

*** HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

+ CRIMINAL PETITION Nos.3276, 3277 AND 3278 OF 2017,

CRIMINAL PETITION Nos.3074 AND 3075 OF 2017,

CRIMINAL PETITION Nos.3076 AND 3077 OF 2017,

CRIMINAL PETITION Nos.3078 AND 3079 OF 2017,

AND

CRIMINAL PETITION Nos.3080 AND 3099 OF 2017

% Date: 09-10-2017

Avva Sita Ram Rao alias Seetha Ram & others .. Petitioners

v.

\$ The State of Andhra Pradesh & another .. Respondents

! Counsel for the Petitioner in : Sri Kapil Sibal, Senior Counsel,
Crl. Pet. Nos.3276, 3277 & 3278 of 2017 for Sri M. Prathap Reddy

Counsel for the Petitioner in : Sri V. Pattabhi, learned Counsel,
Crl. Pet. Nos.3074 & 3075 of 2017 for Ms. Thota Suneetha

Counsel for the Petitioner in : Sri Kanakamedala Ravindra Kumar,
Crl. Pet. Nos.3076 & 3077 of 2017 learned counsel, for Ms. Elipe Shantha Sree

Counsel for the Petitioner in : Sri L. Ravichandran, Senior Counsel,
Crl. Pet. Nos.3078 & 3079 of 2017 for Sri K. Janakirami Reddy

Counsel for the Petitioner in : Sri V. Pattabhi, learned counsel,
Crl. Pet. Nos.3080 & 3099 of 2017 for Sri M.P. Kashyap

^ Counsel for the respondents : Public Prosecutor for the State of A.P.

< **GIST:**

> **HEAD NOTE:**

? CASES REFERRED:

1. 2011 (3) SCC 351.
2. 2012 (1) SCC 520
3. 2003 (5) SCC 257
4. 2006 SC 1683
5. 2008 (5) SCC 662
6. 2008 (5) SCC 668
7. 2007 (9) SCC 481
8. 1992 Supp. (1) SCC 335
9. 1993 (3) SCC 54
10. 1987 2 RCR (Cri) 427
11. 2012 6 AD (Delhi) 568
12. 2009 151 CompCas 583 (Gauhati)
13. (2015) 12 SCC 781
14. (2013) 4 SCC 505
15. (2015) 4 SCC 609
16. (2009) 1 SCC 516
17. 1994 (4) SCC 260
18. 2014 (8) SCC 273
19. (2017) (2) SCC 779
20. 2009 (4) SCC 439
21. 2016 (11) SCC 703
22. (2005) 2 APLJ 374 (AP)
23. (2007) 12 SCC 1
24. (2013) 10 SCC 677
25. (2014) 15 SCC 29
26. (2016) 4 SCC 469
27. (2017) 6 SCC 263
28. 1977 C.L.R. (Pb. & Har) 134
29. (2007) 3 SCC 693
30. (2014) 4 SCC 282
31. (2010) 3 SCC 330
32. 2000 (1) ALT (CrI.) 349 (SC) : 2000 SCC (Cri) 786
33. (2011) 1 SCC 74
34. 2017 (3) ALT (CrI.) 30 (DB) (AP)
35. (2002) 2 SCC 210
36. Criminal Appeal No(s) 1660-1662 of 2017
 [Arising out of Special Leave Petition (Criminal Nos.2875-2877 of 2016)]
37. Criminal Appeal No.1723 of 2017
 [arising out of SLP (CrI) No.9549 of 2016), dated 04-10-2017]
38. Criminal Appeal Nos.1660-1662 of 2017 dated 15.09.2017

C/15

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL PETITION Nos.3276, 3277 AND 3278 OF 2017

Between:

Avva Sita Ram Rao alias Avva Seetha Ram .. Petitioner

AND

State of Andhra Pradesh & another .. Respondents

CRIMINAL PETITION Nos.3074 AND 3075 OF 2017,

Between:

Avva Udaya Bhaskar Rao .. Petitioner

AND

State of Andhra Pradesh & another .. Respondents

CRIMINAL PETITION Nos.3076 AND 3077 OF 2017,

Between:

Avva Venkata Subramanyeswara Sarma .. Petitioner

AND

State of Andhra Pradesh & another .. Respondents

CRIMINAL PETITION Nos.3078 AND 3079 OF 2017,

Between:

Avva Venkata Siva Ram alias Siva Rama Krsihna .. Petitioner

AND

State of Andhra Pradesh & another .. Respondents

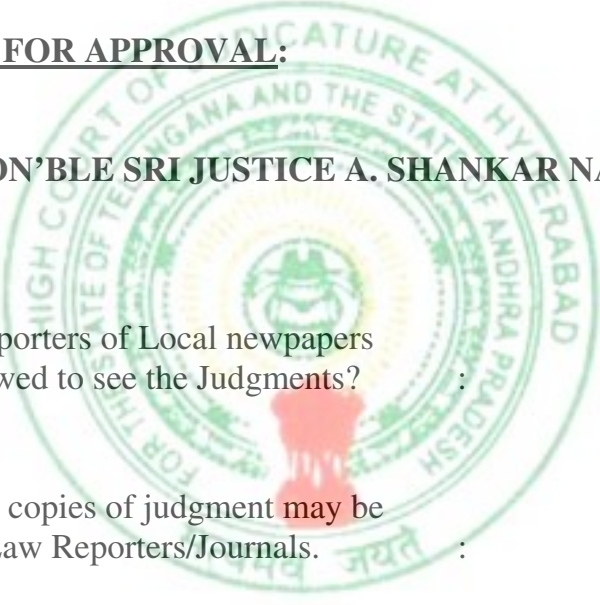
AND**CRIMINAL PETITION Nos.3080 AND 3099 OF 2017****Between:**

K.V.S. Sai Ram alias Avva Sai Ram .. Petitioner

AND

State of Andhra Pradesh & another .. Respondents

DATE OF JUDGMENT PRONOUNCED: 09-10-2017**SUBMITTED FOR APPROVAL:****HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
 2. Whether the copies of judgment may be Marked to Law Reporters/Journals. : Yes
 3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

A. SHANKAR NARAYANA, J

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.3276, 3277 AND 3278 OF 2017,

CRIMINAL PETITION Nos.3074 AND 3075 OF 2017,

CRIMINAL PETITION Nos.3076 AND 3077 OF 2017,

CRIMINAL PETITION Nos.3078 AND 3079 OF 2017,

AND

CRIMINAL PETITION Nos.3080 AND 3099 OF 2017

COMMON ORDER:

Requests are made in these applications by the petitioners, who are arraigned as accused in Crime No.6 of 2015 of Madanapalle II Town Police Station, Chittoor District, Andhra Pradesh; Crime No.378 of 2014 of Nellore III Town Police Station, SPSR Nellore, Andhra Pradesh; and Crime No.3 of 2015 of Peddapadu Police Station, West Godavari District, Andhra Pradesh, to invoke the inherent power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), and to quash the First Information Reports (FIR) in the said crimes.

2. The offences alleged against the petitioners are punishable under Sections 406, 420 and 120-B of Indian Penal Code 1860, 5 of Andhra Pradesh Protection of Depositors of Financial Establishment Act, 1999 (APPDFE Act), 4 of Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (PC & MCSB Act) and under the provisions of Reserve Bank of India Act, 1934 (RBI Act).

3. For convenience sake, the names of the petitioners in these petitions, crime numbers, their status in the array of accused in these crimes, names of the company with which they are associated and the offences alleged against them are projected in a tabular column, as hereunder:

Sl. No.	Name of the Accused	Criminal Petition No.	Crime No. & Police Station	Accused No.	Name of the Company
1.	Avva Sita Ram Rao alias Seetha Ram	3276	6 of 2015 Madanapalle II Town Police Station, Chittoor District, A.P.	A-8	Agri Gold Farm Estates India Private Limited
2.	Avva Sita Ram Rao alias Avva Seetha Ram	3277	378 of 2014, III Town Police Station, SPSR Nellore, A.P.	A-6	Agri Gold Estate Privaet Limited
3.	Avva Sita Ram Rao alias Avva Seetha Ram	3278	3 of 2015	A-7	Agri Gold Management
4.	Avva Uday Bhaskar Rao	3074	378 of 2014 Nellore III Town Police Station, SPSR Nellore, A.P.	A-9	Agri Gold Farm Estates India Private Limited Management
5.	Ava Udaya Bhaskar Rao	3075	3 of 0215 Peddapadu Police Station, West Godavari District, A.P.	A-10	Agri Gold Farm Estates India Private Limited Management
6.	Ava Venkata Subramanyeswara Sarma 3076	3076	378 of 2014, Nellore III Town Police Station, SPSR Nellore, A.P.	A-11	Agri Gold Farm Estates India Private Limited Management

7.	Avva Venkata Subramanyeswara Sarma	3077	3 of 2015, Peddapadu Police Station, West Godavari District, A.P.	A-12	Agri Gold Farm Estates India Private Limited Management
8.	Avva Venkata Siva Ram / Siva Rama Krishna	3078	3 of 2015, Peddapadu Police Station, West Godavari District, A.P.	A-11	Agri Gold Farm Estates India Private Limited Management
9.	Avva Venkata Siva Ram / Siva Rama Krishna	3079	378 of 2014 Nellore III Town Police Station, SPSR Nellore, A.P.	A-10	Agri Gold Farm Estates India Private Limited Management
7.	K.V.S. Sai Ram	3080	3 of 2015, Peddapadu Police Station, West Godavari District, A.P.	A-9	Agri Gold Farm Estates India Private Limited Management
8.	KVS Sai Ram alias Avva Sai Ram	3099	378 of 2014 Nellore III Town Police Station, SPSR Nellore, A.P.	A-8	Agri Gold Farm Estates India Private Limited Management.

CONTENTIONS/PLEAS RAISED IN THE PETITIONS:

Criminal Petition Nos.3276, 3277 and 3278 of 2017:

4. It would be convenient if these petitions are taken up commonly since almost identical pleas have been set out in requesting quashment of the FIRs.

5(i). One Avva Sita Ram Rao alias Seetha Ram is the petitioner in these petitions. He is arraigned as accused Nos.8, 6 and 7 in Crime Nos.6 of 2015, 378 of 2014 and 3 of 2015 respectively. It is not in dispute that he worked as director from the year 2004 to 03.01.2011, on which date, he retired from the three companies viz., M/s. Agri

gold Farm Estates India Private Limited, Agri Gold Constructions Private Limited and Dreamland Ventures Private Limited. On the basis of the complaints lodged by respondent No.2 - *de facto* complainant viz., R.V. Subbareddy, V. Venkat Ram Prasad and Gantasala Venkanna Babu, respectively, in each of these crimes, the concerned Station House Officers have registered the aforesaid crimes for the offences referred to in the above.

(ii). Substantially, the allegations levelled in Crime No.6 of 2015 have been that the *de facto* complainant started investing an amount of Rs.60/- per day with M/s. Agri Gold Farm Estates India Private Limited in Madanapalle from 14.07.2014 which cumulatively amounted to approximately Rs.20,000/-. He complained that the investment returns were not paid to him by the company after the due date was passed and the company was closed. He learnt from the news channels that even other customers/depositors have been duped and the officials of the company refused to make payments.

(iii) He alleges that the cheques issued by the company, when presented, were bounced and the company's sister concern, M/s. Chandana Priya Ventures was even promoted by Mr. Sai Kumar, cine actor, who used to propagate to promote the scheme. He even alleged that the company was involved in milk business and earned crores of money in *benami* names. The *de facto* complainant also alleges that when he approached the 11 accused persons requesting them to pay the amount, they refused, upon which, he filed the

complaint with the Station House Officer, Madanapalle II Town Police Station, on 06.01.2015, which was registered as Crime No.6 of 2015 and later investigation was taken up by the Crime Investigation Department, Hyderabad (CID).

(iv) The *de facto* complainant in Criminal Petition No.3277 of 2017 states that he deposited an amount of Rs.25,000/- in Agri Gold Scheme in the name of his daughter for a period of six and half (6½) years who promised him that he will get double the amount or a plot upon maturity of the scheme. He believed and deposited the said amount on 22.11.2007 and receipt was passed with maturity date as 22.5.2014.

(v) Lured by another scheme started by the company that within six (6) years, the deposit would be doubled, he invested an amount of Rs.4,05,000/- in the year 2013. When he approached the Agri Gold Office situated at Nellore on maturity of the first deposit, the representatives of the company initially asked him to come again and for sometime thereafter, he wandered around the company, but the company did not return his deposit amount. For the second deposit, he was given bonds by the company, but, according to the *de facto* complainant, when he approached the branch, the persons in the branch, illegally collected the deposit bond receipts from him, a month before the maturity date and gave acknowledgement promising to repay the deposit amount on maturity, but failed to keep up the promise. He named one G. Prabhakar Rao and Suresh of

Kovuru village, at whose instance, he joined the said scheme and paid the amount at Brundavanam Office of Agri Gold and that constrained him to file the complaint with the Nellore III Town Police Station, SPSR Nellore District, Andhra Pradesh.

(vi) In Criminal Petition No.3278 of 2017, the *de facto* complainant viz., Gantasala Venkanna Babu, belonging to Vaddigudem village, Peddapadu Mandal, West Godavari District, also met with the same fate having deposited Rs.10,000/- on 30.05.2004 through one Ghantasala Venkata Ranga Raju with A/c. No.489721 and after ten years period, when the company was supposed to give him Rs.40,000/- on maturity date 30.05.2014, they did not pay the amount. The cheque for Rs.40,000/-, issued in favour of his grandmother, when presented, was dishonoured and the company issued yet another cheque dated 06.12.2014 drawn on Bank of India, Gajuwaka, Vizag Branch, but, it too met with the same fate. He was, therefore, constrained to lodge a complaint with the Station House Officer, Peddapadu Police Station, West Godavari District. The investigation was subsequently taken up by the CID.

(vii) These have been the allegations, based on which, complaints were registered by the concerned Station House Officers, and, of course, investigation was taken up by the CID.

6(i) Turning to the pleas put-forth in these three petitions, as they are identical, reference to the details mentioned in Criminal Petition No.3267 of 2017 would suffice.

(ii) The petitioner states that he is being roped in the present crimes in his capacity as being the erstwhile director of the companies, even though, he had resigned as the director of the company on 03.01.2011 i.e., more than three years before the investigation was commenced. He would state that based on his designation, he had no interaction with the companies and was in any way involved in the management or working of the companies and the *de facto* complainant has deliberately suppressed the same with a malicious intention who arraigned him as an accused in order to arm-twist him to come into his illegal demands. The investigating agency, without due application of mind and without conducting preliminary enquiry, holding him vicariously liable for the alleged offences on the basis of his former designation in the company and by ignoring the settled principles of law that there is no concept of vicarious liability in the jurisprudence.

(iii) Touching the incorporation of the company, he would state that he was the erstwhile director of Agri Gold Farm Estates India Private Limited, Agri Gold Constructions Private Limited and Dreamland Ventures Private Limited. He had resigned from the directorship of the said companies with effect from 03.01.2011 and Form - 32 was also submitted before the Registrar of Companies

(ROC) and, therefore, he has no relation with the aforesaid companies subsequent to 2011. He would state that he remained as director of the company from the year 2004 till 03.01.2011.

(iv) He states that a bare perusal of the FIR shows that it is riddled with errors and registered in a rush rather than any sort of analysis or investigation into the complaint. To substantiate this ground, he would state that in the first line of the FIR, it is stated that FIR number is '06/15' whereas the complaint itself was made in 2015 and in column "information received at the PS" and in the General Diary reference column, the date is given as "06.10.2015", whereas the complaint clearly states that it was given on "06.01.2015" and, therefore, claims that some clarification is also required from the appropriate authorities as to the correct details of FIR No.6 of 2015.

(a) The first ground agitated by the petitioner is that the alleged offence took place subsequent to 14.07.2014, when the *de facto* complainant commenced investing Rs.60/- per day, that is more than three years after he resigned on 03.01.2011. The allegation levelled by the *de facto* complainant that he moved towards him (present petitioner) for recovery of his dues, is false as he (petitioner) never interacted with the *de facto* complainant, and, therefore, no role can be attributed to him and he has been made needlessly liable for the alleged offences on the basis of his former designation in the company.

(b) Second, the police authorities, without following the due procedure and on the basis of the false and baseless allegations made by the *de facto* complainant, registered the FIR mechanically, against him for the alleged offences which he has not committed since he ceased to be the director in the company with effect from 03.01.2011, whereas the *de facto* complainant had began investing the amount from 14.07.2014.

(c) Third, the aforesaid facts would leave no manner of doubt that on the date of offence, if any, committed by the company, he was not a director and he had nothing to do with the affairs of the company and if the FIR is allowed to be proceeded against him, it would result in gross injustice to him and tantamount to abuse of process of Court. The petitioner refers to the law declared by the Hon'ble Supreme Court in **Harshendra Kumar D. v. Rebatilata Koley**¹.

(d) Fourth, Form - 32 annexed to the petition as Annexure - B will ascertain that it is an established fact that the petitioner had resigned from the company as director on 03.01.2011, which is well before the relevant date in the year 2014-15, when the cheques may have been issued to the *de facto* complainant. The same has been accepted by the Hon'ble Supreme Court as a valid ground for quashing the criminal proceedings in the cases of **Mrs. Anita Malhotra v. Apparel Export Promotion Council**².

¹ 2011 (3) SCC 351.

² 2012 (1) SCC 520

(e) Fifth, the allegations in the complaint are bald and frivolous as the *de facto* complainant miserably failed to even *prima facie* prove the essential ingredients of the offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code, 1860 (IPC), more particularly, the entrustment and inducement respectively, therein qua the petitioner. Even the *de facto* complainant failed to *prima facie* ascribe any role to him in the entire alleged conspiracy and has failed to even remotely ascribing any role to him.

(f) Sixth, it is settled law by a catena of decisions that for establishing the offence of cheating, the *de facto* complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise of representation. But, in the present case, firstly, there have never been any interaction between the *de facto* complainant and himself (petitioner) and, therefore, the question of any representation, which is one of the main ingredients for constitution of an offence of cheating as contended in Section 420 IPC, did not and could not arise. He places reliance on the ruling in **Hira Lal Hari Lal Bhagwati v. CBI**³.

(g) Seventh, the present complaint fails to disclose as to whether he was entrusted with or otherwise had dominion over the property of the *de facto* complainant or he has committed any criminal breach of trust and in order to bring the evidence of breach of entrustment, proof of entrustment is essential and a perusal of the

³ 2003 (5) SCC 257

complaint reveals that there is not even an iota of proof of entrustment alleged against him and, therefore, the offence punishable under Sections 406 IPC alleged against him is not made out and the investigation ought to be quashed qua the petitioner.

(h) Eighth, while submitting that fraudulent or dishonest intention on the part of the accused must be at the inception and not at a subsequent stage and the present complaint is, therefore, liable to be quashed for the offences punishable under Section 420 IPC, the petitioner refers to the ruling in **Suryalakshmi Cotton Mills Limited v. Rajvir Industries Limited**⁴ and basing on the fact that he resigned more than three years before the *de facto* complainant had begun investing the amount of Rs.60/- per day with effect from 14.07.2014, he would contend that he has been made vicariously liable for the alleged offences and no specific role has been assigned to him. He refers to the law declared by the Hon'ble Apex Court that there is no such concept of vicarious liability under criminal law until and unless the same is specifically provided for under a Legislation/Act, referring to the rulings in **S.K. Alagh v. State of Uttar Pradesh**⁵, **Maksud Saiyed v. State of Gujarat**⁶ and **N.K. Wai v. Shekar Singh**⁷.

(i) Tenth, that the police authorities ought to have considered that the uncontroverted allegations made in the complaint by the *de facto* complainant did not disclose commission of any offence qua the

⁴ 2006 SC 1683

⁵ 2008 (5) SCC 662

⁶ 2008 (5) SCC 668

⁷ 2007 (9) SCC 481

petitioner and, as such, this Court has jurisdiction under Section 482 of the Code to verify and quash the FIR and investigation qua the petitioner. He placed reliance on the ruling in **State of Haryana v. Bhajan Lal**⁸. He states that the complaint does not even mention or make out any case against him and in the absence of any evidence, leave aside the material evidence, qua the petitioner herein and, therefore, requests the Court to exercise the inherent power under Section 482 of the Code in the interest of justice for quashing the investigation against him in order to avoid and prevent him from undergoing mental agony of a criminal trial in the absence of any material against him.

7. In Criminal Petition No.3277 of 2017, the *de facto* complainant besides raising the grounds agitated in Criminal Petition No.3276 of 2017, adverted to in the above also agitates the offence punishable under Section 5 of the APPDFE Act. The petitioner in the said context would state that the said offences cannot be imposed upon him as he was not a part of the management of the company and he has extracted the provisions of Section 5 in ground 'D'.

8. In Criminal Petition No.3278 of 2017, besides adverting to the grounds agitated in the aforesaid two petitions, the petitioner would also refer to the ruling in **Radhey Shyam Khemka v. State of**

⁸ 1992 Supp. (1) SCC 335

Bihar⁹ in the context of absence of specific role ascribed to the petitioner.

Criminal Petition Nos.3074 and 3075 of 2016:

9(i). The petitioner viz., Avva Udaya Bhaskar Rao, in these two petitions is arraigned as accused Nos.9 and 10 in Crime Nos.378 of 2014 and 3 of 2015 respectively. The offences alleged against him are punishable under Sections 120-B, 406 and 420 IPC and Section 5 of APPDFE Act besides the offence under the provisions of the RBI Act. Since the substratum of the case is substantially referred to in the first set of three petitions mentioned hereinbefore, reference to his position, only to the extent of the case set out by him would suffice. His main plea is that he is unconnected with any of the three companies. He is a Technical Diploma Engineer. He worked in a Cement Factory (India Cements) at Chilamakuru, Kadapa District, for twenty four (24) years from the year 1980 to 2004 as Technical In-charge and had taken voluntary retirement in the month of April, 2004 due to ill health of his wife, who got affected with severe heart disease in the year 1988 and thus, he is neither a director nor consultant nor employee in any of the companies.

(ii) He referred to the complaint allegations to the effect that the *de facto* complainant, V. Venkata Rama Prasad, claimed that he deposited an amount of Rs.25,000/- in the Agri Gold Scheme for a

⁹ 1993 (3) SCC 54

period of six and half (6½) years as the company promised to pay double the amount or a plot after the maturity date and believing the same, he has deposited such amount in the name of Velapula Jhansi Lakshmi for which a receipt dated 22.11.2007, was issued showing the maturity date as 22.05.2014, with the value of double the amount. Again in the year 2013, when he learnt that the very same Agri Gold Company making the double amount within six (6) years only, he has deposited Rs.4,05,000/- in various installments, and, when he visited the Agri Gold office at Nellore on 22.05.2015, to collect the maturity amount, he was asked to visit after a few days and, thereafter, though, he made several visits to the office of the company, the company has not returned the maturity amount. He made a specific allegation that the company has collected crores of rupees from the public and converted the same in *benami* names. Basing on the said complaint, Crime No.378 of 2014 was registered for the offences punishable under Sections 406 and 420 IPC and Section 5 of APPDFE Act.

(iii) He would plead that a notice dated 08.04.2017, under Section 41-A of the Code has been issued by the Investigating Officer, Superintendent of Police, EOW, CID, A.P., Hyderabad, directing him to appear before him at the office of the Superintendent of Police EOW, CID, RTC Complex, Vijayawada, on 11.04.2017 at 11.00 a.m., with a clear stipulation in the said notice that failure to comply with the said notice amounts to offence punishable under Section 174 of IPC. He filed the said notice in the material papers. According to

him, issue of such notice is totally unwarranted and uncalled for and the same has to be set aside in the interest of justice.

10. In Criminal Petition No.3075 of 2017, one Gantasala Venkanna Babu is the *de facto* complainant. He deposited an amount of Rs.10,000/- on 30.05.2004 to the Agri Gold Branch No.1018, vide A/c. No.489721 through the agent viz., Gantasala Venkata Ranga Raju, SMO - 223967. The scheme provided that after ten years, four times over the said amount would be returned by the date of its maturity as 30.05.2014, and, when he approached the Branch people for return of the amount of Rs.40,000/-, they did not pay the said amount and gave some reasons; four months prior thereto, on 10.01.2014 a cheque bearing No.728011014120 drawn on ING Vysya Bank, Venkojipalem Branch, Visakhapatnam, for Rs.40,000/- was issued by the branch, but, the said cheque stood dishonored and another cheque issued by the branch on 06.12.2014, drawn on Bank of India, Gajuwaka Branch, Vizag, was also dishonoured, and, when he approached the company people, he was asked to go to Vijayawada to take cheque or cash and, therefore, he lodged the complaint alleging that the petitioner has committed the offences under money circulation Act.

11 (i). In defence to the said allegations, the petitioner has put-forth identical grounds stating that he is unconnected with any of the companies. He never acted as Director or Consultant in any capacity in the said three companies and never involved in any kind of

marketing/sales/promotion/ administration activities/meetings of the accused companies and he never involved in any kind of misappropriation of funds nor indulged in any kind of misappropriation, embezzlements and conspiracies nor helped anybody to do such misappropriation/embezzlements/conspiracies.

(ii). He has pleaded the grounds raised by the petitioner in Criminal Petition Nos.3276, 3277 and 3278 of 2017 referred to hereinabove and also relied on the ruling in **Hira Lal Hari Lal Bagwathi**³.

(iii) He would plead that a notice dated 06.04.2017, under Section 41-A of the Code has been issued by the Investigating Officer, Superintendent of Police, EOW, CID, A.P., Hyderabad, directing him to appear before him at the office of the Superintendent of Police EOW, CID, RTC Complex, Vijayawada, on 07.04.2017 at 11.00 a.m. with a clear stipulation in the said notice that failure to comply with the said notice amounts to offence punishable under Section 174 of IPC. He filed the said notice in the material papers. According to him, issue of such notice is totally unwarranted and uncalled for and the same has to be set aside in the interest of justice.

Criminal Petition Nos.3076 and 3077 of 2017:

12(i). The petitioner viz., Avva Venkata Subramanyeswara Sarma is arraigned as accused Nos.11 and 12 in Crime Nos.378 of 2014 and 3 of 2015 respectively, in these two petitions. The offences

alleged against him in both the crimes are punishable under Sections 120-B, 406 and 420 IPC, and Section 5 of APPDFE Act. He refers to the allegations of the complaint lodged by the *de facto* complainant, V. Venkat Ram Prasad, which have been adverted to in Criminal Petition NNo.3075 of 2017. Therefore, it is unnecessary to advert to them once again. Directly turning to the pleas, he has put-forth that he worked in Indian Army for about twelve (12) years and then for Central Government in the Department of Stores for twelve (12) years and took voluntary retirement in April, 2006. According to him, he is neither a director nor consultant nor employee in any of the accused companies. He states that he was never involved in any kind of marketing/sales/ promotion/administration activities/meetings of the accused companies, never involved in any kind of misappropriation of funds, nor indulged in any kind of embezzlements, and conspiracies nor helped anybody to do such misappropriation/ embezzlements/ conspiracies. He has set up the very same defence which the petitioner in Criminal Petition Nos.3074 and 3075 of 2017 has raised and also relied on the ruling in **Hira Lal Hari Lal Bagwathi**³. He has extracted the order dated 29.09.2016, passed by this Court in Crime No.7 of 2015 while disposing of Criminal Petition No.14164 of 2016, thus:

“Learned Senior Counsel appearing for the petitioner contends that petitioner is not an employee of Agri Gold Farm Estates India Private Limited and further he is innocent and not committed any offence and there are no specific allegations against the

petitioner. On the other hand, learned Additional Public Prosecutor opposed the Criminal Petition contending that, since the investigation is still going on, the question of quashing investigation does not arise. In view of the facts and circumstances of the case, this Court is not inclined to interfere with investigation. However, the Station House Officer, C.I.D., Hyderabad is hereby directed not to arrest the petitioner in connection with Crime No.7 of 2015 till completion of investigation or filing of charge sheet or final report. With the above direction, the Criminal Petition is disposed of. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.”

(ii) He would state that he is suffering from acute back pain due to L-4 and L-5 disk slip, which had occurred in a road accident, due to which he cannot sit or stand continuously for longer period.

(iii) In Criminal petition No.3076 of 2017, he would state that he was issued notice under Section 41-A of the Code dated 08.04.2017 by the very same Investigating Officer asking him to appear on 11.04.2017 at 11.00 a.m., and he has annexed the said notice as one of the material documents thereto.

13. In Criminal Petition No.3077 of 2017, he would state that he was issued notice under Section 41-A of the Code dated 08.04.2017, by the very same Investigating Officer asking him to appear on 11.04.2017 at 11.00 a.m., and he has annexed the said notice as one of the material documents hereto.

Criminal Petition Nos.3078 and 3079 of 2017:

14 (i) The petitioner viz., Avva Venkata Siva Ram alias Siva Ramakrsihna, in these two applications is arraigned as accused Nos.11 and 10 in Crime Nos.3 of 2015 and 378 of 2014, respectively, on the complaints of one Gantasala Venkanna Babu and Venkata Ram Prasad, respectively. The allegations made by both of them in the complaints have been adverted to in the above petitions. Therefore, it is unnecessary to once again advert to them.

(ii) The defence set out by him in Criminal Petition No.3078 of 2015 would suffice as the very same defence occurs in the latter petition.

(iii) He claims that he never had any personal involvement with Agri Gold Farms Estates Limited, Management either directly or indirectly nor did he take any remuneration or fee nor involved in any kind of marketing/sales/promotion/administrative activities/meetings of the accused companies nor involved in any kind of misappropriation of funds nor embezzlements and conspiracies, or help from anybody to such misappropriation and embezzlement conspiracies. He claims himself to be a prudent citizen and had never faced any FIR, complaint, criminal or civil case during his entire life time. According to him, he has been doing his own business unconnected with the Agri Gold Companies.

(iv) He referred to the complaint lodged by the *de facto* complainants in both these criminal petitions which were hitherto referred to.

(v) In Criminal Petition No.3078 of 2017, the petitioner claims that a notice under Section 41-A of the Code dated 07.04.2017, has been issued in both these crimes directing him to appear before the Investigation Officer, Superintendent of Police, EOW, CID, A.P., Hyderabad, on 11.04.2017 at 11.00 a.m., with a clear stipulation in the said notice that failure on his part to comply with the said notice amounts to an offence punishable under Section 174 of IPC. He has filed the said notice as one of the material documents annexed thereto.

(v) In Criminal Petition No.3079 of 2017, he claims that a notice under Section 41-A of the Code dated 07.04.2014 has been issued in both these crimes directing him to appear before the Investigation Officer, Superintendent of Police, EOW, CID, A.P., Hyderabad, on 11.04.2017 at 11.00 a.m. with a clear stipulation in the said notice that failure on his part to comply with the said notice amounts to an offence punishable under Section 174 of IPC. He has filed the said notice as one of the material documents annexed thereto.

Criminal Petition Nos.3080 and 3099 of 2017:

15(i). The petitioner viz., K.V.S. Sai Ram alias Avva Sai Ram is arraigned as accused No.9 and accused No.8 in Crime Nos.3 of 2015 and 378 of 2014 respectively. He alleged to have committed the

offences punishable under Sections 120-B and 420 IPC. The *de facto* complainants are Gantasala Venkanna Babu and V. Venkat Ram Prasad. The allegations in the complaints in these two crimes referred to by the petitioner have been already adverted to in the above petitions.

(ii) Turning to the defence, the petitioner has taken in these two petitions is, that he is innocent and he is unnecessarily roped in the FIRs, that he has nothing to do with the family of 'Avva' or with the 'Agri Gold companies or its affairs', and, in fact, according to him, thirty (30) years back, he had gone on adoption to a family of 'Katamaraju' and he has been living on his own by doing small business. He denied his involvement in 'Agri Gold Farm Estates India Private Limited Management.' According to him, he never had any personal involvement in Agri Gold Farm Estates India Private Limited's Management, either directly or indirectly nor did he take any remuneration or fee nor involved in any kind of marketing/sales/promotions/administrative activities/meetings of the accused companies nor in any kind of misappropriation of funds nor indulged in any kind of embezzlements and conspiracies nor helped anybody to do such misappropriation/embezzlements/conspiracies.

(iii) Raising the pleas put-forth by the other petitioners in the afore referred applications, he has extracted the order dated 29.09.2016 passed by this court in Crime No.7 of 2015 in Criminal Petition No.14164 of 2016 which was referred to in the above.

(iv) In Criminal Petition No.3080 of 2017, the petitioner claims that a notice under Section 41-A of the Code dated 06.04.2017, has been issued in both these crimes directing him to appear before the Investigation Officer, Superintendent of Police, EOW, CID, RTC Complex, Vijayawada, on 07.04.2017 at 11.00 a.m. with a clear stipulation in the said notice that failure on his part to comply with the said notice amounts to an offence punishable under Section 174 of IPC. He has filed the said notice as one of the material documents annexed thereto.

16. In Criminal Petition No.3099 of 2017, he claims that a notice under Section 41-A of the Code dated 08.04.2017 has been issued in both these crimes directing him to appear before the Investigation Officer, Superintendent of Police, EOW, CID, RTC Complex, Vijayawada, on 11.04.2017 at 11.00 a.m. with a clear stipulation in the said notice that failure on his part to comply with the said notice amounts to an offence punishable under Section 174 of IPC. He has filed the said notice as one of the material documents annexed thereto.

17. Heard Sri Kapil Sibal, learned senior counsel assisted by Sri M. Prathap Reddy, learned counsel for the petitioner in Criminal Petition Nos.3276, 3277 and 3278 of 2017; Sri V. Pattabhi, learned counsel, assisted by Ms. Thota Suneetha, learned counsel for the petitioner in Criminal Petition Nos.3074 and 3075 of 2017; Sri Kanakamedala Ravindra Kumar, learned senior counsel, assisted by

Ms. Elipe Shantha Sree, learned counsel for the petitioner in Criminal Petition Nos.3076 and 3077 of 2017; Sri L. Ravichandran, learned senior counsel, assisted by Sri K. Janakirami Reddy, learned counsel for the petitioner in Criminal Petition Nos.3078 and 3079 of 2017; and Sri V. Pattabhi, learned counsel, assisted by Sri M.P. Kashyap, learned counsel for the petitioner in Criminal Petition Nos.3080 and 3099 of 2017; and the learned Public Prosecutor for the State of Andhra Pradesh on behalf of respondents.

SUBMISSIONS:

CRIMINAL PETITION Nos.3276, 3277 AND 3278 OF 2017:

18. The submissions, made by the learned Senior Counsel for the Petitioner, have been:

- i) The petitioner was the Director of Agri Gold Farm Estates Indian Private Limited from 2004 to 03.01.2011, thus, he was roped in the present FIRs in his capacity being the Erstwhile Director of Agri Gold Farm Estates India Private Limited even though, he had resigned on 03.01.2011.
- ii) The learned Senior Counsel would submit that the petitioner was not only the Director of the said Company, but also the Director of Agri Gold Constructions Private Limited, Dreamland Ventures Private Limited during the said period and Form No.32 shows that the petitioner

made an application to the Board of Directors of Agri Gold Farm Estates India Private Limited on 03.01.2011, tendering his resignation on the ground that he was unable to continue as Board of Directors of the Company and requests to accept and intimate the Registrar of Companies by filing Form No.32 with MCA/ROC, and even Form No.32, confirmation of resignation w.e.f. 03.01.2011 was accepted.

- iii) The learned senior counsel would submit that the petitioner herein, in fact, commenced depositing the amount of Rs.2,000/- per month in the month of July, 2014, by which time, the petitioner was not a Director of any of the Companies and three years prior thereto itself he resigned his post of Director of the Company which was accepted by the Registrar of Companies.
- iv) The learned senior counsel would submit that in Crime No.3 of 2015, the *de facto* complainant lodged the complaint alleging the offence of non-payment of investment returns which was due on 30.05.2014, due to a cheque issued by one of the Companies on 10.10.2014, which was dishonoured, thus, the offence complained was more than three years after he ceased to be the Director of the said Company.

- v) In Crime No.378 of 2014, the learned senior counsel would submit that the complaint lodged by the *de facto* complainant was based on an alleged offence of non-payment of investment returns which was due on 22.05.2014 and, thus, the petitioner had no connection whatsoever with the Company as by which date, the petitioner had ceased to be the Director of the same.
- vi) The learned senior counsel would submit that the offences punishable under Sections 406 IPC and 420 IPC cannot co-exist in view of the rulings in **Jalpa Parshad Aggarwal v. State of Haryana¹⁰**; **Wolfgang Reim v. State¹¹**; **R.S. Sodhi Manoranjan Pani v. Partha Pratim Saikia¹²**.
- vii) The learned senior counsel would submit that since the complaint lodged would show that none of the complainants did ascribe any role to the petitioner, no dishonest intention as such can be attributed.
- viii) Concerning the complaints in F.I.R. Nos.3 of 2015 and 6 of 2015, notices under Section 41A of the Code were not issued, and only in FIR No.378 of 2014, notices under Section 41A were issued by the Investigating Agency.

¹⁰ 1987 2 RCR (Cri) 427

¹¹ 2012 6 AD (Delhi) 568

¹² 2009 151 CompCas 583 (Gauhati)

ix) The learned senior counsel also would submit that the concept of vicarious liability is not available in IPC offences as the Penal Code does not contemplate any vicarious liability on the part of party not charged directly for the commission of offences, since the petitioner ceased to be the Director of the Company by virtue of his resignation on 03.01.2011, which was accepted even according to Form No.32, the FIRs are liable to be quashed. Touching the law declared by the Hon'ble Supreme Court on this aspect of the case, the learned senior counsel places reliance on the rulings in **S.K. Alagh⁵; Sharad Kumar Sanghi v. Sangita Rane¹³ Maksud Saiyed⁶; GHCL Employees Stock Option Trust v. India Infoline Limited¹⁴ and Sunil Bharti Mittal v. CBI¹⁵.**

x) The learned senior counsel would further submit that to constitute an offence punishable under Section 420 IPC, a reading of Section 415 IPC with Section 420 IPC would clearly lead to the conclusion that fraudulent or dishonest inducement on the part of the petitioner must be at the inception and not at a subsequent stage. Since nothing is attributed in that direction in any of the

¹³ (2015) 12 SCC 781

¹⁴ (2013) 4 SCC 505

¹⁵ (2015) 4 SCC 609

complaints by the respondents respectively, the FIR in these crimes are liable to be quashed; To fortify his submission, he refers to the rulings in **Hira Lal Hari Lal Bhagwati³**, **Suryalakshmi Cotton Mills Limited⁴**; and **R. Kalyani v. Janak C. Mehta¹⁶**.

(xi) The learned senior counsel lastly would submit that even if the First Information Report in these three crimes if taken at face value, they do not *prima facie* constitute any offence of making out a case against the petitioner and, therefore, these FIRs are liable to be quashed under Section 482 of the Code and relies on the ruling in **Bhajan Lal⁸**.

Criminal Petition Nos.3074 and 3075 of 2017:

19(i) The petitioner viz., Avva Udaya Bhaskar Rao, in these two Criminal Petitions, is shown as accused No.9 in Crime No.378 of 2014 of III Town Police Station, Chittoor District, Andhra Pradesh, and accused No.10 in Crime No.3 of 2015 of Peddapadu Police Station, West Godavari District, respectively.

(ii) Sri V. Pattabhi, learned Senior Counsel for the petitioner, would submit that the petitioner worked as employee in India Cements up to 2004 and quit the job. The Investigating Officer projected him as director of the three core companies, but, Form - 32

¹⁶ (2009) 1 SCC 516

would not disclose that he was director of any of the companies and that the three core companies, of which the petitioner is shown as a director, are independent companies without any subsidiaries.

(iii) The learned senior counsel would submit that the complaints in these two crimes and even the Case Diary Part - I dated 19.07.2003 in Crime No.378 of 2014, does not refer to the name of the petitioner or to the companies and on what basis the petitioner is shown as an accused is not forthcoming. The learned Senior Counsel would submit that the petitioner is only the brother of accused No.1 viz., Avva Venkat Ram Rao and, therefore, the very issue of notice under Section 41-A of the Code was unwarranted.

Criminal Petition Nos.3076 and 3077 of 2017:

20(i) The petitioner viz., Avva Venkata Subramanyeswara Sarma, in both these petitions, is shown as accused Nos.11 in Crime No.378 of 2014 of Nellore III Town Police Station, SPSR Nellore, and accused No.12 in Crime No.3 of 2015 of Peddapadu Police Station, West Godavari District, respectively.

(ii) The learned Senior counsel for the petitioner would submit that the petitioner is not a director in any of the three companies and he is only the brother of accused Nos.4, 5 6 and 7. He is not concerned with the complaint allegations in these two crimes. The petitioner, in fact, worked for twelve years from 1980 to 2004 in Indian Army and for another period of twelve years in the Department

of Stores altogether six (6) F.I.Rs. have been registered and the name of the petitioner is not occurring in any of them. Therefore, the very issue of notice under Section 41-A of the Code is unwarranted. Hence, to quash the FIRs against the petitioner.

(iii) The learned Senior counsel referred to the ruling in **Joginder Kumar v. State of U.P.**¹⁷ (paragraph Nos.8, 9, 11 and 200) and **Arnesh Kumar v. State of Bihar**¹⁸, in connection with issue of notice under Section 41-A of the Code.

(iv) The learned Senior counsel in the context of exercise of power under Section 482 of the Code by the Court places reliance on the rulings in **State of Telangana v. Habib Abdullah Jeelani**¹⁹ (paragraph No.23) and **Mahesh Chaudhary v. State of Rajasthan**²⁰ (paragraph No.18).

(v) Lastly, the learned Senior counsel would submit that while adopting the arguments advanced by the learned senior counsel in Criminal Petition Nos.3276, 3277, 3278, 3074 and 3075 of 2017 seek to quash the FIRs against the petitioner in these two crimes.

¹⁷ 1994 (4) SCC 260

¹⁸ 2014 (8) SCC 273

¹⁹ (2017) (2) SCC 779

²⁰ 2009 (4) SCC 439

Criminal Petition Nos.3078 & 3079 of 2017:

21(i) The petitioner herein viz., Avva Venkata Siva Ram / Siva Rama Krishna, in both these petitions, is shown as accused No.11 in Crime No.378 of 2014 of Nellore III Town Police Station, SPSR Nellore, Andhra Pradesh, and accused No.10 in Crime No.3 of 2015 of Peddapadu Police Station, West Godavari District, Andhra Pradesh.

(ii) Sri Ravi Chandran, learned senior counsel, while adopting the arguments advanced by the learned senior counsel appearing for the petitioners in Criminal Petition Nos.3276, 3277, 3278, 3074 and 3075 of 2017, would submit that the investigating agency failed to establish any link between the petitioner and the three core companies and the allegations are just based on confessional statements said to have made by the other accused and the alleged confessional statement cannot constitute basis for involving the petitioner herein in the present crimes and places reliance on a ruling rendered by the Hon'ble Supreme Court in **Rini Johar v. State of Madhya Pradesh**²¹ (paragraph No.16) and, therefore, sought to quash the FIRs.

Criminal Petition Nos.3080 & 3099 of 2017:

22(i) The petitioner herein viz., K.V.S. Sai Ram alias Avva Sai Ram is accused No.9 in Crime No.3 of 2015 of Peddapadu Police Station West Godavari District, Andhra Pradesh, and accused No.8 in

²¹ 2016 (11) SCC 703

Crime No.378 of 2014 of Nellore III Town Police Station, SPSR
Nellore, Andhra Pradesh.

(ii) The learned counsel while adopting the arguments advanced by the learned senior counsel in the first three criminal petitions, would attack the notice issued under Section 41-A of the Code contending that when the petitioner is not at all a director, the investigating officer cannot mention the name of the petitioner as director of the company in the notice under Section 41-A of the Code. It is his submission that there has been inordinate delay in reporting the matter and registering the FIR; second submission is that no specific role or allegation is attributed to the petitioner in the complaint allegations; third submission is that the Hon'ble Division Bench of this Court has already seized the matter where the Agri Gold Cases have been dealt with. Therefore, it is his submission that the present crimes registered against the petitioners are liable to be quashed.

SUBMISSIONS MADE BY THE LEARNED PUBLIC PROSECUTOR:

23. The learned Public Prosecutor for the State of Andhra Pradesh, per contra, would submit that:

(i) The investigation done so far would unearth that altogether 162 Companies have been floated by the accused persons in all these crime.

(ii) He would categorize these 162 companies into three categories; the first category, according to him, would constitute Core Companies, they are, (i) M/s. Agri Gold Farm Estates India Private Limited; (ii) Agri Gold Constructions Private Limited; and (iii) Dreamland Ventures Private Limited. These three companies were involved in introducing the Schemes, luring the Depositors by appointing Agents in each of its branches in more than one State and in each of the Districts percolating deeply to the Mandal level and collection of amounts.

(iii) The second category consists of 13 companies. These companies are floated from the moneys collected by the Core Companies of first category, mostly investing the amounts by syphoning the funds collected by the Core Companies.

(iv) Third category consists of 146 companies, which are floated mostly in acquiring the properties in the names of the Directors of the Companies who are no other than the kith and kin of the Directors of the Core Companies and, thus, right from the inception, there has been fraudulent motive of deception.

(v) The learned Public Prosecutor would submit that about 32 lakh depositors have invested the amounts and more than Rs.6,000/- Crores have been syphoned to the companies under second and third categories.

(vi) The learned Public Prosecutor would submit that the petitioner herein though, resigned to his post of Directorship on 03.01.2011 in the Core Companies, but he continued to be the whole-time Director or the Director, as the case may be, in the second category of the Companies and the same is borne out by the very documents filed by the petitioner himself which were issued from 'Ministry of Corporate Affairs' relating to the petitioner showing his name as 'Sitaramarao Avva', and his status as on 01.02.11. In fact, the date is shown as "01/02/11", and the time is shown as "03:39:51 P.M.". The said document which relates to the particulars of the Companies/LLPs in which a person is/was a director/designated partner. It gives the details of serial number, CIN/LLPIN, name of the Company/LLP, Current designation of the Director/Designated Partner, Date of appointment at current designation, original date of appointment, date of cessation, Company/LLP Status and Defaulting status. The learned Public Prosecutor would point out the companies at serial Nos.4, 13, 16, 27, 28 and 31 are certain examples amongst several, showing that the petitioner was holding the post of either whole-time Director or Director in the Companies mentioned against the serial numbers. Under vertical column intended to show the date of cessation, the same is left blank indicating that he was continuing as a member even in the year 2015-16. Thus, the petitioner was still continuing even after 03.01.2011 as whole-time director in Agri Gold Project Limited, as Director in Siddavaram Agro Projects Private

Limited, as whole-time Director in North Karnataka PowerGen Private Limited, as Director in Shakti Timber Estates Private Limited and Susila Infra Developers Private Limited. There are further more companies, where his date of cessation is not mentioned indicating that he has been continuing as either as director or additional director of the companies mentioned against serial Nos.35 to 44. Thus, as on 01.02.2015, the petitioner since was continuing as a whole-time Director or Director or Additional Director in either category-II or in category-III Companies, and the moneys collected from the Core Companies have been utilized by syphoning the amounts deposited by the depositors for floating these companies, according to the learned Public Prosecutor, it cannot be said, at this stage, that there was no dishonest intention and nothing is attributed to him in the complaints.

(vii) It is according to the learned Public Prosecutor that the complaints in these three crimes since laid by the depositors, they do not contain the relevant details, and the details which are necessary for them respectively, alone have been mentioned but, in view of the serious allegations in each of these cases, it cannot be concluded that the petitioner is innocent and roped in these crimes without application of mind by the Investigating Officers, nor can it be construed that there was no dishonest intention right from the inception of these companies.

(viii) Concerning Crime No.6 of 2015, the learned Public Prosecutor would submit that by the date of tendering his arguments, 38 witnesses (depositors) were examined and their statements were recorded by the Investigating Officer who have deposited the amounts between 2004 and 2014 years. He has given the numbers of some of the witnesses as LW.5, 9, 11, 17, 18 and 24, who deposited moneys from the year 2004.

(ix) In Crime No.378 of 2014, the learned Public Prosecutor would submit that 180 witnesses were examined and, in fact, the entire episode came into light by the arrest of accused Nos.18 and 19 having taken the custodial interrogation and when interrogated, they spoke about the role of the petitioners in maintaining the accounts. Thus, the statements they made, stand in the status of a confession made by a co-accused and since relevant, cannot be brushed aside, when investigation is in process.

(x) Concerning FIR No.3 of 2015, the learned Public Prosecutor would submit that as many as 186 witnesses were examined who are not only depositors, but also agents appointed by the Core companies and the confessional statements of the accused Nos.11 and 12 were recorded and they would show the active role of the petitioners herein and the *modus operandi* on the part of the petitioner, and, in consequence thereof, even the entire record was retrieved and seized by the Investigating Officer.

(xi) The learned Public Prosecutor would submit that altogether 10 Crimes were registered against the petitioners involving huge money and the depositors deceived were huge in number amounting to 30-40 lakhs.

(xii) Incidentally, the learned Public Prosecutor would submit that a Public Interest Litigation (PIL) bearing No.193 of 2015 is pending before a Division Bench of this Court. The wife of the petitioner - Pushpalatha, in fact, filed a petition not to arrest them. According to the learned Public Prosecutor, the petitioners, who filed those M.Ps. are the persons on whose names properties have been purchased utilizing the amounts collected by the Core Companies from the Depositors and an extent of 450 acres of land was purchased in the name of Pushpalatha alone, wife of the petitioner.

(xiii) The learned Public Prosecutor, while referring to the rulings in **Jalpa Parshad Aggarwal**¹⁰; **Wolfgang Reim**¹¹; **R.S. Sodhi** **Manoranjan Pani**¹² would submit that the fact-situation would show that charge-sheets were filed in all these cases. But, investigation in the present crimes is still pending, and though, number of witnesses were examined in these crimes, still examination of many a witness either depositors or the agents or the employees of the branches or the officers where the branches are located or maintained by the Core Companies and the companies falling under other two categories, is absolutely indispensable and, therefore, exercise of extraordinary

power under Section 482 of the Code as requested by the petitioners does not arise.

(xiv). The learned Public Prosecutor refers to the rulings of the Hon'ble Supreme Court in the context of: (i) invocation of doctrine of lifting the veil where protection of public interests is of paramount importance and to prevent a device to avoid any welfare legislation by a corporate entity in an attempt to evade legal obligation; (ii) concerning the principle that power under Section 482 of the Code should be exercised sparingly with judicial restraint and circumspection; and (iii) that the intention of the accused at the time of inducement can always be inferred by subsequent conduct associated with other factors.

(xv) The rulings relied on by the learned Public Prosecutor have been: (i) **Pothani Chandrasekher v. State of Andhra Pradesh**²²; (ii) **Inder Mohan Goswami and another v. State of Uttaranchal and Others**²³; (iii) **Soma Suresh Kumar v. Government of Andhra Pradesh and Others**²⁴; (iv) **State of Maharashtra v. Vikram Anantrai Doshi**²⁵; (v) **State of Rajasthan and Others v. Gotan Lime Stone Khanji Udyog Pvt. Ltd. and**

²². (2005) 2 APLJ 374 (AP)

²³. (2007) 12 SCC 1

²⁴. (2013) 10 SCC 677

²⁵. (2014) 15 SCC 29

Others²⁶; and (vi) State of Karnataka v. Selvi J. Jayalalitha and others²⁷.

ANALYSIS OF SUBMISSIONS:

24. Since the submissions made by the learned senior counsel in Criminal Petition Nos.3276, 3277 and 3278 of 2017 have been adopted by the learned counsel for the petitioners in other Criminal Petitions, it would suffice to take up the submissions made in the first three Criminal Petitions in the light of the arguments advanced by the learned Public Prosecutor with reference to the rulings relied on by both sides and contextually to refer to other submissions made by the learned senior counsel in the remaining eight Criminal Petitions.

(i) The first submission is, that the petitioner - Avva Sita Rama Rao alias Avva Seetha Ram was erstwhile Director holding the office from the year 2004 to 3rd January, 2011. As already mentioned hereinbefore, that his resignation was accepted and Form No.32 was also approved, and since the complainant alleged the non-payment of investment returns due on 30.05.2014 and even the cheque issued therefor by one of the companies on 10.10.2014 was dishonoured, the offence complained was more than three years after the petitioner ceased to be the director of the said company, the petitioner cannot be roped in.

²⁶. (2016) 4 SCC 469

²⁷. (2017) 6 SCC 263

(ii) In **Harshendra Kumar**¹ relied on by the learned senior counsel, the appellant before the Hon'ble Supreme Court resigned from the post of Director on 02.03.2004 and the dishonoured cheques were issued by the Company on 30.04.2004. The acceptance of the appellant's resignation was duly reflected in the resolution, dated 02.03.2004 and the same was informed to the Registrar of Companies on 04.03.2004, and opining that it was not even the case of the complainants that the dishonoured cheques were issued by the appellant, opining that the offence was committed by the Company when the appellant was not the Director, held that it would result in gross injustice to the appellant and tantamount to an abuse of process of the Courts if the criminal complaints are ready to proceed against the appellant therein. The learned senior counsel relies on the expression of the Hon'ble Apex Court contained in paragraph Nos.26 and 27 thus:

“26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to Appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the Appellant has resigned much before the cheques were issued by the Company.

27. As noticed above, the Appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the Appellant had resigned from the post of Director of the

Company. The acceptance of Appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about Appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the Appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the Appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the Appellant, it would result in gross injustice to the Appellant and tantamount to an abuse of process of the court.”

The fact-situation therein would reflect that a company, by name ‘Rifa Health care (India) Pvt. Ltd’, which was doing business for sale of bio-ceramic products, having received demand drafts from the purchasers for the orders, they had placed, not delivered the products ordered by the complainants, and when they demanded for return of their money, eighteen (18) cheques were issued by the Company, and the cheques were dishonoured. Aggrieved over the same, the complainants filed 18 complaint cases under Section 138 read with 141 of N.I. Act. In the said context, the Hon’ble Supreme Court held as in the above.

(iii) In **Mrs. Anita Malhotra**², the Hon’ble Supreme Court while re-stating that in case of a Director, the complaint should specifically spell out how and in what manner the Director was In-charge of or was responsible to the accused Company for conduct of

its business, and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is insufficient, held in paragraph Nos.22 and 23, on which reliance is placed by the learned senior counsel, thus:

“22. This Court has repeatedly held that in case of a Director, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. (Vide National Small Industries Corporation Limited v. Harmeet Singh Paintal and Anr. (2010) 3 SCC 330). In the case on hand, particularly, in para 4 of the complaint, except the mere bald and cursory statement with regard to the Appellant, the complainant has not specified her role in the day to day affairs of the Company. We have verified the averments as regard to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day to day affairs of the Company. On this ground also, the Appellant is entitled to succeed.

23. In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as certified copy of annual return dated 30.09.1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings. We are unable to accept the reasoning of the High Court and we are satisfied that the Appellant has made out a case for quashing the criminal proceedings. Consequently, the criminal complaint No. 993/1 of

2005 on the file of ACMM, New Delhi, insofar as the appellant herein (A3) is quashed and the appeal is allowed.”

Again, the fact-situation reflects that it was a case where offence punishable under Section 138 read with 141 of the N.I. Act was alleged.

(iv) These two decisions have been relied on by the learned senior counsel in the context of giving weight to the documents, such as Form No.32 showing the resignation of a Director and its consequences on the offences alleged against Ex-Director.

(v) On the second ground that the offences punishable under Section 406 IPC and 420 IPC cannot co-exist, in **Jalpa Parshad Aggarwal**¹⁰, a learned Single Judge of the Punjab and Haryana High Court, referring to its earlier decision in **Iqbal Singh Randhawa v. Doctor Satpaul Goyal**²⁸ where it was ruled that an offence under Section 406 IPC is, an, antithesis of offence under Section 420 of IPC held in paragraph No.3 thus:

“3. At the very outset it may be mentioned that this Court held in **Iqbal Singh Randhawa v. Doctor Satpaul Goyal**, 1977 C.L.R. (Pb. & Har.) 134, that an offence under Section 406, Indian Penal Code, is, an antithesis of offence under section 420, Indian Penal Code. In a case of criminal misappropriation the property is voluntarily kept in the custody of an accused whereas in a case of cheating, the accused, by adoptinig deceitful means, induces the complainant to part with the property. Thus, an accused cannot be tried for these two offences simultaneously. Either he

²⁸. 1977 C.L.R. (Pb. & Har) 134

is committed an offence under Section 406, Indian Penal Code or under Section 420, Indian Penal Code.”

(vi) In **Wolfgang Reim**¹¹, explaining the reason why the offence of cheating and criminal breach of trust cannot co-exist, a learned Single Judge of Delhi High Court held in paragraph No.33 thus:

“33. Further, a person cannot be charged with the offence of cheating and criminal breach of trust simultaneously for the same transaction because for the offence of cheating, it is a prerequisite that dishonest intention must exist at the inception of any transaction whereas in case of criminal breach of trust, there must exist a relationship between the parties whereby one party entrusts another with property as per law, therefore, for commission of criminal breach of trust, the dishonest intention comes later, i.e., after obtaining dominion over the property by the accused person whereas for commission of cheating, dishonest intention of the accused has to be present at the inception of the transaction.”

(vii) In **R.S. Sodhi Manoranjan Pani**¹², detailed further, the very same proposition in paragraph Nos.13 to 15 by a learned Single Judge of Gauhati High Court thus:

“3. Before entering into the discussion as to whether the impugned order taking cognizance of offences aforementioned and directing issuance of processes against the accused-petitioners is sustainable in law or not, one needs to point out the principal distinction between "criminal breach of trust" and "cheating". In "criminal breach of trust", the accused comes into possession of the property or acquires dominion over the property honestly and bona fide, but he develops dishonest intention subsequent to the taking possession of, or subsequent

to having acquired the dominion over, the property and, having developed such dishonest intention, he dishonestly misappropriates or converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do.

14. Thus, in "criminal breach of trust", the intention of the accused cannot be dishonest or mala fide at the time, when he comes into possession of the property or comes to acquire dominion over the property; but, having come into possession of, or having acquired dominion over the property, the accused develops dishonest intention and actuated by such *mens rea*, he converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do.

15. Contrary to what happens in "criminal breach of trust", the intention of the accused, in a case of "cheating", is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In short, thus, while in "criminal breach of trust", the accused comes into possession of the property without dishonest intention and develops dishonest intention subsequent to his coming into possession of the property, the offence of cheating is one, wherein the accused has

dishonest intention from the very commencement of the transaction.”

(viii) At this stage itself, it would be relevant to mention that the relief sought for, is quashment of FIR and the crimes are under investigation and if both the offences do not co-exist, but, either of the two would have to be examined by the Investigating Agency. Further, the offences alleged in all these crimes are not just the offences punishable under Sections 406 and 420 IPC alone, but the allegations are in regard to the other offences under IPC, APPDFE Act, PC & MCSB Act and infraction of provisions of RBI Act.

(ix) On the submission that the concept of vicarious liability is not available in IPC offences and also in the context of the petitioner in first three Criminal Petitions ceased to be the Director of the Company by virtue of his resignation on 03.10.2011, the learned senior counsel refers to the relevant expressions of the Hon'ble Supreme Court in the following rulings:

(x) In **S.K. Alagh**⁵, the Hon'ble Supreme Court while holding that except some provisions specifically providing vicarious liability, the Penal Code does not contemplate any vicarious law on the part of a party, who is not charged directly for the commission of offence, held in paragraph Nos.16 and 19 thus:

“16. Indian Penal Code, save and except some provisions specifically providing therefore, does not contemplate any

vicarious liability on the part of a party who is not charged directly for commission of an offence.

19. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefore. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. {See *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [(2006) 10 SCC 581].”

(xi) In **Sharad Kumar Sanghi**¹³, while insisting that when a complainant intends to rope in a Managing Director or any officer of the company, it is essential to make requisite allegation to constitute the vicarious liability, held in paragraph No.9 thus:

“9. The allegations which find place against the Managing Director in his personal capacity, as we notice, are absolutely vague. When a complainant intends to proceed against the Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In *Maksud Sajjad v. State of Gujarat* [(2008) 5 SCC 668], it has been held, thus:

“ 13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its

entirety, would lead to the conclusion that the Respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligator on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.” ”

xii) Though, the learned senior counsel refers to the ruling in **Maksud Saiyed**⁶, it is unnecessary to advert to since the expression contained in paragraph No.16 therein has been referred to by extracting the same in **Sharad Kumar Sanghi**¹³. In the same context is the decision rendered by the Hon’ble Apex Court in **GHCL Employees Stock Option Trust**¹⁴. The learned senior counsel refers to the expression of the Hon’ble Supreme Court in paragraph Nos.12 to 14 thus:

“12. From bare perusal of the complaint and the allegations made therein, we do not find in any of the paragraphs that the complainant has made specific allegations against Respondent Nos. 2 to 7. In paragraph 2 of the complaint, it is alleged that Respondent Nos. 2 to 6 are looking after the day-to-day affairs of the Company. With whom the complainant or its authorized representative interacted has also not been specified. Although in paragraph 11 of the complaint it is alleged that the complainant on numerous occasions met accused Nos. 2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in paragraph 17 of the complaint, there is no allegation that a particular Director or Managing Director fabricated debit note.

In the entire complaint there are bald and vague allegations against Respondent Nos. 2 to 7.

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.”

xiii) In **Sunil Bharti Mittal**¹⁵, while referring to the principle that criminal intent of person (s) controlling the company can be imputed to the company based on principle of ‘of "alter ego", but reverse application of principle is impermissible, held in paragraph Nos.40 to 55 thus:

“40. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

41. In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the Appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company is attributed and imputed to the Appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a direction of a company can be held liable.

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

42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta*

Hada [(2012) 5 SCC 661], the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company. This very principle is elaborated in various other judgments. We have already taken note of Maharashtra State Electricity Distribution Company Ltd.. [(2010) 10 SCC 479] and S.K. Alagh [(2008) 5 SCC 662]. Few other judgments reiterating this principle are the following:

45.1. *Jethsur Surangbhai v. State of Gujarat* [(1984) Supp. SCC 207, (SCC pp.210-11, para 9):

9. With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the Appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the Appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the Chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court, however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for

convicting the Appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the Appellant was directly and personally connected with acts or omissions pertaining to Items 2, 3 and 4. It is conceded by Mr. Phadke that no such direct evidence is forthcoming and he tried to argue that as the Appellant was Chairman of the Sangh and used to sign papers and approve various tenders, even as a matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the law. In the absence of a charge of conspiracy the mere fact that the Appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the Chairman was to be made liable then all members of the Committee viz. Tehsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a conclusion which has not even been suggested by the prosecution. As Chairman of the Sangh the Appellant had to deal with a large variety of matters and it would not be humanly possible for him to analyse and go into the details of every small matter in order to find out whether there has been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the Appellant in the forefront. But that by itself would not be conclusive evidence against the Appellant. There is nothing to show that A-3 had either directly or indirectly informed the Appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course of the audit. Far from proving the intention the prosecution has failed to prove that the Appellant had any knowledge of defalcation of Items 2 to 4. In fact, so far as item

3 is concerned, even Mr. Phadke conceded that there is no direct evidence to connect the Appellant. (emphasis supplied)

45.2. *Sham Sunder v. State of Haryana* [(1989) 4 SCC 630, SCC p.632, para 9]

“9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not. (emphasis supplied)

45.3. *Hira Lal Hari Lal Bhagwati v. CBI* [(2003) 5 SCC 257, SCC p.277, para 30]

“30. In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e. the Customs Act, 1962 the Appellants have been thereunder wholly discharged and the GCS granted immunity from prosecution. (emphasis supplied)

45.4. *Maksud Saiyed v. State of Gujarat* [(2008) 5 SCC 668, SCC p.674, para 13]

13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the Respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said

purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. (emphasis supplied)

45.5 R. Kalyani v. Janak C. Mehta [(2009) 1 SCC 516, SCC p.527, para 32)

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

45.6. Sharon Michael v. State of T.N. [(2009) 3 SCC 375, SCC p. 383, para 16)

16. The first information report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the Appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the Appellants herein who hold different positions in the Appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company. (emphasis supplied)

45.7. Keki Hormusji Gharda v. Mehervan Rustom Irani [(2009) 6 SCC 475, SCC pp. 480-81, paras 16-19)

16. We have noticed hereinbefore that despite of the said road being under construction, the first Respondent went to the police station thrice. He, therefore, was not obstructed from going to the police station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of

this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence Under Section 341 Indian Penal Code.

17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

18. In Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749] this Court held as under: (SCC p. 760, para 28)

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the complaint petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the

process of the court, still the High Court would refuse to exercise its discretionary jurisdiction Under Section 482 of the Code of Criminal Procedure.

46. It is stated at the cost of repetition that in the present case, while issuing summons against the Appellants, the Special Magistrate has taken shelter under a so-called legal principle, which has turned out to be incorrect in law. He has not recorded his satisfaction by mentioning the role played by the Appellants which would bring them within criminal net. In this behalf, it would be apt to note that the following observations of this Court in the case of GHCL Employees Stock Option Trust v. India Infoline Ltd. [(2013) 4 SCC 505, SCC p.516, paras 19 & 21]:

19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. (Thermax Ltd. v. K.M. Johny followed)

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21. In the instant case the High Court has correctly noted that issuance of summons against Respondents 2 to 7 is illegal and amounts to abuse of process of law. The order of the High Court, therefore, needs no interference by this Court.

47. We have already mentioned above that even if the CBI did not implicate the Appellants, if there was/is sufficient material on record to proceed against these persons as well, the Special Judge is duly empowered to take cognizance against these persons as well. Under Section 190 of the Code, any Magistrate of first class (and in those cases where Magistrate of the second class is specially empowered to do so) may take cognizance of any offence under the following three eventualities:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts; and

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

42. This Section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression "taking cognizance" has not been defined in the Code. However, when the Magistrate applies his mind for proceeding Under Sections 200-203 of the Code, he is said to have taken cognizance of an offence. This legal position is explained by this Court in *S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. and Ors.* [(2008) 2 SCC 492] in the following words:

19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of: and when used with reference to a court or a Judge, it connoted "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. Taking Cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence....

48. Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only

consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance Under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See *SWIL Ltd.. v. State of Delhi* [(2001) 6 SCC 670]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See *Union of India v. Prakash P. Hinduja and Anr.* [(2003) 6 SCC 195]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may

be the Magistrate receiving the complaint or to whom it has been transferred Under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

54. However, there has to be a proper satisfaction in this behalf which should be duly recorded by the Special Judge on the basis of material on record. No such exercise is done. In this scenario, having regard to the aforesaid aspects coupled with the legal position explained above, it is difficult to sustain the impugned order dated 19.03.2013 in its present form insofar as it relates to implicating the Appellants and summoning them as accused persons. The appeals arising out of SLP (Crl.) No. 2961 of 2013 and SLP (Crl.) No. 3161 of 2013 filed by Mr. Sunil Bharti Mittal and Ravi Ruia respectively are, accordingly, allowed and order summoning these Appellants is set aside. The appeals arising out

of SLP (Crl.) Nos. 3326-3327 of 2013 filed by Telecom Watchdog are dismissed.

55. While parting, we make it clear that since on an erroneous presumption in law, the Special Magistrate has issued the summons to the Appellants, it will always be open to the Special Magistrate to undertake the exercise of going through the material on record and on that basis, if he is satisfied that there is enough incriminating material on record to proceed against the Appellants as well, he may pass appropriate orders in this behalf. We also make it clear that even if at this stage, no such prima facie material is found, but during the trial, sufficient incriminating material against these Appellants surfaces in the form of evidence, the Special Judge shall be at liberty to exercise his powers Under Section 319 of the Code to rope in the Appellants by passing appropriate orders in accordance with law at that stage.”

These have been the submissions made by the learned senior counsel relying on the aforesaid rulings requesting to quash the FIR on the main ground that the Company is not the accused in any of the First Information Reports herein.

25. In order to fortify the submission that it is difficult to cull out ‘dishonest intention’ from the inception is to constitute offence of cheating, the learned senior counsel refers to the following rulings:

i) In **Hira Lal Hari Lal Bhagwati**³, which ruling has been consistently referred to by the learned senior counsel in all these criminal petitions, the Hon’ble Supreme Court while insisting that the complainant is required to show that the accused had fraudulent or

dishonest intention at the time of making promise or representation, held in paragraph No.40 thus:

“40. It is settled law, by catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise of representation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it and, therefore, it rightly paid the necessary duties without taking advantages of the exemption certificate. The conduct of the GCS or the appellant in their capacities as office bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Indian Penal Code does not arise. We have read the charge sheet as a whole. There is no allegation in the First Information Report or the Charge sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what where the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the cancer society is a non profit organization and, therefore, the allegation against the appellants leveled by the prosecution are unsustainable. Kar Vivad Samadhan Scheme Certificate along with the Duncan's and Sushila Rani's judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the

alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process.”

ii) On the same principle, the learned senior counsel relies on the expression of the Hon’ble Supreme Court in paragraph No.26 in **Suryalakshmi Cotton Mills Limited⁴** thus:

“26. A bare perusal of Section 415 read with Section 420 of the Indian Penal Code would clearly lead to the conclusion that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage.”

iii) In **R. Kalyani v. Janak C. Mehta¹⁶**, the Hon’ble Supreme Court observing that in the absence of allegation that the accused were entrusted with or otherwise had dominion over the property to have committed breach of trust, held in paragraph Nos.29 and 30 thus:

“29. The allegations contained in the First Information Report, therefore, do not disclose an offence against the respondent Nos 1 and 2. They have in their individual capacity been charged for commission of offences of cheating, criminal breach of trust and forgery. As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, as contained in Section 415 of the Indian Penal Code, did not and could not arise.

30. Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust.”

iv) In the context of absence of specific allegation regarding role of Directors in the present complaints, the learned senior counsel

places reliance in **N.K. Wai**⁷. The Hon'ble Supreme Court observing that if the offence is committed by a Company, every person who is a Director or employee of the company is not liable, and only such person would be held liable if at the time when offence is committed he was in charge and was responsible for the company for the conduct of the business of the company as well as the company, held in paragraph Nos.7 and 8 thus:

“7. This provision clearly shows that so far as the companies are concerned if any offence is committed by it then every person who is a Director or employee of the company is not liable. Only such person would be held liable if at the time when offence is committed he was in charge and was responsible to the company for the conduct of the business of the company as well as the company. Merely being a Director of the company in the absence of above factors will not make him liable.

8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

The said proposition was rendered by the Hon'ble Apex Court in the context of the offence punishable under Section 138 read with 141 of N.I. Act, where there is a specific provision occurring in the N.I. Act.

v) In **Radhey Shyam Khemka**⁹, the Hon'ble Supreme Court while cautioning the Courts at the time of taking cognizance that the Court must be satisfied that *prima facie* an offence under the Penal Code disclosed on the material produced before the Court, at the time of taking cognizance of the alleged offence in connection with the registration, issuance of prospectus, collection of moneys from the Investors and the misappropriation of the funds collected from the shareholders which constitute one offence or the other under the Penal Code, held in paragraph No.6 thus:

“6. But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the share-holders which constitute one offence or other under the Penal Code, court must be satisfied that *prima facie* and offence under the Penal Code has been disclosed on the materials produced before the court. If the screening on this question is not done properly at the stage of initiation of the criminal proceeding, in many cases, some disgruntled share-holders may launch prosecutions against the promoters, directors and those in charge of the management of the company concerned and can paralyse the functioning of such company. It need not be impressed that for prosecution for offences under the Penal Code the complainant has to make out a *prima fade* case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. It cannot be overlooked that there is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, *mens rea* is

not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the Penal Code, the traditional rule of existence of mens rea is to be followed.”

vi) In **Saroj Kumar Poddar v. State**²⁹, where the petitioner therein had resigned from the Directorship of the company at the time when the dishonoured cheque was issued, the Hon’ble Supreme Court while observing that the complaint - petitions were silent as to how and in what manner, the appellant was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning, held in paragraph No.14 thus:

“14. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to the functioning. He had not issued any cheque. How he is responsible for dishonor of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.”

²⁹. (2007) 3 SCC 693

vii) In **G.N. Verma v. State of Jharkhand and another**³⁰, the Hon'ble Supreme Court while observing that Section 141 of N.I. Act is a Penal provision creating a vicarious liability and referring to the earlier ruling in *National Small Industries Corpn. Ltd. V. Harmeet Singh Paintal*³¹, in the context of absence of specific allegation against the Director that he was In charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director, held in paragraph Nos.19 and 20 thus:

“19. It has been laid down, in the context of Sections 138 and 141 of the Negotiable Instruments Act, 1881 in *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal* [(2010) 3 SCC 330 that Section 141 is a penal provision creating a vicarious liability. It was held as follows: (SCC p.336, para 13)

“13. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.” (emphasis in original)

It was then concluded: (SCC p.345, para 39)

“39. (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.”

³⁰. (2014) 4 SCC 282

³¹. (2010) 3 SCC 330

20. Insofar as the criminal complaint is concerned, it does not contain any allegation against G.N. Verma. The only statement concerning him is that he was the Chief General Manager/deemed Agent of the mine and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the rules, regulations, orders made thereunder. In the face of such a general statement, which does not contain any allegation, specific or otherwise, it is difficult to hold that the Chief Judicial Magistrate rightly took cognizance of the complaint and issued summons to G.N. Verma. The law laid down by this Court in *Harmeet Singh Paintal* (though in another context) would be squarely applicable. Under the circumstances, we are of the opinion that on the facts of this case and given the absence of any allegation in the complaint filed against him no case for proceeding against G.N. Verma has been made out.”

26. The learned Public Prosecutor refers to the ruling in **Pothani Chandrasekher**²² rendered by a learned Single Judge of this Court. In answering the proposition that in an offence under Section 420 of IPC, deception at inception is not absolutely indispensable but the subsequent conduct of a person receiving the property should furnish some indication of his original intention, the learned Single Judge referred to the ruling of the Hon’ble Supreme Court in **Hridaya Ranjan p.d. Verma v. State of Bihar**³², relied on by the learned counsel for the petitioner therein (**Pothani Chandrasekher**²²). The factual matrix would reflect that the petitioner therein floated a finance institution called “Koratla Permanent Fund Limited” inviting deposits from the general public promising to give twice the amount or thrice the amount after expiry of five years, a large number of

³². 2000 (1) ALT (Crl.) 349 (SC) : 2000 SCC (Cri) 786

people were attracted by the said promise, deposited the amounts, but as usual, such companies would do, after expiry of the period, did not return the redeemable value of deposit receipt amounting to Rs.15,000/-. Thus, complaints came to be filed for the offences of cheating and misappropriation punishable under Sections 420 and 406 IPC.

i) Thus, the facts are almost alike occurring in the present cases, though not, on such huge scale as is available in the present petitions. It is forthcoming that even the petitioner filed a company petition before the Company Court and the said company was in liquidation. Certain submissions were made by the learned counsel therein including the submission that the deception from inception is not occurring and there was no intention at the inception stage for the petitioner to act dishonestly. This apart, even the submission was that the complaints were registered by the concerned police station and other police stations in gross violation of the provisions of Section 220 (1) of the Code urging that by reason of the definition 'Financial Establishments' under Section 2 (c) of the Act, a company registered under the Companies Act, 1956 is not liable for prosecution for an alleged offence under Section 5 of the Act. While answering the submissions, the learned Single Judge referred to the amendment effected to the definition 'financial establishments' with effect from 14.07.2003 by amendment Act No.12 of 2003, extracting the definition and observing that the amended definition of 'financial

establishments' would belie the submission made by the learned counsel for the petitioner therein and held that as per law, a person, or group of individuals accepting deposits under any scheme or arrangement is liable for punishment for a term which may extend to ten years, if such person or group of persons defaults in return of the deposit either in cash or in kind. Since paragraph Nos.5, 6, 10, 11 and 12 are relevant, it would be useful to extract them as to what has been observed by the learned Single Judge therein thus:

“5. The above definition did not permit the police to take action against the companies registered under Companies Act, 1956. Therefore, Andhra Pradesh Legislature by Amendment Act No.12 of 2003 amended the definition of ‘*Financial Establishment*’ with effect from 14-7-2003. After amendment, the definition reads as under.

“[2(c)*Financial Establishments*’ means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949)]”

6. A reading of the definition of ‘*Financial Establishments*’ as it stands in the Statute would belie the submission of the learned counsel for the petitioner that the Act has no application. As per law, a person or group of individuals accepting the deposits under any scheme or arrangement is liable for punishment for a term which may extend to ten years, if such person or group of persons defaults in return of the deposit either in cash or in kind. (See Section 5 read with Section 2 (c) of the Act). Therefore, the submission is rejected.

7.

8.

9.

10. The learned counsel for the petitioner has placed strong reliance on the oft-quoted judgment of the Supreme Court in *Hridaya Ranjan p.d. Verma v. State of Bihar*, 2000 (1) Alt (Crl.) 349 (SC): 2000 SCC (Cri) 786 in support of the submission that the petitioner cannot be said to have deceived the depositors by fraudulently and dishonestly inducing and that he had no intention to deceive anybody initially. He placed reliance on paragraph-14 of the said judgment, which reads as under.

“On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.”

11. In the same judgment, in paragraph-15, the Supreme Court made the following observations.

“In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. **It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test.** Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.”

12. It is no doubt true that textually the offence of cheating requires fraudulent dishonest intention to cheat on the part of the accused at the very beginning when the deceived person delivered property or valuable security. If the same were interpreted textually, the same would result in a situation where no person can be accused of cheating and can be made punishable under Section 420 I.P.C. It may not require a big logical argument to conclude that, a person, however, gullible the deceived may be, would not reveal his true intention before making the deceived person to part with valuable property. It is always done by some inducement of making false promises or making to believe the other person to deliver the property in the existence of certain facts, which are nonexistent. For instance, no depositor would deposit money in any Non-Banking. Financial Company, if such company were to announce that the chance of returning the deposit made by a person with interest would be remote or would be doubtful. Therefore, every financial company would certainly induce persons to part with the money by promising attractive rates of interest as well as attractive benefits by way of gifts. Therefore, the subsequent conduct of a person receiving the property should furnish some indication of his original intention. Indeed, as observed by the Supreme Court in the above case, the intention of the accused at the time of inducement can always be inferred by subsequent conduct associated with other factors.”

ii) In **Soma Suresh Kumar**²⁴ relied on by the learned Public Prosecutor, the Hon’ble Supreme Court while holding that Section 2

(c) of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (17 of 1999) does not exclude cooperative banks from penal action and attachment of property provisions, and only excludes company registered under the Companies Act or a corporation or a cooperative society owned and controlled by any State Government or the Central Government, rejected the request seeking mandamus to direct the respondents not to arrest them or attach the properties of Directors of alleged cooperative banks. The learned Public Prosecutor places reliance on the observations of the Hon'ble Apex Court contained in paragraph Nos.8, 9, 10 and 17 thus:

“8. We notice that the State of Andhra Pradesh was contemplating a legislation similar to one enacted in the State of Tamil Nadu, for a long time. On many occasions, the State's attention was drawn, to the large scale diversion of money by many financial institutions in the State, by cheating the depositors of their hard-earned savings, misappropriating the same and then later vanishing from the scene. Several cases were booked against the persons responsible for the same, but the presence of a comprehensive legislation to curb such unfair practice was lacking. This was the reason for the State of Andhra Pradesh to enact the Andhra Act.

9. The Statement of Objects and Reasons of the Act read as under:

“Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and are put to grave hardship by losing their hard

earned savings. To curb these malpractices, the State Government has decided to bring a law to protect the interests of depositors of the financial establishment in the State and for matters connected therewith or incidental thereto. The above issue was also discussed in a conference of the State Chief Ministers and Finance Ministers presided by the Union Finance Minister on 14.9.1998 at Vigyan Bhavan, New Delhi. The Union Finance Minister also desired that States should take expeditious steps for enacting legislation on the lines of "Tamil Nadu Protection of Depositors (in Financial Establishments) Act, 1997, "to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits.

To achieve the above object, the Government has decided to make separate law by undertaking legislation.”

10. The above mentioned Act was reserved by the Governor on 13th April, 1999 for consideration and assent of the President and on 23rd June, 1999, the same was granted and the Act was published on 1st July, 1999, in the Andhra Pradesh Gazette for general information.”

and

“17. Learned Counsel for the Petitioner raised a further contention that Vasavi Cooperative Bank Ltd. does not come within the definition of "financial establishment" Under Section 2(c) of the Andhra Act. We find it difficult to accept that contention. What has been excluded from that definition is a Company registered under the Companies Act or a Corporation or a Cooperative Society owned and controlled by any State Government or the Central Government. The Society in question does not fall in that category. Consequently, the Co-operative Bank in question is also governed by the provisions of the Andhra Act.”

It was a case where the Board of Directors of Vasavi Cooperative Urban Bank Limited had swindled away the money of the depositors by creating false documents, amounting to crores of rupees.

iii) In the context of serious consequences that flow from a financial fraud, the ruling in **Vikram Anantrai Doshi**²⁵ is relied on by the learned Public Prosecutor. The learned Public Prosecutor would rely on the catastrophic effect of financial frauds as the one occurring in the present cases creating a hazard in the financial interest of the society, relies on paragraph No.26. The Hon'ble Supreme Court referring to the gravity of such offence creating a dent in the economic spine of the nation holds thus:

“26. We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominantinglly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which

travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction Under Article 226 of the Constitution or Under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible."

iv) The learned Public Prosecutor to fortify his submission that the fact-situation in all these crimes necessarily warrant invocation of doctrine of lifting veil as public interest demands, places reliance in **Gotan Lime Stone Khanij Udyog Private Limited**²⁶. The ruling is quoted by the learned Public Prosecutor to answer the submission of the learned senior counsel appearing on behalf of the petitioners that vicarious liability does not arise so far as the offences under the Penal Code are concerned and, therefore, the crimes registered against the petitioners are liable to be quashed. The learned Public Prosecutor mainly rests on the principle laid down by the Hon'ble Supreme Court in paragraph No.27 thus:

“27. It is thus clear that the doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. In the present case, the corporate entity has been used to conceal the real transaction of transfer of mining lease to a third party for consideration without statutory consent by terming it as two separate transactions-the first of transforming a partnership into a company and the second of sale of entire shareholding to another company. The real transaction is sale of mining lease which is not legally permitted. Thus, the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented.”

v) To the very same effect, the learned Public Prosecutor also relies on the ruling in **Selvi J. Jayalalitha**²⁷, laying great stress on what has been stated by the Hon'ble Apex Court in paragraph No.192 thus:

“192. In State of Rajasthan and Ors. v. Gotan Lime Stone Khanji Udyog Private Limited and Anr. (2016) 4 SCC 469, it has propounded that the principle of lifting the corporate veil was well recognized not only to unravel tax evasion but also where protection of public interest was of paramount importance and the corporate entity was only an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid any welfare legislation. It was acknowledged that it was difficult to enumerate the classes of cases where lifting the veil is permissible but it was stressed upon that the same must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc. It was recorded that the doctrine of lifting the veil could be invoked, if the public interest so required or if there was violation of law by using the device of a corporate entity. In the reported case, the corporate entity had been used to conceal the real transaction of transfer of mining lease to a third party for consideration without the statutory consent by terming it as two separate transactions. The real transaction was the sale of mining lease which was legally impermissible. That the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented, is thus the judicial precept.”

vi) Concerning the proposition that powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise, and that the Court must be careful to see that its decision in exercise of this power is based on sound principles, the learned Public Prosecutor, refers to the observations of the Hon’ble Supreme Court in paragraph Nos.23 and 27 in **Inder Mohan Goswami**²³. In the same context,

reference to the scope and ambit of Courts power under Section 482 of the Code, explained by the Hon'ble Supreme Court in paragraph No.23, since useful, the same is extracted as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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 the Court 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.

26. In R.P. Kapur v. State of Punjab 1960CriLJ1239 , this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.”

CONCLUSIONS TO BE DRAWN:

27. The present obtaining fact-situation requires appreciation in the light of the submissions made by the learned senior counsel for the petitioners and the learned Public Prosecutor, and on the anvil of the authorities relied on by them respectively.

i) The rulings, in **Harshendra Kumar¹** and **Mrs. Anita Malhotra²** referred to by the learned senior counsel, were in the context of giving weight to Form No.32 showing the resignation of a Director and its consequences on the offence alleged against Ex-Director. As referred to hereinbefore, the offence alleged therein is punishable under Section 138 read with 141 of the N.I. Act. But, in the present case, it is not so. The offences alleged against the petitioners have been the offences falling under IPC provisions and the provisions of APPDFE Act, PC & MCSB Act and also infraction of the provisions of the RBI Act. This apart, the main ground is, that all the petitioners herein except the petitioner - K.V.S. Sai Ram in Criminal Petition Nos.3080 and 3099 of 2017, have been holding some post or other in the companies falling under one or other of three categories, the relevant details have already been referred to in the above so far as Avva Sita Ram Rao alias Avva Seetha Ram, concerned with Crl.P. Nos.3276, 3277 and 3278 of 2017 arraigned as accused Nos.8, 6 and 7 respectively. The further relevant details would be mentioned in a table at a later stage. Therefore, merely on the ground that the petitioner in first three petitions resigned on

03.01.2011 and worked as Director from the year 2004 to 03.01.2011 is no ground to accede to his request, more particularly, the fact-situation in the latter two criminal petitions clearly disclosing that the cause of action commenced even during the directorship of petitioner in the three core companies.

28. Concerning the submission that offence punishable under Section 420 IPC and 406 IPC cannot co-exist and the decisions relied on by the learned senior counsel, in **Jalpa Parshad Aggarwal**¹⁰, the learned Single Judge of Punjab and Haryana High Court quashed the FIR, basing on its earlier decision in **Iqbal Singh Randhawa**²⁸, holding that offence punishable under Section 406 IPC is an antithesis of offence under Section 420 IPC. But, in the present case, investigation is yet to be completed and the Investigating Officer has to arrive at a definite opinion, whether the allegations would *prima facie* make out either of the offences. This apart, as already mentioned hereinbefore not only the IPC offences have been alleged, but also the offences under APPDFE Act, PC & MCSB Act and the violations of the relevant provisions of RBI Act have been alleged against the petitioners. The rulings in **Wolfgang Reim**¹¹ and **R.S. Sodhi Manoranjan Pani**¹² are also to the same effect.

29. On the third submission that concept of vicarious liability is not available so far as IPC offences are concerned, in **S.K. Alagh**⁵, the Hon'ble Supreme Court in paragraph No.16, in the opening words

carves out an exception observing that the Penal Code, “save and except some provisions specifically providing therefor,” does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. What is sought to be insisted by the learned senior counsel referring to the rulings in **S.K. Alagh⁵**, **Sharad Kumar Sanghi¹³**, **Maksud Saiyed⁶** and **GHCL Employees Stock Option Trust¹⁴** is, when the complainant intends to rope in a Managing Director or any Officer of the company, he is duty bound to make a specific allegation to constitute vicarious liability and the said ingredient is conspicuously absent in the complaints against the petitioners. In **S.K. Alagh⁵**, where the offence punishable under Section 406 IPC was alleged, it was a case based on a contract for supply of goods. The complainant therein sent two demand drafts for different amounts for supply of goods on a particular date, despite the fact that his dealership had been terminated earlier and he refused to receive the said demand drafts when they were sent to him by the appellant company (Britannia Industries Limited). Thereafter, the Company appointed a New Area Wholesale dealer for Azamgarh. When the complainant made a demand to deliver the goods by a letter, dated 24.09.2000, alleging that the Company owes him a sum of Rs.1,00,000/-, the Company issued a letter reiterating that his dealership had been terminated. When the complainant lodged the complaint alleging the offence under section 406 IPC against the company, in that context, it was held that the Managing Director of

the Company cannot be said to have committed an offence under Section 406 IPC as the drafts were drawn in the name of the company.

30. In **Sharad Kumar Sanghi**¹³, the fact-situation would reflect that the complainant obtained a quotation from the Bhopal Branch of M/s. Sanghi Brothers (Indore) Limited for purchase of a TATA Diesel vehicle. The vehicle was delivered to him on 01.05.1998 on payment of the price deposited at Bhopal through Bank Draft. The complainant faced difficulty with the vehicle and eventually learnt that in the month of August 2000, there was a discrepancy of the engine number in the invoice issued to him. On his further enquiry, he found that the letter issued to Tata Engineering and Locomotive Company (TELCO), dated 7.11.2000, that in the course of transit from the company to Bhopal, the said vehicle had met with an accident, as a result of which, the engine was replaced by another engine. He, therefore, filed the complaint under Section 200 of the Code, for suppression of information and deliberately cheating him. When cognizance was taken and summons was issued, the same was challenged by a revision before the learned Sessions Judge, Betul, which was dismissed on 27.02.2002. Aggrieved over the same, when he preferred an application under Section 482 of the Code, repelling all the submissions, dismissed the application for quashment. The Hon'ble Supreme Court referring to the allegations, holding that the allegations which found place against the Managing Director in his personal capacity, were absolutely vague, and thereby allowed the

appeal. Thus, the fact-situation would reflect that it was based on a contract and involvement of the Company was obvious.

31. In **Sunil Bharti Mittal**¹⁵ mainly the emphasis was on the principle that the criminal intent of the “alter ego” of the company, i.e., the person or group of persons that guide the business of the company, would be imputed to the company/corporation, referring to the legal proposition laid down in **Iridium India Telecom Ltd. v. Motorola Inc**³³.

32. For the submission that the allegations in the complaint do not disclose any dishonest intention and, in fact, the complaint allegations ought to give an indication that dishonest intention was ‘from the beginning’ to sustain the offence alleged against the petitioners, the learned senior counsel has placed reliance in **Hira Lal Hari Lal Bhagwati**³, **Suryalakshmi Cotton Mills Limited**⁴, **R. Kalyani**¹⁶, **N.K. Wai**⁷, **Radhey Shyam Khemka**⁹, **Saroj Kumar Poddar**²⁹ and **G.N. Verma**³⁰. On the other hand, in **Pothani Chandrasekher**²² relied on by the learned Public Prosecutor, the learned Single Judge of this Court refers to the expression of the Hon’ble Supreme Court in **Hridaya Ranjan P.D. Verma**³² that the intention of the accused at the time of inducement can always be inferred by subsequent conduct associated with other factors.

³³. (2011) 1 SCC 74

33. The relief sought for in all these petitions is to quash the FIRs. Investigation is at the inceptive stage when the applications have been filed and subsequent development has been that some of the witnesses have been examined in each of the crimes and the purport of statements made by some of the witnesses, referred to in the above, when examined would definitely indicate that the depositors were lured that they would be provided with double the amount or in some occasions thrice the amount deposited, but no amounts were paid as promised and instead cheques were issued in some cases repeatedly in the names of one or the other bank when the cheques presented in the first bank were dishonoured. Thus, when the intention is inferential, certainly, it is not the stage to record a positive finding just basing on the allegations made in the complaint, more particularly, when viewed in the context of huge number of depositors to the tune of 30-40 lakhs, that are alleged to have been deceived involving huge amount to the tune of more than Rs.6,000 Crores which are the crucial aspects occurring in these crimes.

34. In the present context, it would be appropriate to refer to the common order rendered by the Hon'ble Division Bench of this Court in **Jakir Hussain Kosangi and others v. State of Andhra Pradesh, represented by its Principal Secretary to Government, Home**³⁴. The petitioners therein, who were the Directors and Managing Directors of the company, by name, M/s. Akshaya Gold

³⁴ 2017 (3) ALT (Crl.) 30 (DB) (AP)

Farms and Villas India Limited, were also petitioners in other five writ petitions appointed as whole-time Director for five years in a company by name M/s. Agri Gold Farms Estates India Private Limited, which is one of the core companies in the present petitions. Similar relief as the one sought for in the present Criminal Petitions was claimed by the petitioners in all six writ petitions under Article 226 of the Constitution of India for quashment of the First Information Reports. The Hon'ble Division Bench refers to the fact-situation therein in paragraph No.4 thus:

“4. The sum and substance of the grievance of the petitioners is that FIRs are registered by different police in different parts of several States alleging non-repayment of the deposits collected by the company of which they were the Directors or the Nominee Directors or sons of the Nominated Directors. As a consequence, Prisoner Transit warrants are issued by various courts making the petitioners run around, without any redemption, seriously infringing their fundamental rights.”

35. The issue agitated was that there can be only one First Information Report under Section 154 of the Code and all information that flows thereafter, could only be treated as material in furtherance of the investigation. The Hon'ble Division Bench after projecting evolution of the law referring to a catena of decisions rendered by the Hon'ble Supreme Court, summarized under sub-heading “the analysis of the decisions of the Hon'ble Supreme Court” thus:

“

S.NO	Decision	The dispute arose out of	Whether the Second (2 nd) FIR or Multiple FIRs filed are Valid or Invalid
1.	Ram Lal Narang Vs. State(Delhi Administration) and Om Prakash Narang & Ors Vs. State(Delhi Administration), (1979) 2 SCC 322	Arose out of theft of two sandstone pillars of great antiquity.	Valid
2.	M. Krishna Vs. State of Karnataka, (1999) 3 SCC 247	Arose out of amassing wealth disproportionate to one's source of income.	Valid
3.	V.K. Sharma Vs. Union of India, (2000)9SCC449	Arose out of swindling a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. (White-Collar Crime)	Valid (Multiple FIRs)
4.	Mohan Bhaitha Vs. State of Bihar, (2001)4SCC350	Arose out of a dowry death. Note: - The question involved here is not concerned about whether there can be more FIRs than one but whether there can be more trials than one.	<u>Held:</u> -Offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of facts so as to form the same transaction.
5.	T.T. Antony Vs. State of Kerala, (2001) 6 SCC 350	Arose out of police firing resulting into deaths of few people and injuries to a large number of people.	Third (3 rd) FIR Invalid.
6.	Narinderjit Singh Shani and another Vs. Union of India, (2002)2SCC210	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
7.	Kari Chaudhary Vs. Most. Sita Devi and Ors, (2002) 1 SCC 714	Arose out of a murder case.	Valid
8.	State of Punjab Vs. Rajesh Syal , (2002)8SCC158	Arose out of swindling of a large number of depositors on the false pretext that their	Valid (Multiple FIRs)

		deposits would be returned with interest on a subsequent date. (White-Collar Crime)	
9.	Upkar Singh v. Ved Prakash, (2004) 13 SCC 292	Arose out of an attempt to murder and house-trespass cases	Valid
10.	RameshchandraNandlal Parikh v. State of Gujarat (2006) 1 SCC 732	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
11.	Vikram Vs. State of Maharashtra, (2007) 12 SCC 332	Arose out of a murder case.	Valid
12.	Pramod Kumar Saxena Vs. Union of India and Ors, (2008)9SCC685	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
13.	Nirmal Singh Kahlon Vs. State of Punjab and Others, (2009) 1 SCC 441	Arose out of scandal involving selection of Panchayat Secretaries.	Valid
14.	C. Muniappan and others Vs. State of Tamil Nadu, (2010) 9 SCC 567	Arose out of setting fire to a university bus and several public buses.	Investigation of the Second FIR was clubbed with the investigation of the First FIR. In essence, two complaints/FIRs are clubbed together and investigated jointly.
15.	Bahubhai Vs. State of Gujarat, (2010) 12 SCC 254	Arose out of altercation that took place between members of the two communities.	Invalid
16.	ChirraShivraj Vs. Sate of AP, (2010) 14 SCC 444	Arose out of an attempt to murder case.	Second F.I.R. held Valid because SHO made a mistake by recording information as a fresh F.I.R. and that this mistake should not make the case of prosecution weak especially when

			no prejudice had been caused.
17.	Shiv Shankar Singh Vs. State of Bihar, (2012) 1 SCC 130	Arose out of dacoity and murder.	Valid
18.	Surender Kaushik and Others Vs. State of UP, (2013) 5 SCC 148	Arose out of fake and fraudulent documents prepared by the accused persons.	Invalid
19.	AmitbhaiAnilchandra Shah Vs. CBI, (2013) 6 SCC 348	Arose out of murder cases	Invalid
20.	Anju Chowdry Vs. State of UP, (2013) 6 SCC 384	Arose out of a hate speech.	Valid
21.	YanabSheikh@gagu Vs. State of West Bengal, (2013) 6 SCC 428	Arose out of a murder case.	Invalid

”

It would be appropriate to refer to what has been observed by the Hon’ble Division Bench in paragraph No.64, which is relevant in the present fact-scenario thus:

“64. As we have pointed out earlier, in almost all the five decisions of the Supreme Court where finance companies and its directors were accused of collecting deposits and not repaying them, the Supreme Court did not adopt the same view as adopted in *T.T Antony*. Though in *V.K Sharma* and *P.K Sharma* the Supreme Court granted a small reprieve, the Supreme Court did not grant the reliefs that the petitioners have sought in these writ petitions. It must be pointed out that a staggering amount of nearly Rupees seven thousand crores was admittedly due, when the first PIL was filed. The number of depositors to whom such a huge amount was due from Agri Gold group of companies and Akshaya Gold, was about 32 lakhs of people. These companies had branches in several places. The depositors, who invested money in various branches, have independent causes of action.”

36. Thus, it is clear that the present group of companies in all these crimes were also the group of companies and Akshaya Gold in the aforesaid writ petitions. Though, not on the same grounds that are

occurring in the present petitions, but on a different ground, the quashment was sought under Article 226 of the Constitution of India, still, when viewed the factual matrix that number of depositors to whom a staggering amount of more than Rs.6,000 Crores was undisputedly due and the depositors, who were deprived of their legitimate amount, was about 32.00 lakhs of people, certainly, it is difficult to accede to the request in the present petitions.

37. Certain relevant facts are also necessary to refer to that emerge from the investigation so far done and the documents submitted by the petitioner in Crl.P. No.3276 of 2017, to which already advertence is made herein before, and similar statements submitted by the learned Public Prosecutor so far as the petitioners in Crl.P. Nos.3074 & 3075; 3076 & 3077; and 3078 & 3079 of 2017 are concerned.

38. In fact, the learned Public Prosecutor in resisting the request made by the petitioners herein placed on record a confessional statement said to have made by one Bejawada Veera Venkata Babu Rao, son of Veera Raghavulu figuring as one of the accused persons in all these crimes. The learned Public Prosecutor would submit that the involvement of the petitioners have been occurring in these statements. The probative value of these statements requires examination during trial in case investigation leads to laying charge sheets. However, as referred to in the above, the statement regarding the details of the Director/designated Partner maintained by the

Ministry of Corporate Affairs as on 23.04.2017 placed for perusal of this Court by the learned Public Prosecutor would give enough indication in viewing what has been stated by the learned Public Prosecutor as to the three categories of the companies and the petitioners holding one or other posts even as on 23.04.2017 is correct and cannot at all be sidelined. It would be relevant to project the statements which would reflect that the petitioner - Avva Sita Ram Rao alias Seetha Ram in Criminal Petition Nos.3276, 3277 and 3278 of 2017 is still working in some of the Agri Gold group companies that fell in category Nos.2 and 3 referred to in the above as on 01.02.2015. The relevant entries showing the details in the statement relating to the petitioner alone are extracted as hereunder:

S. No.	CIN/LLPIN	Name of the Company/LLP	Current designation of the Director/Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/LLP Status	Defaulting status
4	U51219AP1997PLC027851	AGRI GOLD PROJECTS LIMITED	Whole-time director	01/01/2011	28/08/1997	-	Active	NO
10	U55101TN1992PTC022889	VENKATADRI HOTELS PRIVATE LIMITED	Director	09/08/2006	09/08/2006	-	Active	NO
13	U01119AP2007PTC055400	SIDDAVARAM AGRO PROJECTS PRIVATE LIMITED	Director	04/09/2007	04/09/2007	-	Active	NO
15	U70102TG2002PTC039346	SANCTUARY HOMES PRIVATE LIMITED	Director	30/08/2008	02/01/2008	-	Active	NO
16	U40101KA2004PTC035205	NORTH KARNATAKA POWERGEN PRIVATE LIMITED	Whole-time Director	25/09/2008	08/01/2008	-	Active	NO
17	U70200TG2008PTC058195	KAMALATMIKA ESTATES PRIVATE LIMITED	Director	17/03/2008	17/03/2008	-	Active	NO
27	U02005TG2007PTC055637	SHAKTI TIMBER ESTATES PRIVATE LIMITED	Director	28/08/008	27/03/2008	-	Active	NO
28	U01403AP200	SWARNA SIRI						

	7PTC053425	PLANTERS PRIVATE LIMITED	Director	26/08/2008	27/03/2008	-	Active	NO
31	U45209TG2008PTC061100	SUSLA INFRA DEVELOPERS PRIVATE LIMITED	Director	18/09/2008	18/09/2008	-	Active	NO
33.	U70101TN2008PTC070121	BILLIYARD FARMS PRIVATE LIMITED	Director	11/12/2008	11/12/2008	-	Active	NO
35	U45200TN2008PTC070126	BANDHO REAL ESTATES PRIVATE LIMITED	Director	24/09/2009	02/01/2009	-	Active	NO
36	U40109TG2000PTC035120	SAI RENEWABLE POWER PRIVATE LIMITED	Director	27/01/2009	27/01/2009	-	Active	NO
37	U40109TG1996PLC022967	CLARON POWER CORPORATION LIMITED	Director	31/08/2009	06/04/2009	-	Active	NO
38	U45200AP2008PTC57993	AVANINDRA INFRA VENTURES PRIVATE LIMITED	Director	21/08/2010	10/08/2010	-	Active	NO
39	U70100AP2008TC058011	RAJA SYAMALA REALTORS PRIVATE LIMITED	Director	20/08/2010	10/08/2010	-	Active	NO
40	U45400AP2008PTC057777	MOTHERLAND REALTORS PRIVATE LIMITED	Director	20/08/2010	10/08/2010	-	Active	NO
41	U92120TG2010PTC071623	PUSHPA TELEVISION PRIVATE LIMITED	Director	13/12/2010	13/12/2010	-	Active	NO
42	U63020AP2010PTC069270	SRI VENKATESWARA WAREHOUSING PRIVATRE LIMITED	Additional Director	15/03/2011	15/03/2011	-	Active	NO
43	U22190TG2010PTC068200	ASPRATION MEDIA PRIVATE LIMITED	Director	14/09/2012	11/11/2011	-	Active	NO
44	U45209TG2012PTC083953	KRYSTAL VISION PROJECTS PRIVATE LIMITED	Additional Director	01/12/2014	01/11/2012 2009	-	Active	NO

i) Like-wise, Sri Avva Udaya Bhaskar Rao, petitioner in Criminal Petition Nos.3074 and 3075 of 2017, was holding the office of the company in the following companies as on 23.04.2017.

S. No.	CIN/LLPIN	Name of the Company/LLP	Current designation of the Director/Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/LLP Status	Defaulting status
4	U13200AP2008PTC061741	ABHI MINERALS PRIVATE LIMITED	Director	29/11/2008	29/11/2008	-	Active	-
5	U15209AP2001PTC038236	AMRUTHA VARSHINI DAIRY FARMS PRIVATE	Director	29/09/2003	29/09/2003	-	Active	-

		LIMITED						
6	U24100TN198 6PTC013669	MIRA ORGANICS AND CHEMICALS PRIVATE LIMITED	Director	18/10/2006	18/10/2006	-	Active	-
7	U24119TN200 5PTC055351	UNIPHASE CHEMICASL PRIVATE LIMITED	Director	18/06/2007	18/06/2007	-	Active	-
8	U24120AP199 9PTC031354	AGRI GOLD ORGANICS PRIVATE LIMITED	Director	27/09/2003	27/09/2003	-	Active	-
9	U25111PN200 3PLC051447	CHANDI TECHNOLOGIES AND INDUSTRIES LIMITED	Director	18/11/2004	18/11/2004	-	Active	-
10	U31909TG199 9PLC033104	RITHWIK ENERGY SYSTEMS LIMITED	Director	31/08/2009	06/04/2009	-	Active	-
11	U40101KA20 004PTC03520 5	NORTH KARANTAKA POWERGEN PRIVATE LIMITED	Whole-time Director	02/04/2008	08/01/2008	-	Active	-
12	U40105AP200 2PTC038328	SINGARAYA HILLS GREEN POWER GENCO PRIVATE LIMITED	Managing Director	04/08/2005	04/08/2005	-	Active	-
13	U40109TG199 6PLC022967	CLARION POWER CORPORATION LIMITED	Director	31/08/2009	06/04/2009	-	Active	-
14	U40109TG200 0PTC035120	SAI RENEWABLE POWER PRIVATE LIMITED	Director	03/11/2011	27/01/2009	-	Active	-
18	U45209AP200 8PTC058079	AKHILENDRA INFRA AND AGRO VENTURES PRIVATE LIMITED	Director	25/07/2013	18/06/2013	-	Active	-
19	U45209TG201 2PTC083953	KRYSTAL VISION PROJECTS PRIVATE LIMITED	Additional Director	01/12/2014	01/12/2014	-	Active	-
20	U51219AP199 7PLC027851	AGRI GOLD PROJECTS LIMITED	Managing Director	30/11/2002	30/11/2002	-	Active	-
24	U63020AP201 0PTC069270	SRI VENKATESWARA WARE HOUSING PRIVATE LIMITED	Additional Director	08/04/2011	08/04/2011	-	Active	-
29	U92199TG200 2PTC039047	ARKA LEISURE AND ENTERTAINMENT S PRIVATE LIMITED	Director	30/05/2002	30/05/2002	-	Active	-

ii) Sri Avva Venkata Subrahmanyeswara Sarma, petitioner in Criminal Petition Nos.3076 and 3077 of 2017 is holding the office in the following companies as on 23.04.2017.

S. No.	CIN/LLPIN	Name of the Company/LLP	Current designation of the Director/Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/LLP Status	Defaulting status
3	U01120AP1995PLC022211	AGRI GOLD FOODS AND FARM PRODUCTS LIMITED	Director	27/08/2013	29/11/2008	-	Active	-
8	U24231TN2008PTC067409	MIRAGEL CHEM PRODUCTS PRIVATE LIMITED	Director	21/04/2008	21/04/2008	-	Active	-
9	U32109KA2007PTC042635	AVVAS INFOTECH PRIVATE LIMITED	Managing Director	15/07/2013	09/06/2008	-	Active	-
16	U45400AP2008PTC057777	MOTHERLAND REALTERS PRIVATE LIMITED	Director	27/08/2011	03/01/2011	-	Active	-
19	U51909AP1996PLC025600	AGRI GOLD EXIMS LIMITED	Managing Director	04/05/2006	04/05/2006	-	Active	-
20	U55101KA2004PTC035044	RAAM AVVAS RESORTS AND HOTELS PRIVATE LIMITED	Director	20/05/2009	20/05/2009	-	Active	-
23	U72200KA2015PTC084594	AVVAS CONSULTANCY SERCIES PRIVATE LIMITED	Director	09/12/2015	09/12/2015	-	Active	-
25	U72300TN2005PTC056820	COMMUNICATION NEXT CONSULTANCY PRIVATE LIMITED	Director	02/09/2011	03/01/2011	-	Active	-
26	U74999TG2007PTC053696	RETAIL SMART GLOBAL SHOPPING PRIVATE LIMITED	Director	01/06/2007	01/06/2007	-	Active	-
27	U92199TG2002PTC039047	ARKA LEISURE AND ENTERTINMENTS PRIVATE LIMITED	Director	14/09/2010	08/03/2010	-	Active	-

iii) Sri Avva Venkata Siva Ram alias Siva Rama Krishna, petitioner in Criminal Petition Nos.3078 and 3079 of 2017, is holding the office in the following companies as on 23.04.2017:

S. No.	CIN/LLPIN	Name of the Company/LLP	Current designation of the Director/Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/LLP Status	Defaulting status
1	U01120AP1995PLC022211	AGRI GOLD FOODS AND FARM PRODUCTS LIMITED	Additional Director	30/12/2013	30/12/2013	-	Active	-

4	U15209AP200 1PTC038236	AMRUTHA VARSHINI DAIRY FARMS PRIVATE LIMITED	Director	19/12/2001	19/12/2001	-	Active	-
5	U24231TN198 8PTC016307	CLINCHEM PHARMACEUTICA LS PRIVATE LIMITED	Director	06/08/2001	06/08/2001	-	Active	-
6	U31909TG199 9PLC033104	RITHWIK ENERGY SYSTEMS LIMITED	Director	31/08/2009	06/04/2009	-	Active	-
7	U32109KA20 07PTC042635	AVVAS INFORTECH PRIVATE LIMITED	Director	09/06/2007	09/06/2007	-	Active	-
8	U40105AP200 2PTC038328	SINGARAYA HILLS GREEN POWER GENCO PRIVATE LIMITED	Additional Director	27/07/2013	27/07/2013	-	Active	-
9	U40108AP201 2PTC080246	BIOMASS DEVELOPMENT COOPERATION PRIVATE LIMITED	Director	12/04/2012	12/04/2012	-	Active	-
10	U40109TG199 6PLC022967	CLARION POWER CORPORATION LIMITED	Managing Director	06/04/2009	06/04/2009	-	Active	-
24	U55101KA20 04PTC035044	RAAM AVVAS RESORTS AND HOTELS PRIVATE LIMITED	Director	20/05/2009	20/05/2009	-	Active	-
25	U60200TG200 8PTC060760	TOURISM AND TRAVEL MEDIA ENTERTAINMENT PRIVATE LIMITED	Managing Director	10/01/2012	24/10/2008	-	Active	-
28	U72200KA20 15PTC084594	AVVAS CONSULTANCY SERVICES PRIVATE LIMITED	Director	09/12/2015	09/12/2015	-	Active	-
30	U74920TG200 9PTC065232	ANVI SECURITY AND SERVICES PRIVATE LIMITED	Director	30/09/2009	30/09/2009	-	Active	-
32	U74999TG200 7PTC053696	RETAIL SMART GLOBAL SHOPPING PRIVATE LIMITED	Director	01/06/2007	01/06/2007	-	Active	-

39. In the present context, it would be appropriate to refer to the ruling in **Narinderjit Singh Sahni and another v. Union of India and others**³⁵. The appellants therein moved the writ petitions under Article 32 of the Constitution of India by reason of supposed

³⁵. (2002) 2 SCC 210

infraction of Article 21 seeking grant of an order for bail in the nature as prescribed under Section 438 of the Code, in line with the orders passed in earlier two writ petitions by the Hon'ble Supreme Court. The said writ petitions were requested to refer to the larger Bench and, therefore, they were taken up by the Three-Judge Bench of the Hon'ble Supreme Court. The offence alleged to have committed by the appellants relate to the white collar crime. A large number of cases of cheating against the appellants were pending in different States. It was held that virtual impossibility of release owing to pendency of cases in various States itself not sufficient to establish infraction of Article 21. Thus, in almost akin to the factual matrix in the present crimes, even relief sought for by the appellants therein was refused, which is a smaller relief when compared with the larger relief sought for in the cases at hand.

40. On quashment of FIRs while holding that it would be a misplaced sympathy of the Court on such white-collared accused persons whose acts of commission and omission has ruined a vast majority of poor citizens of the country, the expression of the Hon'ble Supreme Court in paragraph N.61 in **Narinderjit Singh Sahni**³⁵ is very apt to refer to thus:

“61. It is no doubt true that this Court earlier on two occasions in Writ Petition (Crl.) No.256/99 and Writ Petition (Crl.) Nos.72-75/2000, has granted the relief that in the event of the arrest of the petitioner in connection with any criminal case in his capacity as Managing Director/Director of the Group of

companies, the arresting officer shall release him on bail on his executing a bond to the satisfaction of the arresting officer. This order obviously tantamounts to an order, invoking the provisions of Section 438 of the Code of Criminal Procedure. The Court adopted the aforesaid procedure to find out a solution in the peculiar situation and being of the opinion that even though the accused is able to get orders for bail from different Courts, where cases are pending, but in view of the large number of cases against the accused throughout the country, it has physically not become possible to release the accused from the custody. If an accused facing a charge under Sections 406 409 420 and 120B is ordinarily not entitled to invoke the provisions of Section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bone fide one it is difficult, to conceive that an accused who is involved in thousands of cases in different parts of the country by cheating millions of countrymen, can be given benefit of the privilege of anticipatory bails as a matter of routine, as was done in the two cases, on the basis of which the present batch of cases have been field. In the manner in which these white-collared crimes are committed and the extent to which it has pervaded the society at large, we are of the considered opinion that the two cases decided by this Court earlier would not be of universal application and cannot be used as a precedent for availing of the privilege in the nature of an anticipatory bail. The Court itself was conscious of the peculiar situation and, therefore, noticed that the Court is exercising its discretion in the peculiar nature and facts of the cases. We do not agree with the proposition that an accused being involved in large number of criminal cases in different parts of the country, if is not able to be released from custody even on getting bail orders in some cases, itself would tantamount of violation of the right of a citizen under Article 21 of the Constitution. The object of Article 21 is to prevent encroachment upon personal liberty by the Executive save in accordance with law, and in conformity with the provisions

thereof. It is therefore, imperative that before a person is deprived of his life or personal liberty, the procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in exercise of its constitutional power, of judicial review, has to decide whether there is a law authorising such deprivation and whether in the given case, the procedure prescribed by such law is reasonable, fair and just and not arbitrary, whimsical and fanciful. On account of liberal interpretation of the words 'life' and 'liberty' in Article 21, the said Article has now come to be invoked almost as a residuary right, even to an extent which the founding fathers of the Constitution never dreamt of. In a country like ours, if an accused is alleged to have deceived millions of countrymen, who have invested their entire life's saving in such fictitious and frivolous companies promoted by the accused and when thousands of cases are pending against an accused in different parts of the country, can an accused at all complain of infraction of Article 21, on the ground that he is not being able to be released out of jail custody in view of different production warrants issued by different Courts. Issuance of production warrants by the Court and the production of accused in Court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to make a complaint of infraction of his rights under Article 21. In our considered opinion, it would be a misplaced sympathy of the Court on such white-collared accused persons whose acts of commission and omission has ruined a vast majority of poor citizens of this country. Though we agree that in given case, Court may be justified in directing release of the accused, taking a stock of the entire situation in the case. While, therefore, we agree with the submissions of the counsel for the petitioners-accused that an accused could maintain a petition under Article 32, but the Court would not be justified in directing the release

of such accused under a blanket order like the one, which has been relied upon by the counsel for the accused persons and such a course of action would perpetrate gross injustice.”

41. Though, not on such large scale as the one occurring in the present crimes, still, on smaller scale, where the fact-situation is identical, the Hon’ble Supreme Court while setting aside the order of quashment passed by the High Court of Judicature at Madras in **K. Boodanathan v. S. Natarajan & others**³⁶, held in paragraph Nos.4, 5 and 6 thus:

“4. The basis of the order of the High Court appears to be that the respondent accused - S. Natarajan (Accused No.12) was a Director of M/s PNL Nidhi Limited during the period between 1995 and 2000 and the default in repayment of dues to the depositors by the Company - M/s PNL Nidhi Limited occurred in the year 2004. IN this regard, we have taken note of two relevant facts which appear from the record. The first is that during the period when the respondent accused was a Director of M/s PNL Nidhi Limited the funds of M/s PNL Nidhi Limited were diverted in different corporate entities and such diversion resulted in consequential default in repayment of money to the depositors.

5. Another fact that emanates from the record is that the respondent accused held the controlling interest in a private limited company, i.e. Calfin Credit Holdings Pondicherry Limited, Chennai, which was one of the beneficiaries of the diverted funds and he had transferred the said Company (Calfin Credit holdings Pondicherry Limited, Chennai) to the other co-accused in the year 1993.

³⁶. Criminal Appeal No(s) 1660-1662 of 2017 [Arising out of Special Leave Petition (Criminal Nos.2875-2877 of 2016)]

6. In the light of the above facts and circumstances of the case we do not think that the High Court was right in quashing the criminal proceedings against the respondent – accused who was accused No.12 in the said criminal proceedings.”

42. In a recent ruling, **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another**³⁷, rendered on 04.10.2017, referring to judicial precedents in **Gian Singh v. State of Punjab** [(2012) 10 SCC 303], **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], **Vikram Anantrai Doshi**²⁵, **Central Bureau of Investigation v. Mahinder Singh** [(2016) 1 SCC 389], and **State of Tamil Nadu v. R. Vasanthi Stanley** [(2016) 1 SCC 376], the Hon’ble Supreme Court summarized the propositions in regard to exercise of extraordinary power under Section 482 of the Code.

i) Propositions (viii) and (ix) in paragraph No.15 are absolutely relevant in the context of deciding the present request. They are thus:

“15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

- (i) xxx
- (ii) xxx
- (iii) xxx
- (iv) xxx
- (v) xxx

³⁷. Criminal Appeal No.1723 of 2017 [arising out of SLP (Crl) No.9549 of 2016), dated 04-10-2017]

(vi) xxx

(vii) xxx

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and”

ii) Concerning financial or economic fraud or misdemeanour, the Hon’ble Supreme Court laid down proposition (x) thus:

“(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

iii) The offences alleged against the appellants therein were punishable under Sections 384, 467, 468, 471, 120-B and 506 (2) IPC. On the complaint of respondent No.2 therein, the FIR was lodged, wherein the complainant and his siblings deprived of landed property valued at Rs.12.50 Crores on account of a conspiracy hatched by the appellants and by other co-accused. When the appellants made a request for quashing the FIR, the Coordinate Bench of Hon’ble High

Court of Gujarat rejected the application under Section 482 of the Code. Aggrieved over the rejection order, when the appellants preferred the aforesaid Criminal Appeal, the Hon'ble Supreme Court summarized the propositions in paragraph No.15 (i) to (x) and upheld the rejection order agreeing with the observation of the Hon'ble High Court that it was a case involving extortion, forgery and conspiracy where all the appellants were acting as a team and it was not in the interest of society to quash the FIR on the ground that a settlement had been arrived at with the complainant.

43. Adverting to the submission made by the learned senior counsel in one of the sets of these criminal petitions that a Division Bench of this Court has seized the Agri Gold Group of Companies' Public Interests Litigation Petition and, therefore, it may not be appropriate for this Court to decide the present petitions, it is to state that the Public Interests Litigation mostly concerns with the seizure of properties and return of amounts deposited by the depositors. It is no doubt true, some of the respondents in the aforesaid Public Interests Litigation filed writ petitions under Article 226 of the Constitution of India requesting to quash the FIRs, and the common order was passed rejecting the request in the said writ petitions was adverted to in the above. But, the question therein was that there cannot be multiple FIRs concerning one and the same transaction besides, the petitioners herein being not the petitioners to the writ petitions. That ground was

rejected and consequently the writ petitions were dismissed by the Hon'ble Division Bench.

44. In the present Criminal Petitions the grounds agitated are different from the grounds raised in the writ petitions. The grounds have been substantially adverted to in the above. Therefore, that submission does not merit acceptance.

CONCLUSION:

45. Incidentally, it is relevant to state that, initially, the learned senior counsel in all these petitions placed reliance in an unreported decision in Criminal Petition No.14164 of 2016, dated 29.09.2016, where a learned Single Judge of this Court while dismissing the criminal petition, directed the Investigating Officer not to arrest the accused till filing charge sheet. The learned senior counsel would submit that the Hon'ble Supreme Court in **Habib Abdullah Jeelani**¹⁹ has not prohibited granting interim order, but held that in exercise of jurisdiction under Article 226 of the Constitution of India or Section 482 of the Code, and Court if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation and may pass appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. The fact-situation therein would

show that a learned Single Judge of this Court while rejecting the quashment of FIR and consequential investigation, directed the police not to arrest the petitioner till completion of investigation.

46. It is pertinent to mention that the petitioners in all these criminal petitions have resorted to invoking the jurisdiction under Section 438 of the Code by filing appropriate petitions on the file of this Court and they were coming up for disposal. That was the ground, on which the request for grant of interim order was not acceded to. It is also relevant to mention that during the pendency of these petitions in the last week of April, 2017, two of the petitioners have been arrested, and in that connection, when arguments were advanced, to direct the police to release them as the Investigating Officer, in utter disregard to the pendency of these petitions did effect the arrest, was not acceded to by passing appropriate orders on 28.04.2017.

47. The learned Public Prosecutor has submitted various Government Orders in relation to seizure of the properties of the petitioners in all these crime. Perused the Government Orders, but it is unnecessary to advert to them, at this stage, in deciding the requests herein in these petitions.

48. The learned Public Prosecutor has also submitted Forensic Audit of Agri Gold Group of Companies and some of the Annexures thereto in a sealed cover. Perused the Forensic Audit Report and the

Annexures thereto. The entire material placed on record would clearly indicate that a huge amount of about Rs.6,380 Crores was collected from the depositors, but did not pay the depositors the amounts promised on maturity. This apart, the Core Companies of Agri Gold Group of Companies have issued cheques to the depositors, and when they were submitted with the banks, they were dishonoured. When the depositors again approached, again cheques were issued in the name of a different bank, but when they were presented again by the depositors, they were also dishonoured. Added insult to the injury, the depositors were also issued bonds by the Group of Companies, but unfortunately, they were also collected back from the depositors by the concerned authorities of the local branches promising to pay the amounts asking them to wait for a month or two and ultimately the every attempt made by the depositors to get back the amounts proved totally abortive. This has been the fact-scenario at the substratum level. When examined in the light of these facts, even at this stage, the invariable conclusion is that there is strong *prima facie* material to reject the requests made by the petitioners herein.

49. Thus, when kept in view, the statements relating to the details of the petitioners in all these crimes, Avva Sita Ram Rao alias Seetha Ram, Avva Uday Bhaskar Rao, Avva Venkata Subramanyeswara Sarma, Avva Venkata Siva Ram / Siva Rama Krishan and K.V.S. Sai Ram alias Avva Sai Ram, maintained by the Ministry of Corporate Affairs.

50. The submission of the learned Senior Counsel is that Avva Sita Ram Rao alias Seetha Ram in first three Criminal Petitions, since resigned from the directorship of the three core companies, as evidenced by Form - 32, cannot be prosecuted and is entitled to quashment of FIRs, is without merit for the reason, the petitioner is found to hold the controlling interest in other companies falling either under Category – I or II as could be seen from the statement relating to which companies, as per the prosecution case, the depositors amount has been diverted and in the second and the third criminal petitions, the complaint allegations would clearly show that he was holding the post of director when the depositors started depositing the amounts even way back in 2007 and 2004 years.

51. Even concerning vicarious liability, the decisions relied on by the learned senior counsel, mainly, relate to the offences punishable under Sections 138 and 141 of IPC, as has already adverted to hereinbefore, where a special provision is enacted under Section 141 of the Negotiable Instruments Act therefor. But, unless, the investigation is completed, at this stage, it is difficult to hold that the petitioners cannot be held liable vicariously, more particularly, when kept in view, the authorities relied on by the learned Public Prosecutor referred to in the above, in the context of 'alter ego'. Further, the complaints filed in all these criminal petitions were lodged by the depositors, who are absolutely unaware of the relevant details, such as, who have been the directors or managing directors of

the companies or wholesome directors of which of the companies. The same can only be unravalled, when a thorough probe is made by the investigating agency into the allegations, and, therefore, the submission that all the complaints herein suffer from specific allegations against the petitioners, and, therefore, the FIRs are liable to be quashed is of no avail, at this stage.

52. The rulings relied on by the learned Public Prosecutor have got direct bearing on the allegations in the complaints. The decisions in **Pothani Chandrasekher²²**, **Soma Suresh Kumar²⁴**, would reflect that the depositors' amounts were swindled away by creating false documents amounting to crores of rupees. In **Vikram Anantrai Doshi²⁵** and **Gotan Lime Stone Khanji Udyog Pvt. Ltd²⁶**, invocation of doctrine of lifting the veil is open when public interest demands, and **Selvi J. Jayalalitha²⁷**. Besides these authorities, common order in W.P. Nos.29374 of 2016, 10185, 11201, 11245, 12943 and 13005 of 2017 dated 04.07.2017, rendered by the Hon'ble Division Bench of this Court referred to herein above, rejecting the similar request made under Article 226 of the Constitution of India, where depositors' money herein is also subject matter therein and directly referred to by the Hon'ble Division Bench though, not in the present context, but in a different context has bearing on the requests made herein.

53. This apart even the decisions in **Narinderjit Singh Sahni**³⁴ and **K. Boodanathan v. S. Natarajan**³⁸ referred to in the above would make it abundantly clear that in crimes of this nature, more particularly, white collar cases, when numerous cases of cheating in different States are occurring, quashment of the proceedings cannot be resorted to.

54. The propositions summarized by the Hon'ble Supreme Court in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur**³⁷, referred to in the above, are sufficient to reject the request of quashment of FIRs pleaded by the petitioners in all these criminal petitions. It is no doubt true, Avva Sai Ram, the petitioner in Criminal Petition Nos.3080 and 3099 is concerned, though, he claims that he is totally unconnected with the core companies, but, investigation is to be completed to unearth his acts in the companies falling under Categories - II and III floated by the core companies.

55. Thus, summing up, when the entire conspectus of facts occurring in the present crimes is scrutinized, it is difficult to find that continuation of investigation in these crimes by the C.B. C.I.D. would amount to abuse of process of law, as sought to be viewed by the learned senior counsel in all these criminal petitions, more particularly, when the financial fraud is the allegation in the present crimes creating a hazard in the financial interest of the society. Therefore, there is no other option except to reject the requests in all

³⁸ Criminal Appeal Nos.1660-1662 of 2017 dated 15.09.2017

these criminal petitions. Accordingly, all these Criminal petitions are dismissed.

56. It is made clear that the observations in the present common order ought not be treated as having any effect on the investigation or during trial, in case, investigation leads to charge, and, the investigating officer is directed to proceed with in accordance with law, uninfluenced by any of the observations made in this order.

As a sequel thereto, Miscellaneous Petitions, if any, pending in these Criminal Petitions stands dismissed.

A. SHANKAR NARAYANA, J

Date:09.10.2017

MGR/PV

