P.C,.Act. A11, brother of A1, committed offences punishable under Sections 420 and 120(B) of IPC. A27 to A52, beneficiaries, committed offences punishable under Sections 120(B), 471 and 420 of IPC. A53 to A55 committed offences punishable under Sections 120(B), 201, 466, 468, 471, 420 read with 109 IPC and 13(1)(d)(ii) of PC Act.

13. If the said first contention is examined in the light of the contents of the charge sheet and the entire supporting material, neither the first contention nor the other contentions of the petitioners herein which are already referred

to supra do not merit consideration in the light of the following settled undisputed legal position: 'Section 239 Cr.P.C reads as under: - "When accused shall be discharged: If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." Section 227 Cr.P.C., reads as under: - 'Discharge: - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.' Thus, a charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a prima facie case against him/her under a particular provision of law. In case the prosecution fails in its primary duty to show a prima facie case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he/she shall be discharged forthwith under Section 227 Cr.P.C. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge, the prosecution is under an obligation to place only that much of material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section

227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients Constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

14. Further, in view of the following aspects there is no need to dilate further on the various contentions of the petitioners-accused herein including

the contention that they have nothing to do with any of the alleged criminal acts constituting the criminal elements of the offences alleged against them. The present petitioners-accused, according to the prosecution case are also members of the conspiracy and they connived with the other accused. The specific allegations made against the present petitioners-accused are already noted supra. The present petitioners-accused contend that they are only beneficiaries and that on the information given by A1 and the counsel who appeared for them they acted *bona fidely* by believing them and that they acted on the instructions of their counsel while signing and filing the cheque applications and that they being illiterates merely acted upon the advise of the counsel. The learned Public Prosecutor submitted that the specific case of the prosecution is that the advocates as well as the beneficiaries conspired with A1 and one of the witnesses namely Mallikarjuna Satyanarayana, LW50, who was examined during the course of investigation stated that at the relevant time, on one day, he went to Court and that on that day Sarva Shankaraiah, A1, and Kantha Rao were present in Court. Thus, according to the prosecution, the advocate-A15 was in the company of A1 at the time, the details of the said witness were collected at the instance of A1. Further, it is pointed out that the advocates who earlier appeared for some of the beneficiaries gave statements that they informed the beneficiaries for whom they earlier appeared that they do not get any further amounts and yet, cheque petitions are filed by the beneficiaries and their acts eventually facilitated payment of compensation twice in some cases and more compensation in some other cases, is the case of the prosecution. Learned Public Prosecutor also would bring to the notice of the Court that not only fake judgments/orders and decrees were pressed into service but also basing on the same the process was initiated and amounts were got released from the Government and deposits were made into Court to the credit of various OPs by apportioning the budget even though no execution petitions are filed and that within a short time thereafter, the cheque petitions were filed and amounts were got credited to the accounts of the beneficiaries. He would, therefore, submit that the said facts lay bare the conspiracy and connivance and that, therefore, there is sufficient material to safely conclude that there is a strong case for framing charges and proceeding against all the accused. He would also submit that in a given case, even when charge sheet is silent on some legal aspects, yet the trial court can frame necessary charges if the facts of the case show complicity of the accused in respect of the proposed charges.

15. Further, as held by the Supreme Court, if this Court is to consider the contentions of the petitioners herein in detail, this Court would be clutching at the jurisdiction of the trial Court. It is also apt to note infra, the decision in Suresh Chandra Bahri v. State of Bihar [1995 (Supp) 1 SCC 80], which was referred to with approval in the afore-stated order in Crl.A.No.1114 of 2012 of the Supreme Court.

> 'In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn.'

Therefore, it is premature for this Court to record any finding on the existence of or otherwise of criminal conspiracy amongst the accused including the petitioners-accused herein who are also said to be parties to such conspiracy and suffice it to say that the present cases are not fit cases to invoke the jurisdiction at this stage and discharge the petitioners-accused herein.

16. Before parting, it is apt to refer to the decisions relied upon by the learned counsel for the petitioners:

i. CBI v. K. Narayana Rao[1] & State of Karnataaka v. L. Muniswamy and others[2] are relied upon to enlighten on the powers of the High Court and its inherent powers while dealing with applications filed under Section 482 of the Code requesting to quash the proceedings pending before the Court of Session/Special Court. Placing reliance on these decisions it is urged that for the purpose of determining whether there is sufficient ground for proceeding against an accused, the Court possesses a comparatively wider discretion and that in the exercise of the said discretion the Court can determine the question whether the material on record, if unrebutted, is such on the basis of which a conviction can be said to be reasonably possible. It is also submitted that though a roving enquiry is not needed, however, it is the duty of the Court to find out whether there is *prima facie* material against the persons who are charged with various offences under the penal laws.

ii. Bhagwan Swarup Lal Bishan Lal v. the State of Maharashtra[3], Mohd.Hussain Umar Kochra etc. v. K.S.DalipSinghji and another[4] and Yogesh @Sachin Jagdish Joshi v. State of Maharashtra[5] are relied upon on the aspect of mode of proof of conspiracy and the ingredients of the said offence which are required to be established. Placing reliance on these decisions, it is

[1] (2012)9 SCC 512
[2] (1977) 2 SCC 699
[3] AIR 1965 SC 682
[4] AIR 1990 SC 45
[5] AIR 2008 SC 2991

submitted that the provision under Section 120(A) of IPC shall not be invoked unless there is reasonable ground to believe and there is *prima facie* evidence that a person is party to a conspiracy. Placing reliance on the decision in Modh.Hussain's case (6 supra), it is urged that in order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design and that in such conspiracy each conspirator plays his separate part in one integrated and united effort to achieve the common purpose and that each one is aware that he has a part to play in general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished and that in view of the above legal position, it cannot be said that the evidence collected during investigation is sufficient to establish that the present petitioners conspired with A1 and other accused. In Bhagwan Swarup Lal Bishan Lal (5 supra) the section of law was analysed as follows: -

> 'In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.'

Be it noted that in view of the decision of the Supreme Court in the Criminal Appeal of the State related to A13 in the instant case and the decision of the Supreme Court in Suresh Chandra Bahri's case, there is no need to further dilate on the legal position since the legal position insofar as it related to the accused in the present case is already emphasised by the Supreme Court in the orders passed in the said criminal appeal of the State.

17. Dealing with the contention that some beneficiaries, who are similarly placed as the present petitioners-beneficiaries are not arraigned as accused and that some such beneficiaries were listed as witnesses for the prosecution and that the investigation agency has adopted the method of pick and choose and discriminated the petitioners-beneficiaries, it is to be noted that the learned Public Prosecutor would point out that the beneficiaries who are innocent were arraigned as witnesses as they have no nexus with the conspiracy and the criminal acts. He alternatively submitted that merely because some beneficiaries are likely to escape from liability, it is no ground to exonerate the beneficiaries arraigned as accused and against whom there is sufficient material which evidences a *prima facie* case and a strong case. He would also submit that the accused-beneficiaries on one hand are contending that they are innocent, but, at the instance of A1 and also the advocates, they filed the cheque petitions and received amounts though ineligible; and, that on the other hand, the advocates are contending that they are innocent and that on the instructions of the beneficiaries they filed the cheque petitions as instructed by the beneficiaries and that they are innocent. Thus, the advocates for the beneficiaries and the accused-beneficiaries are trying to shift the blame to the other party and pass the buck. In support of the contention that the beneficiaries are discriminated and that the investigating agency adopted pick and choose method, reliance was placed on the decision in State of Mahdya Pradesh v. Sheetla Sahai and others[6]. The facts of the cited case show that while making some officers, both working and retired, as accused, some other officers who were one way or other connected with the matter have not been proceeded against at all and, therefore, it was contended on behalf of the accused that they were discriminated. The Supreme Court commented as follows: - 'We fail to understand on what basis such a discrimination was made.' In the case on hand, the prosecution offered some

[6] (2009) 8 SCC 617

explanation for not making the other beneficiaries as accused. Therefore, on the ground that the other beneficiaries were not arraigned as accused these petitioners-beneficiaries cannot be exonerated at this stage as the Court has only to look to the materials brought on record, which if given face value and taken to be correct in their entirety, disclose commission of an offence or not. Learned Public Prosecutor rightly points out that the pleading of the petitioners in Crl.MP itself show that from the inception they were acting as instructed by A1, being in touch with him. He aptly points out that the petitioners herein in their pleaded case itself stated that A1 approached them and informed them that, on his efforts, the High Court enhanced the compensation and that the amounts were deposited into civil Courts and that the petitioners believed his said and other statements and agreed to part with 50% of compensation amount in the event they received the enhanced compensation amount as stated by A1. The very fact that the beneficiaries agreed to part with 50% of the enhanced compensation amount in the event they received the enhanced compensation as stated by A1 is itself indicating that right from the inception till the end all the accused including the petitioners-beneficiaries are parties to the conspiracy.

18. Further, there is no need at this stage to form an opinion that petitioners-accused herein are certainly guilty of the offences alleged against them. This Court examined the issue involved, keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the afore-sated precedential guidance and the decision in State of Rajasthan v. Fatehkaran Mehdu[7]. On consideration of the broad probabilities of the case, the total effect of evidence including the documents produced before the Court and in the absence of any basic infirmities in the case warranting acceptance of the request of the petitioners-accused and also in view of the limited scope of jurisdiction, which vests with the Court, it is noticeable that

[7] 2017 (1) ALD (Crl) 842 (SC)

this is a case where a final adjudication of the proposed charge/s against the petitioners-accused herein has to be made only after oral and documentary evidence is adduced in a full-fledged trial.

19. On the above analysis and for the reasons assigned supra, this Court finds that the request of the petitioners-accused herein does not merit consideration and that the order of the learned Special Judge, which is sustainable, brooks no interference.

20. In the result, the Criminal Revision Case is dismissed. It is needless to state that this Court has not expressed any opinion on the merits of the matter and this order shall not prevent the petitioners-accused herein from urging all such grounds as are open to them under facts and in law at the time of hearing on charges or any later stages of the trial of the case.

Miscellaneous petitions pending, if any, in this revision case shall stand closed.

M.SEETHARAMA MURTI, J

19.09.2017
Vjl