

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.10363 OF 2015

ORDER:

This Criminal Petition is filed under Section 482 CrPC by the petitioner-A.5 (Y.Sri Lakshmi the then Secretary, Industries and Commerce Department, Government of A.P.) among 13 accused persons in said C.C.No.12 of 2013 on the file of the Principal Special Judge for CBI Cases, Nampally, Hyderabad, for the alleged offences punishable under Sections 120-B r/w 420, 420 and 409 of IPC and Sec.13(2) r/w Sec.13(1)(c) & (d) of Prevention of Corruption Act, 1988 (for short, 'the P.C.Act'), seeking to quash the proceedings in said C.C.No.12 of 2013 which is outcome of FIR in Pc.19(A)/ 2011-CBI/ Hyderabad, dt.17.08.2011, registered pursuant to the directions in the W.P.Nos.794 & 6604 of 2011, and after investigation and final report submitted by the state through C.B.I, ACB, Hyderabad, the learned Special Judge for C.B.I. cases, Hyderabad has taken cognizance for said offences, by impugning the same.

2(a). The contentions in the grounds of the quash petition are that she is being Secretary, Industries and Commerce Department, Government of Andhra Pradesh, duty bound and scrupulously followed the service rules and performed the duties assigned to her by the State Government and has unblemished service record and also one of the youngest Officers who got selected to the Indian Administrative Service in 1988 batch and she worked in various capacities in the then State of the United Andhra Pradesh including as Collector, Nellore, Commissioner and Director of Municipal Administration from 2002 to 2005, before the present mentioned capacity and thereafter as Commissioner, Family Welfare till 28.11.2011.

2(b). The contentions further are that the respondent-CBI due to wholesome and gross misunderstanding and lack of application to verify the Business Rules and the Secretariat Instructions of the Andhra Pradesh Government and the procedures envisaged there under and also from lack of understanding and application of the provisions of the Mines and Minerals Development Act, (for short, 'MMDR Act') 1957 and the Mineral Concession Rules (for short, 'the MC Rules'), 1960, charge sheeted her and the same is unsustainable for being vitiated by wholesome misreading of the material within its true and correct factual matrix that was in fact lost sight in fabrication of facts, if not with ill-motive at least by non-application of mind and the chargesheet filed and also the cognizance taken are thus devoid of merits and are liable to be quashed.

2(c). The further contention in support of the relief sought is that inclusion of the petitioner as A.5, leaving the Members of the Cabinet of the State Government who are collectively responsible under the Constitution for the acts and deeds done by one of the Ministers in the Cabinet, leaves a bonafide suspicion on the fairness of investigation which is apparently carried away by the misstatements of the witnesses who prima facie appear to have spoken to save them and to make her a scapegoat.

2(d). It is also contended that the CBI has also got no jurisdiction to investigate in the impugned matter without bearing in mind the demarcation to appreciate the distinction between the policy decisions of the State and its implementation by the Executive vis-à-vis the criminal culpability therefrom if any, for any offence under any enactment and having failed in drawing said demarcation in its carrying the investigation, the CBI grossly erred in implicating the petitioner and

toying with her career and reputation by also subjecting her to untold misery, agony and mental trauma.

2(e). The other contention is that the impugned proceedings are also illegal for not following the mandatory provisions of law, more so in view of the fact that the sanction under Section 197 CrPC, was not given by the Government, which categorically establishes the anxiety and craving of the respondent-CBI to seek prosecution of petitioner as A.5 among some senior officers, along with A.1, A.12, A.13 etc., for nothing.

3. The petitioner submits with regard to the allegation of she has in connivance with others committed the overt acts by issuing the orders to benefit other accused persons by departing from law is incorrect, that the respondent-CBI in this regard failed to appreciate in its investigation the important fact that there is ample material available with the respondent-CBI which is demonstrating that the approvals made are strictly in accordance with the provisions of MMDR Act, 1957 and the MC Rules, 1960 and the grant of conditional transfer of mining leases as per the provisions of the MC Rules, 1960 and MMDR Act, 1957 is very much there in the department and is in accordance with law and there is nothing exceptional done much less to do any undue favour to the A.12 and A.13 by any departure of Rules and Laws. Thus the allegation of dubious methods adopted in grant of Conditional PL improperly is incorrect and the imputations relating to transfer of Mining Lease to A.12 from A.13 are only projected to prejudice the Courts of law despite lack of any substance therein, though as per rules supra for grant of PL statutory permission to be accorded is to prospect the mineral in said area and as long as the applicant is in the PL Stage the law does not contemplate the possibility of such grantee earning any income or profit over and above the monies invested for prospecting operations in said

area, nor do they hold lien over the mineral rights; as such the offences under Sections 409 and 420 IPC and Section 13 PC Act, are not attracted and the implication of the petitioner is therefrom wholly illegal.

4. The version of the petitioner in disputing the allegations made in the final report against her are that:

a) Insofar as the allegation of she has in connivance with other accused intentionally and by abusing her official position agreed to the proposal with a rider of conditional transfer and by not going into the merits forwarded the file containing the proposal for transfer of PL from M/s Jaya Minerals to M/s Eswar Cements Pvt. Ltd. (A.13)(for short, 'M/s ECPL') for final approval by the Minister Smt. P.Sabita Indra Reddy(A.4), Minister, Mines & Geology, knowing fully well that such conditional transfer was not authorized under MC Rules, 1960 and issued favourable orders for the conditional grant of Prospecting License (for short, 'PL') for limestone over an extent of 407.05 Ha. in favour of M/s. Jaya Minerals vide G.O.Ms.No.183 dt.14.07.2006, in spite of several deficiencies and observations made by Sri Meenakethana Reddy(LW4), the then Joint Director, Mines & Geology that the application deserves rejection as per Rule 12(1)(b) of MC Rules, 1960; in stead issued the G.O.Ms.No.346, Industries & Commerce(M III) Department dt.27.12.2006 from approval by the Minister, in transferring the PL from M/s. Jaya Minerals to M/s ECPL(A.13), is wholly untrue for the reasons that M/s Jaya Minerals has a right to transfer its PL as per Rule 14(1)(vii) of MC Rules, 1960 and the notings on the file by the Director of Mines & Geology (for short, 'DMG') and the Assistant Secretary in recommending for grant of conditional grant of PL speak volumes on transparency in the movement and method and manner of processing the file and those do not show any departure from the established practices of the State in

like matters and it also demonstrates that there is no special favour shown in the matter by the petitioner and there is absolutely no misuse or abuse of her official position to favour anybody much less the other accused. It was based on the proposal of DMG, the G.O. Ms. 183, dt.14.07.2006 was issued duly following MC Rules, 1960 and MMDR Act, 1957, which is in accordance with law and there is nothing illegal in its issuance based on the proposal of DMG and by duly following MC Rules, 1960 and MMDR Act, 1957, and also the subsequent G.O. Ms. No.346, dt.27.12.2006 transferring the PL from M/ s Jaya Minerals to M/ s ESPL, as per Rule 14(1)(vii) of the MC Rules, 1960 in accordance with law and there is nothing illegal in the issuance of above G.Os and as such the proceeding against her are illegal and liable to be quashed.

b). With regard to other allegation of she has ignored several deficiencies and observations made by Sri Meenakethana Reddy(LW4), the then Joint Director(JD), Mines & Geology that the application deserves rejection as per Rules 12(b) of MC Rules, 1960 is wholly incorrect as said K. Meenakethana Reddy as Joint Director in the Office of the Director of Mines and Geology(DMG) in the year, 2000 what made remarks are, *"It may not be desirable to entertain applications for cement grade limestone where the applicants are not sound technically, financially, without previous experience and knowledge granting of areas to unworthy persons may result in blocking of areas, selling of areas to others etc. This application, I presume is one of such applications and cannot be encouraged as they create and pose problems to real and genuine applicants. Hence ascertain at the first instance the capacity, capability etc., in full and complete shape at once from applicants and then process."* From the above, it appears the queries of said Meenakethana Reddy were with regard to verifying the

genuineness of the applicants and not a direct recommendation for rejection and the same are further appear to have been answered from the subsequent recommendations of the JD and DMG. Therefore the respondent-CBI failed to notice that the JD and DMG also had not recommended for rejection of the application of M/s Jaya Minerals. The other witnesses Mr.Venkat Rao(L.W.5) and Mr.Dayakar Reddy(L.W.3) though never pointed out to the petitioner officially about deficiencies if any, when the PL was processed, made contradictory statements before CBI which statements of them have no value under law. The respondent-CBI deliberately misread the policy of the Government in giving preference to Greenfield cement plants, the grant of PL and the subsequent conditional transfer to A.13 are though in tune with such policy of the State which is not in the realm of discretion of the petitioner. On the other hand, the statements of L.W.2 Sri A.Ashok, the then Deputy Secretary, I & C Dept., L.W.6 Sri Rafi Ahmed, Joint Director of Mines & Geology, clearly demonstrate the practice of transfer of licenses and leases in vogue in the department, the duties and responsibilities of respective officers in the Government and that every act done by the petitioner is in accordance with law. Thus, the allegation of she facilitated the conditional transfer of PL not in conformity with Rule 9 of MC Rules, 1960 in stead to reject the application of M/s Jaya Minerals as not genuine, is incorrect for the reasons that (i) Rule 9 of the MC Rules, 1960 deals with the procedure for filing of application for PL and lists out all the documents to be enclosed with such applications. It does not deal with 'conditional transfer' as stated by the respondent-CBI, (ii) The checklist sent by the DMG in his recommendation is precisely for checking whether every clause in Rule 9 and other rules of the MC Rules 1960 have been

complied with and (iii) In the light of the provision of Rule 9 and the check list prescribed thereunder, the CBI cannot allege that M/s Jaya Minerals was not a genuine applicant more so when their application is supported by all the documents that they are required to submit under law for consideration of their application. Therefore, it cannot be said that the processing/issuance of PL is not in conformity with Rule 9.

c). With regard to the other co-related allegation of the petitioner by abusing her official position and in furtherance of said alleged criminal conspiracy, dishonestly approved the proposals for grant Mining Lease to M/s ECPL(A.13) basing on the false field inspection report submitted by Assistant Director, Mines & Geology, is untrue; the CBI in fact failed to take note of the post of the petitioner who has no accessibility to verify the genuineness or otherwise of the Field Inspection Report of the AD and such factual details are only verified at the level of DMG and his subordinate staff and it is upon the Field Inspection Report of the AD and on its verification and notings by the DMG forwarding the file to the Government arises. Once there is the proposal therefrom for grant of Mining Lease to M/ s ECPL wherein G.O. Ms. 10, dt.09.01.2008 were appreciated as in accordance with law and suitable orders were issued based on the recommendation sent by the DMG wherein he has clearly stated in paras 22 and 23 that the lease may be granted in favour of M/ s ECPL for 30 years; there is nothing to suspect the petitioner's role by the CBI. It is in ignorance by the CBI of the settled law that a person who plays fraud or makes a wrong declaration has to be accused of dishonesty and cheating to be punished but not the authority who acted bonafide on the basis of such declaration or information believing it to be true. The intent pre-

supposes awareness of facts which in this case does not exist as she was totally unaware of the so called falseness of the Assistant Director's inspection report.

d). With regard to the other allegation of she being a public servant in the capacity of Secretary, Industries & Commerce, having control over the mineral resources of the Government of A.P., in furtherance of criminal conspiracy, dishonestly accorded the approval at her level for transfer of Mining Lease in favour of M/s Dalmia Cement (Bharat) Ltd.(A.12)(for short, 'M/s DCL'), knowing fully well that the transfer involved 'speculation' and after approval of the Minister, issued G.O.Ms.No.321, dt.08.12.2008 transferring Mining Lease by circumventing the Rules & Regulations, repudiating the trust reposed on her and thereby allowed the accused to convert the mineral resources to their own use whereas, Rule 37 of the MC Rules, 1960 expressly bar the speculative transactions whereby M/s ECPL gained illegally to the tune of Rs.2,14,25,000/- in the above speculative transaction is totally untrue and untenable, for there is no violation of Rule 37 of MC Rules, 1960 which rule merely says that one must obtain particulars by way of an affidavit from the transferor and transferee, and the same were complied with and said affidavits of both the transferor and transferee show that there is no speculation involved in the transfer of Mining Lease as well as any financial consideration. When such is the case, the CBI cannot allege that there is speculation in the transaction. The said declaration in the application for transfer submitted by both the parties was relied upon by the Government and in case the declaration is not correct, said companies are liable for action for false declaration but there is no such fetter imposed on the Government to consider the applications for transfer with suspicion of there is some element of

speculation involved. The file notings of the DMG and the Deputy Secretary(L.W.3) when show no indication of speculation involved, the allegation against the petitioner is without any substance for there is no any contemporaneous material brought to the notice of the petitioner to conduct diligence on that account and to discard the proposal sent by DMG. Even from the analysis of annual reports furnished by the CBI along with the charge sheet it clearly shows that there is no speculation. When ECPL is a wholly owned subsidiary of DCL, the question of suspecting that there was speculation in the transfer does not arise. Even the legal opinion of the advocate Mr. L.Venkateshwar Rao, clearly shows that the procedure was perfectly followed in law and the transfer of Mining Lease between A.13 and A.12 is strictly in accordance with the MMDR Act, 1957 and MC Rules, 1960 and there are no violations of any provisions and however, the CBI ignored these aspects for reasons better known.

5. The petitioner in support of her version also contends that the charge for the offences under Sections 409 and 420 IPC and 13 of the PC Act are self-contradictory in nature and demonstrate the confusion of the respondent-investigating agency in the matter of even determining the culpability of the petitioner. It is the settled position in law that in the matter of the decision making by a public servant in regard to grant of licenses etc., there is no 'entrustment of property' to the Government Servant, solely on account of the public servant being the authority for making a decision in this regard under the Business Rules. There is no material or allegation in the chargesheet which would attract the ingredients of Sec.409 IPC and in a fact situation of this nature, and even from the allegations made, charge against the petitioner could not be sustained under Section 409 IPC. If a citizen or

whoever cheats a State to secure benefit for themselves, then the cheated person (Public Servant) could not have shown committed misconduct as said public servant is also part of the Government and thus cannot be distinguished from the State for the sake of convenience of the Investigation agency and for its whims and fancies. Likewise, if a citizen secures a benefit on account of misconduct of a public servant or breach of trust by a public servant, he cannot be charged of the offence u/ sec.420 IPC. The Apex Court in Common Cause Vs. Union of India¹ while interpreting the doctrine of Public Trust, explained the aspects of 'entrustment' 'domain' of property 'Trust' 'Trustee' etc., which are the essential ingredients in the alleged offences punishable u/ sections 409 & 420 of IPC and Section 13 of the PC Act. In the light of the legal position stated supra in relation to the grant of licenses and leases under the MMDR Act, 1957 and the MC Rules, 1960 in the matter of M/s Jaya Minerals and A.12 and A.13, there is no question of Sections 409 and 420 IPC to be alleged against the petitioner and consequently there is no attracting of Section 13 of PC Act. It is the settled proposition of law that a person who plays fraud or makes wrong declaration has to be accused of dishonesty and cheating but not the authority who acted bonafide on the basis of such declaration or information believing it to be true. The transfer of shares of a lessee company does not constitute transfer of lease under Rule 37 of the MC Rules, 1960 and does not therefore require the State Government to grant permission. More so when the Court of competent jurisdiction approved the scheme of amalgamation as per the procedure contemplated under law, there is no justification for implicating the petitioner in the matter. The CBI is wholly incorrect, prejudiced, and totally faulty in misinterpreting and misquoting the provisions of law on the subject and the same resulted in

¹ (1999) 6 SCC 667

false, frivolous, vexatious exercise of power in filing of the charge sheet against the petitioner. The respondent transgressed its limits, ignored the fundamental provisions of Criminal Law, Business Rules of Secretariat and also the Constitutional provisions relating to the service conditions and protection of the Members of All India Service under Article 311 of the Constitution of India. The respondent-CBI failed to notice the fact that grant of licence or lease of the mineral is part of the concomitant policy of the Government and the acts done in furtherance thereof are only as per the policy and no undue favours have been shown to the entrepreneurs in the field. It is settled law that the policy decisions of the State cannot be opposed by the Secretaries to the Government working in the State and they can at best only express their demur against the decisions of the Council of Ministers. Therefore the act of the CBI which culminated in the impugned chargesheet is liable to be quashed. The respondent-CBI hatched an evil scheme to implicate the petitioner alleging that she conspired with other accused but obviously the sections referred under IPC and also under the PC Act cannot be made applicable to the case on hand against the petitioner to array as A.5 as even if the same are found to have been done, the same are done in good faith in obedience to the orders of the Council of Ministers and the actions of the petitioner are protected u/ sec.27 of the MMDR Act, 1957, which provides protection to the person for doing the act in good faith or intended to be done in good faith under the Act. When the Statute provides for protection of the acts done under the Act, unless and until there is material to establish that such acts done under the Act are not in good faith, the very investigation is illegal. In the case on hand in the absence of the material to the said effect and in the absence of even the List Witnesses making any allegations of specific

departure from the provisions of the Act to suit or benefit an individual, the investigation against the petitioner is wholly vitiated and is illegal under law. Mainly the impugned chargesheet and its concomitant cognizance orders are not sustainable as they are sheer infraction of law. On plain reading of Section 197 CrPC, no public servant can be prosecuted except with the sanction of the Government, if the alleged offence is said to have been committed by him/ her during the course of discharge of his official functions. To substantiate the same, the petitioner relies on the decision of the Apex Court in Anil Kumar and others Vs. M.K.Ayyappa and another², where it was held that the public servant should be protected and his/ her acts done in good faith in implementation of the decisions of the Cabinet and thus cannot be taken cognizance of any offence by any Court without sanction obtained from the concerned Department. It is also held by the Apex Court that if law requires sanction and if the Court proceeds against a public servant without sanction, the said public servant has a right to raise the issue of jurisdiction as the entire action may be rendered *void ab initio* but there is no sanction accorded by the concerned Government and in the absence of sanction, therefrom the cognizance order is illegal. The similar view is found in various decisions including Dilwar Singh Vs. Parvinder Singh @ Iqbal Singh³, CBI Vs. Raj Kumar Jain⁴ so also in the State of Madhya Pradesh Vs. M.V.Narasimhan⁵, Prakash Singh Badal and another Vs. The State of Punjab and others⁶. The purport of said judgments is that the requirement of sanction is a pre-condition even at pre-cognizance state for the Magistrate to take cognizance of the alleged offences against a public servant and said permission sought for

² 2014 CrLJ 1

³ 2005 (12) SCC 709

⁴ (1998) 6 SCC 551

⁵ 1998(6) SCC page 551

⁶ (2007) 1 SCC 1

under Section 197 CrPC was not given by the State and therefore the charge sheet is liable to be quashed on said requirement of law. It is settled law that this Court has ample power to quash the criminal proceedings under Section 482 CrPC as laid down in a catena of expressions of the Apex Court in *Madhavrao Jiwaji Rao Scindia & Others Vs. Sambhajirao Chandojirao Angre & Others*⁷, *Ravindra Kumar Madhanlal Goenka Vs. Rugmini Ram Raghav Spinners (P) Limited*⁸, *R. Kalyani Vs. Janak C. Mehta*⁹, *M/s. Zandu Pharmaceutical Works Limited Vs Md Sharaful Haque & Another*¹⁰. The case on hand is on all fours of law declared by the Apex Court in *Bhajan Lal's case*¹¹ at para 102(3),(5),(7) and at para 104.

The respondent failed to note that, there is no malice anywhere in the entire conduct of the petitioner in discharge of her functions without any fear or favour for anybody. It is loosely alleged in the chargesheet that there is criminal conspiracy and dishonest intention, but on plain reading of the entire subject matter, these two also are incapable of being discerned since the petitioner was never alleged to have even met with other accused either in person or by phone or by gestures or any means whatsoever and as such, conspiracy alleged is without any basis. Similarly, the dishonest intention alleged is also non-traceable on a thorough reading of entire chargesheet. It is very unfortunate that very grave sections under both IPC and PC Act, were cited against the petitioner by the respondent in a most callous and slipshod manner without bestowing any application of mind, care and caution. Apparently, insofar as the offence u/ sec.409 and 420IPC which are Criminal Breach of Trust and Cheating by inducement to deliver

⁷ (1988) 1 SCC 692

⁸ (2009) 11 SCC 529

⁹ (2009) 1 SCC (GrI)567

¹⁰ (2005) 1 SCC 122

¹¹ (1992) Supp(1) SCC 335

goods respectively are to be alleged by the person to whose detriment the same are caused but quite surprisingly and curiously no such report or complaint of loss by the Government has been ever made much less against the petitioner or other accused till this day. The petitioner is unable to traverse each and every line of the chargesheet and the material supplied along with the same as it is a bundle of distortions and mismatching. It would be wholly unjust to allow the above criminal case to proceed against the petitioner as it is nothing but continuing a false and vexatious litigation eternally which ultimately will be found to be a clear case of abuse of process of law, therefrom the learned Special Judge should have rejected the said Charge sheet on the premise that the statutory requirements as contemplated under the provisions of Criminal Law are indeed absent and as such, ought not have taken cognizance of the same. The case on hand also is false and vexatious in maliciously attributing accusation against the petitioner who is holding high office and enjoying respectable status by sully her character, injuring her reputation and exposing her to social ridicule with a view to spite her on account of personal rancor, predilections and thus the impugned proceedings against the petitioner are liable to be quashed.

6). On the other hand, the respondent-CBI filed its counter in opposing the quash petition and by supporting the cognizance order from the charge sheet averments and by denying the averments of the petitioner herein.

a). It is submitted on the factual background that the High Court vide order dated 10.08.2011, while hearing W.P.Nos.794 and 6604 of 2011 filed by Sri P.Shankar Rao, MLA, Secunderabad Cantonment and Sri Yerran Naidu, Ex-MP, directed the CBI for registration of the case and for thorough investigation in all the aspects into financial misdeeds

involving huge magnitude of Government largesse, corporate dealings and investments as part of Quid Pro Quo arrangements for the largesse and the benefit obtained by the investors from the State of Andhra Pradesh and all other aspects relevant thereto. This High Court also observed that *'The material available supports a thorough probe and investigation in all the aspects into financial misdeeds involving huge magnitude of Government largesse, corporate dealings including huge investments as part of Quid Pro Quo arrangement for the largesse and benefit obtained by the investors from the State of Andhra Pradesh and all other aspects, and keeping in view the scope of the public interest litigation as settled by the decisions of the Supreme Court referred to above, we have confined ourselves to the considerations of prima facie satisfaction and regard being had to the manner in which the investments in the group companies of Y.S.Jagan Mohan Reddy have been made vis-à-vis the benefits and official favours received by the investors from the Government of Andhra Pradesh, prima facie we are satisfied that there are violations of the provisions of the Indian Penal Code, Prevention of Corruption Act. Prevention of Money Laundering Act apart from criminal conspiracies and commission of other related offences involving huge magnitude of investment by local and foreign companies, some located in tax haven countries, for which registration of a crime and investigation to remedy the public interest which has suffered, is just and necessary by a well equipped and specialized agency, having expertise to handle such situations and has the credibility. Analyzing as such, the most appropriate agency would be the CBI.'*

b). As per the orders of the High Court, CBI-ACB Hyderabad Branch registered the case RC.19(A)/2011-CBI-HYD on 17.08.2011 u/ sec.120-B

r/w 420,409 and 477-A and Section 13(1)(c) & (d) of PC Act, 1988 against Sri Y.S.Jagan Mohan Reddy(A.1), Member of Parliament, Kadapa and 73 others and investigated into.

c). The allegations as per the FIR are that on 14.05.2004 Dr.Y.S.Rajasekhara Reddy, was sworn in as the Chief Minister of Andhra Pradesh. Sri Y.S.Jagan Mohan Reddy, son of late Dr.Y.S.Rajasekhara Reddy and himself adopted several ingenious ways to amass illegal wealth which resulted in great public injury. Late Dr.Y.S.Rajasekhara Reddy, during his stint as Chief Minister of Andhra Pradesh from May, 2004 to August, 2009, abused his public office to favour his son Sri Y.S.Jagan Mohan Reddy. The modus operandi followed by the duo was to sell out public properties, licenses, allotting/granting various projects, SEZs, mining leases, ports, real estate permissions and other benefits to the persons of their choice in gross violation of all established norms and procedures in the Government of A.P. The beneficiaries, in turn, have given bribes to Sri Y.S.Jagan Mohan Reddy under the guise of purchasing shares of M/s. Jagati Publications Ltd., M/s Raghuram Cements Ltd., (presently known as M/s Bharathi Cement Corporation Pvt. Ltd.) and other companies floated by him at exorbitant premiums. The role of Sri Y.S.Jagan Mohan Reddy (A.1) in the process was to exercise personal influence on his father and other public servants including Ministers and Secretaries to Government, through his father, and to see that the benefits were conferred on the chosen persons and in the process received illegal gratifications in the name of investments in his companies amounting to thousands of Crores of rupees. Since May, 2004 Sri Y.S.Jagan Mohan Reddy (A.1) started floating/acquiring number of companies including M/s Raghuram Cements Ltd with the sole objective of laundering the ill-gotten wealth

obtained by misusing the office of the Chief Minister held by his father Dr. Y.S Rajasekhara Reddy.

d). That the Country's leading Cement Companies like M/s. DCL and M/s India Cements Limited(ICL) share values are around Rs.40/- and Rs.110/- respectively after decades of their existence and reputation in the sector, are made to purchase the shares of this novice Company i.e. M/s Raghuram Cements Ltd/ M/s.Bharathi Cement Corporation Ltd., at a premium of Rs.1440/- at the time of its inception itself which is alleged to be an instance of payment of the bribe in the guise of purchase of shares for undue benefits extended to them by the State Government during this period.

e). That M/s DCL invested Rs.50 crores in M/s Raghuram Cements Ltd., by purchasing shares at a premium of Rs.110/- in the year 2007 and at a premium of Rs.1440/- in the year 2008.

f). That M/s Dalmia Cements was given a mining lease held by M/s. ECPL on transfer for limestone over an extent of 407.05 Ha., in Talamanchipatnam village, Mylavaram Mandal, Cuddapah District for unexpired portion of the lease period i.e. up to 23.06.2038 by G.O. Ms. No. 321, dt.18.12.2008. That the unexpected growth of M/s Bharathi Cements Corporation Ltd., its share were again subscribed by the same group of Investors along with some new ones, at a premium which is unheard of in the Cement sector. M/s Raghuram cements Ltd. was promoted by Sri C.Ramachandraiah in the year, 1999. This company was taken over by Sri Y.S.Jagan Mohan Reddy in the year 2005, with the benevolence of late Dr. Y.S.Rajasekhara Reddy, the then Chief Minister, concerned Ministers and other officials. It also alleges that M/s Bharathi Cements Ltd., got mines, licenses and permissions by violating norms

and by misusing the public office occupied by his father and then download the shares in the market for unusually inflated prices.

g). During the year, 2007-08, M/s DCL acquired shares at a premium of Rs.1440/- per share, whereas, after lapse of one year, Sri Y.S.Jagan Mohan Reddy and his associates have divested their shares to the French Company at Rs.671/- per share.

h). For the averments mentioned at paras 1 to 22 of the petition, the prosecution submits as follows:-

i). Smt. Y.Sri Lakshmi IAS the petitioner herein was arraigned as A.5 for her involvement in commission of the offences and accordingly after completion of the investigation, a charge sheet has been filed on 08.04.2013 against 13 persons/ companies including the petitioner for the offences supra which the Court took cognizance on 13.05.2013 against the petitioner for the offences u/s.120-B r/w 420, 420 and 409 IPC and relevant sections of law against the other accused persons in view of the prima facie case on the basis of material which does not form part of official duties of the public servants and it was purely the consideration and satisfaction of the Court and the trial Court taken cognizance by relying on the judgments of the Apex Court where it was held sanction u/ sec. 197 CrPC is not required for prosecuting public servant for similar offences like in the present case. That the Court took cognizance u/ sec. 13(2) r/w 13(1)(c) & (d) of P.C.Act, subsequently on receipt of the sanction issued by the competent authority i.e. Department of Personnel and Training, New Delhi.

j). M/s Raghuram Cements Ltd.(A.11) was originally incorporated on 12.05.1999 under the name of M/s Raghuram Cements & Minerals Pvt. Ltd. with registration No.01-31682 of 1999-2000. The promoter Directors

of the company were Smt. C.Kasturi Bai & Sri Chennam Shetty Vishnu Swarup, with the main objective of the company was to deal in all kinds of cement and cement products. On 29.11.2005, the name of the company was changed to M/s Raghuram Cements Pvt. Ltd. again on 08.12.2005., it was changed to M/s Raghuram Cements Ltd (A.11).

k). In October, 2006, M/s Silicon Builders Pvt. Ltd. and M/s Sandur Power Company Ltd. controlled by Sri Y.S.Jagan Mohan Reddy (A.1) acquired controlling stakes in M/s Raghuram Cements Ltd(A.11). On 01.12.2006, Sri Y.S.Jagan Mohan Reddy (A.1) was appointed as Director in M/s Raghuram Cements Ltd.(A.11). On 06.08.2008, the name of the company was changed to M/s Bharathi Cement Corporation Ltd., with address at 8-2-269/ S/ 98, Sagar Society, Road No.2, Banjara Hills, Hyderabad-32. On 01.09.2010, the name of the company was again changed to M/s Bharathi Cement Corporation Pvt. Ltd. On 26.12.2010 Smt. Y.S.Bharathi Reddy was inducted into the Board of Directors in place of Sri Y.S.Jagan Mohan Reddy (A.1).

l). M/s Dalmia Cement (Bharat) Limited (M/s DCBL) (A.12) was incorporated on 01.11.1951 as a Public Limited Company with Registration No.640 (26942 TN 1951 PLC000640) under the Indian Companies Act, 1913. The company underwent restructuring scheme in the year 2010. After the restructuring, the name of M/s Dalmia Cement (Bharat) Limited was changed to M/s Dalmia Bharat Sugar & Industries Ltd. The Cement, Captive Thermal Power and Refractory division were demerged into M/s Dalmia Bharat Enterprises Ltd. (M/s DBEL). The Cement Division was demerged into M/s Avnija Properties Ltd. (Now known as M/s Dalmia Cement (Bharat) Ltd. w.e.f. 31.12.2010 (M/s DCBL) and Captive Thermal Power Business was demerged into M/s DCB Power Ventures Ltd. The above demerger scheme was approved by the High

Court of Madras, vide their common orders Dt. 29.07.2010. Thus, the cement business has retained the name M/s Dalmia Cement (Bharat) Ltd (M/s DCBL (A.12) and Mr. Puneet (A.3) was appointed as Managing director of M/s Dalmia Cement (Bharat) Ltd. (A.12) on 16.01.2007 and is continuing in the same position.

m). M/s Jaya Minerals was a firm and came into existence through a partnership deed dated 24.11.1997, amongst Smt. A.Chamundeswari Devi W/o Sri A.Chandrasekhara Reddy and three of her daughters including Smt. A.V.Rajyalakshmi to carry on the business of mining, quarrying and for setting up mineral based industries, manufacturing cement, acquiring of Mining Leases and any other allied activity. The address of said firm was shown at H.No.1/900-F-11, Pulivendula, Cuddapah District. Smt. A.V.Rajyalakshmi was the Managing Partner and was authorized to look after the day-to-day affairs of the aforesaid partnership business.

n). That M/s ECPL(A.13) was incorporated on 28.01.1999 and was registered with the Registrar of Companies, A.P., Hyderabad with an objective to carry out business of mining, quarrying and setting up of mineral based industries, manufacturing of cement and other allied activities. The authorized share capital of M/s ECPL was Rs.5.00 Crores and was divided into 50,00,000 equity shares of Rs.10/- each. The issued and paid up capital of M/s ECPL was Rs.1,60,75,000/- divided into 16,07,500 fully paid up equity shares of par value of Rs.10/- each and the promoter Directors of the company are Sajjala Diwakar Reddy, Sajjala Ramakrishna Reddy and Sajjala Bhageerathi, appointed on 28.01.1999.

o). In December, 1997, M/s Jaya Minerals applied to the Director of Mines & Geology (DMG), Andhra Pradesh for grant of PL for limestone over an extent of 407.05 Ha., situated at Talamanchipatnam and Nawabpet villages, Mylavaram Mandal, Cuddapah District. The application was lying without disposal for want of material particulars at the office of the Director of Mines & Geology, Government of A.P., Hyderabad till the year 2000. Sri K.Meenakethana Reddy(LW4), the then Joint Director, Mines & Geology initiated steps to obtain the financial soundness and technical experience of the applicant i.e. M/s Jaya Minerals to avoid blocking of the areas, as required under the relevant rules. M/s Jaya Minerals was not found at the address shown in the application submitted to the Director of Mines & Geology(DMG). The issue remained as it was in the absence of any compliance from the applicants.

P). With regard to grant of PL over an extent of 407.05 Ha., in Talamanchipatnam and Nawabpet villages, Mylavaram Mandal, Cuddapah district in favour of M/s Jaya Minerals vide GO Ms. No.183 by the Industries & Commerce (M.III) Department dated 14.07.2006, the background was:

i). Dr. Y.S.Rajasekhara Reddy took over as the Chief Minister of Andhra Pradesh in May, 2004. Sri Sajjala Diwakara Reddy(A.7), a close confident of Late Dr.Y.S.Rajasekhara Reddy, requested the Director of Mines & Geology to grant PL in favour of their company i.e. M/s Eswar Cements Pvt. Ltd(A.13) instead of M/s Jaya Minerals by claiming that M/s Eswar Cement Pvt. Ltd. (A.13) took over M/s Jaya Minerals by virtue of a purported partnership dated 20.04.1998. Sri Y.S.Jagan Mohan Reddy (A.1) entered into a criminal conspiracy with his father late Dr. Y.S.Rajasekhara Reddy, Sri Sajjala Diwakar Reddy (A.7), Sri Puneet

Dalmia (A.3) and other accused in getting the Mining Lease granted to M/s Dalmia Cement (Bharat) Ltd. (A.12), under deception and to receive an illegal gratification in the garb of investments in the companies controlled and owned by Sri Y.S.Jagan Mohan Reddy (A.1). In pursuance of the said criminal conspiracy, Sri Puneet Dalmia (A.3), the then Vice-President, M/s Dalmia Cement (Bharat)Ltd.(A.12) entered into a Memorandum of Understanding (MOU) on 12.04.2006 with Sri Sajjala Diwakar Reddy (A.7) of M/s ECPL(A.13) with the condition that M/s ECPL (A.13) should acquire the PL within three months in their name and subsequently acquire the Mining Lease and thereafter, will also facilitate the transfer of Mining Lease to M/s Dalmia Cement (Bharat) Ltd.(A.12). In pursuance of the fraudulent intention of obtaining the PL/ML under deception, Sri Puneet Dalmia (A.3), got inducted his employee Sri Pa.Ch.Tugnait, Dy. Executive Director (Corporate Affairs) into M/s Eswar cements Pvt. Ltd (A.13) on 18.08.2006 as a Director and assigned him the task of establishing a cement plant. The request of Sri Sajjala Diwakar Reddy (A.7) of M/s Eswar Cements Pvt.Ltd. (A.13) to grant Prospecting License to M/s ECPL (A.13) in place of M/s Jaya Minerals, should have been rejected under Rule 12(1)(b) of Mineral Concession Rules 1960, since the original application of M/s Jaya Minerals was not complete in all material particulars and was not accompanied by the required documents, as discussed in the preceding paragraphs. In furtherance of the criminal conspiracy and acting in connivance with the other accused persons, Sri V.D. Rajagopal (A.6), the then Director of Mines & Geology, Govt. of A.P. dishonestly chose to ignore the recommendations of Sri Meenaketan Reddy, the then Joint Director of Mines & Geology to reject grant of PL under Rule 12(1) (b) of MC Rules (MCR), 1960 and dishonestly instructed Sri K.Venkat Rao, the then

Superintendent, Mines & Geology to put up a circulation note favouring M/s Jaya Minerals, despite several deficiencies in their application. Sri V.D. Rajagopal (A.6) in furtherance of the conspiracy not only recommended conditional granting of PL to M/s Jaya Minerals but also recommended for the transfer of PL within three months from the date of the execution to M/s ECPL (A.13) and forwarded the file to Government for approval.

ii). On receipt of said proposal from Sri V.D. Rajagopal (A.6), the petitioner herein in furtherance of the criminal conspiracy, did not go into the merits of the case independently and by abusing her official position, agreed to the proposal with a rider of conditional transfer and forwarded the file to the Minister of Mines & Geology, Smt. P. Sabita Indra Reddy (A.4) for final approval, knowing fully well that such conditional transfer was not authorized under the Mineral Concession Rules, 1960. Smt. P. Sabita Indra Reddy (A.4), the then Minister for Mines & Geology, in furtherance of criminal conspiracy, by abusing her official position as Minister of Mines, dishonestly accorded her final approval for the conditional grant and transfer of PL.

iii). The PL for limestone over an area of 407.05 Ha., in Talamanchipatnam and Nawabpet villages, Mylavaram Mandal, Cuddapah District was granted in furtherance of the above said conspiracy by the petitioner in favour of M/s Jaya Minerals with a condition that the PL should be transferred in the name of M/s ECPL (A.13), though it is not in conformity with Rule 9 of Mineral Concession Rules, 1960 and the application should have been rejected as M/s Jaya Minerals were not genuine applicants, but with dishonest and fraudulent intention to facilitate grant of Mining Lease to M/s Dalmia Cement (Bharat) Ltd. (A.12) under deception, not rejected.

q). M/s Jaya Minerals had also applied for grant of PL over an extent of 520 Ha., in Talamanchipatnam village on 01.04.1999. In this Case, the DMG rejected the application under Rule 12(1) of MC Rules, 1960 on the ground that the applicant company had left the address given in their application and failed to intimate the present address either to the DMG or to the Government and that M/s Jaya Minerals showed lack of their interest in their PL application. This clearly shows the dubious standards adopted in granting PL to the same company M/s Jaya Minerals in one case and rejecting the other case due to the criminal conspiracy hatched amongst the accused.

r). Transfer of PL from M/s Jaya Minerals to M/s ECPL (A.13): Immediately after obtaining GO Ms. No.183, dt.14.07.2006 in their favour, Sri S. Ramakrishna Reddy, Managing Partner of M/s Jaya Minerals filed an application before the AD on 23.08.2006 along with an affidavit dt.18.08.2006 to accord sanction to transfer the PL for Limestone in favour of M/s ECPL (A.13). In furtherance of the criminal conspiracy, Sajjala Diwakar Reddy (A.7) MD of M/s ECPL (A.13) signed a MOU dt.12.04.2006 with Puneet Dalmia (A.3) to get them Mining Lease, filed a false affidavit dated 18.08.2006 to obtain the PL in their favour under deception stating that M/s ECPL (A.13) would establish a cement manufacturing unit. The AD recommended transfer of PL from M/s Jaya Minerals to M/s ECPL (A.13) stating that no speculation was involved in the above transaction and forwarded the file to the DMG. In furtherance of the criminal conspiracy, Sri V.D. Rajagopal (A.6), the DMG, dishonestly recommended for the transfer of PL from M/s Jaya Minerals to M/s ECPL (A.13) and forwarded the proposals to industries & Commerce Department, Govt. of A.P.

s). The petitioner (A5) herein by abusing her official position accorded approval at her level without verifying the factual position and forwarded the same for final approval to Smt. P. Sabita Indra Reddy (A.4), Minister of Mines, who, in furtherance of the criminal conspiracy and by abusing her official position as Minister, accorded permission to transfer the PL from M/s Jaya Minerals to M/s ECPL (A.13) under Rule 14(vii) of MC Rules, 1960. The petitioner, in furtherance of criminal conspiracy issued G.O.Ms.No.346, Industries & Commerce (MIII) Department dated 27.12.2006, in favour of M/s Eswar Cements Pvt. Ltd. (A.13) transferring the PL from M/s Jaya Minerals for an area of 407.05 Ha., in Talamanchipatnam village, Cuddapah district. The conditional grant of PL issued, vide G.O.Ms.No.183, dt.14.07.2006 was itself when illegal, all the subsequent orders including G.O.Ms.No.346, Industries & Commerce (M.III).Department dt.27.12.2006 based thereon have no any legal sanctity.

t). Grant of Mining Lease to M/s. ECPL (A.13): On 15.02.2007, Pa.Ch.Tugnait, Director & Power of Attorney, who was inducted into M/s ECPL (A.13) by Sri Puneet Dalmia (A.3) of M/s Dalmia Cement (Bharat) Ltd., applied for the grant of Mining Lease for limestone over an area of 407.05 Ha., for a period of 20 years. The said application was only to facilitate the back door entry of M/s Dalmia Cements (Bharat) Ltd., (A.12) in furtherance of the criminal conspiracy hatched on 12.04.2006 through the MOU between M/s ECPL (A.13) and M/s Dalmia Cement (Bharat) Ltd. (A.12) for obtaining Mining Lease ultimately in favour of M/s Dalmia Cement Pvt. Ltd. A false inspection report was obtained to the effect that M/s ECPL laid foundation stone for construction of a cement plant on 20.04.2007. In fact, Dr. Y.S.Rajasekhara Reddy, the then Chief Minister laid the foundation stone for a cement plant

belonging to M/s Dalmia Cement (Bharat) Ltd. (A.12) and Sri Y.S.Jagan Mohan Reddy (A.1) also attended and assured to A.12 all the required help. After obtaining the false inspection report and the proposals of the AD, Yerraguntla for the grant of Mining Lease in favour of M/s ECPL (A.13), Sri V. Rajagopal (A.6) in furtherance of the conspiracy, by abusing his official capacity as the DMG, knowing fully well that cement plant belongs to M/s Dalmia Cement (Bharat) Ltd (A.12) and not to M/s ECPL (A.13) forwarded the proposal and the petitioner (A5) herein dishonestly and by abusing her official position approved the proposals for grant of Mining Lease in favour of M/s. ECPL and forwarded the same for final approval to Smt. P. Sabita Indra Reddy (A.4), who in furtherance of criminal conspiracy and by abusing her official position as the Minister for Mines & Geology accorded approval to grant Mining Lease in favour of A.13 and accordingly, G.O.Ms.No.10 dt.09.01.2008 was issued by the petitioner granting Mining Lease of limestone for a period of 30 years in favour of M/s Eswar Cements.

u). Transfer of Mining Lease from M/s ECPL to M/s Dalmia Cement (Bharat) Ltd.(A.12): In furtherance of the criminal conspiracy, M/s ECPL after obtaining the Mining Lease in their favour under deception, filed an application for transfer of the said Mining Lease in favour of M/s Dalmia Cements (Bharat) Ltd., (A.12), willfully concealing the fact that the company was already amalgamated into M/s Dalmia Cement (Bharat) Ltd (A.12), who had paid an amount of Rs.3.75 crores as compensation for taking over M/s ECPL wherein the capital invested by the shareholders in M/s ECPL was only Rs.1,60,75,000/- . Thus, M/s ECPL gained illegally to the tune of Rs.2,14,25,000/- in the above speculative transaction. Rule 37 of the MC Rules, 1960 expressly bar the speculative transactions to preclude unscrupulous lessees/ contenders

who apply for PL/ ML with an intention to make a quick fortune by selling the allotted leases eliminating the healthy competition amongst the genuine entrepreneurs. The term 'speculation' in transfer of Mining Lease refers to selling the PL/ ML to a third party for a consideration more than the investment made by the promoters in order to make a quick profit. As per Rule 37(2) 'the lessee shall not charge or accept from the transferee any premium in addition to the sum spent by him'. Sri V.D. Rajagopal (A.6) in furtherance of the criminal conspiracy, after obtaining false inspection report from ADMG, Yerraguntla to the effect that no financial consideration was involved in the transaction intentionally without verifying the facts independently, dishonestly recommended transfer of Mining Lease in favour of M/s Dalmia Cement (Bharat) Ltd. for the unexpired portion of the lease period up to 23.06.2038 under Rule 37 of MC Rules, 1960 basing merely on the notarized affidavits submitted by them. In furtherance of criminal conspiracy, the petitioner (A5) herein and Smt. P. Sabita Indra Reddy (A.4), Minister accorded their approvals for transfer of Mining Lease in favour of M/s Dalmia Cements knowing fully well that the transfer involved 'speculation' and issued G.O.Ms.No.321, dt.18.12.2008 transferring Mining Lease for limestone over an extent of 407.05 Ha., in Talamanchipatnam village, Mylavaram Mandal, Cuddapah District for the unexpired portion of the lease period i.e. up to 23.06.2038. The provisions of MMDR Act, 1957 and MC Rules 1960, are applicable to all the lessees whether they are corporate bodies or individuals. Rule 37 of MC Rules, 1960 expressly bars transfer of Mining Lease without previous consent in writing of the State Government. In furtherance of the conspiracy, the Mining Lease was obtained by M/s ECPL (A.13) which in turn facilitated fraudulent entry of M/s Dalmia Cements. The petitioner

and other accused/public servants having control over the mineral resources of Government of A.P. acted in connivance with and under the influence of Dr.Y.S.Rajasekhara Reddy and Sri Y.S.Jagan Mohan Reddy (A.1), have grossly abused their official position and intentionally violated the above mentioned provisions and facilitated illegal grant of the Mining Lease to M/s Dalmia Cements.

v). By above said overt acts of willful omissions and commissions, the petitioner herein has committed the offences of criminal conspiracy, cheating and criminal breach of trust by public servant. The above facts have clearly brought out strong prima facie material, documentary and oral, to prove that the petitioner herein has committed the offences alleged against her in the chargesheet. Hence, to dismiss the petition.

7). Heard both sides and perused the decisions placed reliance respectively and also the material on record with reference to the respective contentions in the oral and written submissions referred above. The decisions placed reliance respectively to avoid repetition is chosen to refer contextually in the course of discussion in the decision to be arrived.

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

i). Whether the cognizance taken by the learned Principal Special Judge for CBI cases, Nampally, Hyderabad for the offences punishable u/ sections 120-B r/w 420, 420 and 409 of IPC and Sec.13(2) r/w Sec.13(1)(c) & (d) of the P.C.Act, in C.C. No.12 of 2013, against the petitioner(A5), leave about other accused 1-4 & 6-13 from the chargesheet filed against them by the CBI, ACB/ SPE, Hyderabad, is unsustainable and is liable to be quashed either for want of sanction for prosecution from legal bar or for want of prima-facie accusation from even face value of the final report material covered by the investigation and if so to what extent and for what offence?

ii). To what result?

9). The main accusation against the petitioner as A5 in the final report and the orders of cognizance taken therefrom for the offences

referred therein u/ sections 120-B r/ w 420 and 409 of IPC and Sec.13(2) r/ w Sec.13(1)(c) & (d) of the P.C.Act, in C.C. No.12 of 2013, so far as against the petitioner A.5(Y. Sri Lakshmi) is that as the then Secretary, Industries and Commerce Department, Govt. of A.P., she by abusing her official position with dishonest intention by colluded with other accused committed the offences of criminal breach of trust and cheating in issuing the orders granting mining leases and also for the conditional transfer of the mining leases with out going into merits and contrary to the earlier file notings of ineligibility and contrary to the provisions of MMDR Act, 1957 and the MC Rules, 1960 in benefit other accused persons to have wrongful gain and by causing loss to the public exchequer.

10). Coming to the scope on the exercise of the inherent powers under Section 482 CrPC by the High Court, the three Judge Bench of the Apex Court in Common Cause Vs. Union of India supra, held at Para 179 that the powers that can be exercised by the Supreme Court under Article 32 and by the High Court under Article 226 are plenary and are not even fettered by any legal constraints. No doubt it was observed at Para 178 that there should be accountability and liability of the executive including public servants in administrative matters and there should be transparency in all what they do, especially where grant of larges concerned. It was also observed at Para 86 that the officers of the Government would also be liable in damages for their wrongful acts provided the act does not fall within the purview of "act of State".

10)(a). The Apex Court in Pepsi Food Ltd. v. Special Judicial Magistrate¹² held that the powers conferred on the High Court under Article 226 and 227 of the Constitution of India and under Section 482 CrPC. have no limit, but more the power, more due care and caution should be exercised while invoking these powers.

¹² AIR 1998 SC 128

10)(b). It is also as per the well laid down expression of the Apex Court five judge Bench way back in *Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, Bombay*¹³ referring to the earlier three judge bench expression in *Talab Haji Hussain Vs. Madhukar Purshottam Mondkar*¹⁴ that the High Court is having the inherent power under Section 561-A(old) 482(new) CrPC, where such an order is necessary to secure the end of justice or to prevent abuse of process of Court as this power is always preserved to the High Court under the Code. It was also observed that the inherent power of the High Court is not conferred by CrPC. The power which inheres in the High Court is no way limited or effected by the provisions of CrPC.

10)(c). The three Judge Bench of the Apex Court in *Krishnan V. Krishnaveni*¹⁵ relying upon the earlier Four Judges Bench expression in *V.C.Shukla V. State through C.B.I*¹⁶ that refers the three Judge Bench expression in *Madhulimaye v. State of Maharashtra*¹⁷ that where it is found any miscarriage of justice or abuse of process of the Court or required statutory procedure not been complied with or the order passed or sentence imposed requires correction, it is but the duty of the High Court to exercise the inherent powers.

10)(d). The latest three Judge Bench of the Apex Court in *Prabhu Chawla v. State of Rajasthan*¹⁸ held explaining *Mohit v. State of Uttar Pradesh*¹⁹ that Section 482 CrPC begins with a non-obstante clause to state: “Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent

¹³ AIR 1967 SC 1639

¹⁴ 1958 SCR 1226

¹⁵ (1997) 4 SCC 241

¹⁶ (1980) 2 SCR 380=1980 (2) SCC 665

¹⁷ (1977) 4 SCC 551

¹⁸ 2016 SCC OnLine SC 905

¹⁹ (2013) 7 SCC 789

abuse of the process of any Court or otherwise to secure the ends of justice.” A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. “abuse of the process of the Court or other extraordinary situation excites the court’s jurisdiction. The limitation is self-restraint, nothing more.”

10)(e). It was also held by the Apex Court in Popular Muthaiah Vs State rep. by Inspector of police²⁰ that the inherent power is not confined to procedural or adjectival law, but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts *ex debito justitiae* -to mean to do real and substantial justice in the lis for which alone the power exists inherently. The Apex Court in Popular Muthaiah (supra) referred the earlier expressions in 1) Nawabganj Sugar Mills Vs. Union of India²¹ holding that, though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is coextensive with the necessity and in 2) South Eastern Coal Fields Ltd. Vs State of M.P.²² holding that act of court does not confine to act of primary court, but even appellate or revisional or other superior court, as it is an act of court as a whole. In Popular Muthaiah(supra) it is also held referring to the scope of the Maxim *actus curiae neminem gravabit* -that this principle is not confined to erroneous act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and the law.

²⁰ (2006) 7 SCC 296

²¹ AIR 1976 SC 1152

²² AIR 2003 SC 4482

10)(f). In *R.Kalyani V. Janak C.Mehta*²³, it was held that for invoking the inherent power in discharge of paramount duties by the High Court, it is to see a person apparently is not subjected to persecution and humiliation on the basis of wholly untenable complaint/report.

10)(g). In *Sunitha Jain V. Pavan Kumar Jain*²⁴ at Para No.39 it was held that, inherent power of High Court would not embark upon an enquiry as to whether evidence is reliable or not which is a function of trial Magistrate to appreciate as to the accusation is not sustained or not ultimately.

10)(h). In *State of Orissa V. Saroj Kumar Sahu*²⁵ it was also held in para Nos.11 and 14 that though no hard and fast rule can be laid down in exercise of the extraordinary jurisdiction of the High Court, but for to say it is not permissible for the High Court in exercise of the jurisdiction to act as if it was a trial Court but for prima facie to satisfy about existence of sufficient ground of accusation for proceeding or not and to evaluate the material for the limited purpose with reference to documents.

10)(i). In *Punjab National Bank V. Surender Prasad Sinha*²⁶ it was held in para No.6 that: “It is also salutary to note that judicial process should not be an instrument of oppression or needles harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that stage the

²³ (2009) 1 SCC 516

²⁴ (2008) 2 SCC 705

²⁵ (2005) 13 SCC 540

²⁶ (1988) 1 SCC 692

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

10)(j). Same is the principle also laid down in *Zandu Pharmaceuticl Works Ltd. Vs Mohd. Sharaful Haque*²⁷, *Amit kapoor Vs Ramesh Chander*²⁸ and *Rajat Prasad Vs CBI*²⁹.

10)(k). In *Rajib Ranjan and Ors. v. R. Vijaykumar*³⁰ referring to the three Judge Bench expression in *Inder Mohan Goswami and another v. State of Uttaranchal*³¹, it was observed at Para 19, that the Court reiterated the scope and ambit of power of the High Court under Section 482 of the Code in the following words:

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

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

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

²⁷ 2005(1)SCC 122

²⁸ 2012(9)SCC 460

²⁹ 2014(6)SCC 495

³⁰ (2015) 1 SCC 513

³¹ (2007) 12 SCC 1

injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases:

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

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

10)(I). In *Umesh Kumar Vs. State of Andhra Pradesh*³² referring to (*Pepsi Food Ltd. supra*; *Ashok Chaturvedi v. Shitulh Chanchani*³³; *G. Sagar Suri v. State of U.P.*³⁴ and *Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy*³⁵), it was held that the scope of Section 482 CrPC as well defined and the inherent powers could be exercised by the High Court to give effect to an order under the CrPC.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about

³² 2013(10) SCC 591

³³ AIR 1998 SC 2796

³⁴ AIR 2000 SC 754

³⁵ (2011) 12 SCC 437

the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

10)(m). There is distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial, as pointed out in Prakash Singh Badal (supra).

10)(n). Thus and for all the above, the quash petition impugning the cognizance orders is maintainable.

11). Coming to the scope of law on the offences punishable under sections 120-B, 420 and 409 of IPC:

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

11)(A)(a). The Apex Court in State of H.P. Vs Kishan Lal Pardhan³⁶ held at para 8 on section 120-B IPC that the offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act by illegal means, and

³⁶ AIR 1987 SC 773 = 1987 CrLJ 709

the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

11)(A)(b). In *State Of Tamil Nadu vs J. Jayalalitha*³⁷ on the scope of charge or discharge for consideration, it was observed by the Apex Court from the facts on record placed by the prosecution that there is sufficient material against Smt. Jayalalitha making out the offences under Sections 120B & 409 IPC r/w. 13 of the PC Act in her insistence for the proposal and its ultimate approving the tenders to purchase and import coal for wrongful gain by causing loss to State exchequer even with no necessity that too for high price, despite the Secretary concerned of the State Govt. raised strong objection for the proposal and even Secretary, Ministry of Coal raised objection also on the poor quality by its ignorance and even by deviation of conditions of Central Government for rooting through it and the discharge by trial court held unsustainable, that too when all concerned officials were charged. The scope of Section 10 Evidence Act considered is by relying upon the observations of the three Judge Bench of the Apex Court in *State vs. Nalini*³⁸ that the first condition which is almost the opening lock of that provision is the existence of 'reasonable ground to believe' that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement 'in reference to their common intention'.

³⁷ 2000(5)SCC 440

³⁸ 1999 (5) SCC 253

11)(A)(c). In *Ram Narain Poply Vs. CBI*³⁹, the three Judge Bench of the Apex Court held on Section 120B IPC that the elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they; become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. The encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

11)(A)(d). The Apex Court in *V.C. Shukla v. State (Delhi Admn.)* supra, held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The

³⁹ 2003 CrLJ 4801

circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

11)(A)(e). In State (N.C.T. of Delhi) Vs. Navjot Sandhu@ Afsan Guru⁴⁰ it was totally considered the scope of criminal conspiracy from Sections 120B & 43 IPC and Section 10 of the Evidence Act by observed from para 86, referring to aims and objects in introducing in IPC by 1913 amendment, with observation of similar to the definition in Halsbury's laws of England and American concept of criminal conspiracy, Russell on crimes, Harisngn Gour on Penal Law, some of the foreign expressions, besides that of the Apex Court earlier including from Sardar Singh Caveeshar⁴¹, Major E.G. Barsay⁴², Yash Pal Mittal⁴³, V.C.Shukla supra, Mohd. Usman⁴⁴, Kishan Lal Pardhan supra, Kehar Singh⁴⁵, Ajay Agarwal⁴⁶, Nalini supra, Ferozuddin⁴⁷, Mohd. Khalid⁴⁸, that few bits here and there cannot be suffice, agreement can be inferred from any sold facts and circumstances to consider therefrom act of one as act of all, it requires some kind of physical manifestation of

⁴⁰ 2005 SCC (Crl)1715

⁴¹ AIR 1957 SC 747

⁴² AIR 1961 SC 1762

⁴³ 1977 (4) SCC 540

⁴⁴ 1981 (2) SCC 443

⁴⁵ 1988 (3) SCC 609

⁴⁶ 1993 (3) SCC 609

⁴⁷ 2001 (7) SCC 596

⁴⁸ 2002 (7) SCC 334

agreement like transmission of thoughts and sharing of unlawful design by meetings and communications to commit the act, prior to the act. For that, there has to be cogent and convincing evidence against each of the accused. It is one who commits an overt act with knowledge of conspiracy is guilty and one who tacitly consents to the object of the conspiracy can also be made liable. The Court in appreciation must take care to see that the acts and conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability cannot be fastened by way of analogy or by extension of a common law principle. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another, and have made a partnership in crime. Beyond the mere fact of agreement, the necessary *mens rea* for proving that a person is guilty of conspiring to commit an offence be established.

11)(A)(f). The Apex Court in *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd*⁴⁹ categorically held that merely on the basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy.

11)(A)(g). The Constitution Bench expression of the Apex Court in *Bhagwan Swarup Lal Bishan Lal V. State of Maharashtra*⁵⁰ way back observed that the offence of conspiracy has to be established like any other offence but for Section 10 of the Indian Evidence Act introduces the doctrine of agency subject to conditions laid therein are satisfied for

⁴⁹ 2010 (10) SCC 479

⁵⁰ AIR 1965 SC 682

act done by one is admissible against co-conspirators. But this Section will come into play only when the Court is satisfied that there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or the actionable wrong that is to say there should be a prima facie evidence that a person was party to the conspiracy before his acts can be used against his co- conspirators

11)(A)(h). In *Abuthagir Vs State*⁵¹ referring to *Mohd.Khalid, Devander Pal Singh and Kehar Singh supra*, it was held that the elements of conspiracy to be (a). an object to be accomplished, (b). a plan or scheme embodying means to accomplish that object, (c). an agreement or understanding between two or more of the accused whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, and (d). in the jurisdiction where the statute required an overt act. The Court must enquire whether the two or persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the later does.

11)(A)(i). In *Mir Nagvi Askari vs CBI*⁵² it was held on requirements and proof of Criminal conspiracy that it is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.....Condition

⁵¹ 2009 CrLJ 3987

⁵²2009 15 SCC 643

precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication-[See Mohammad Usman supra]. The following passage from Russell on Crimes (12th Edn. Vol 1) cited by Jagannatha Shetty, J in Kehar Singh supra brings out the legal position succinctly:

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

11)(A)(j). Further it was noted in Kehar Singh (supra) that to establish the offence of criminal conspiracy `it is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be

accomplished.' In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.

11)(A)(k). This Court in *Maharashtra v. Som Nath Thapa*⁵³ supra opined that it is necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."- [See also *K.R. Purushothaman v. State of Kerala*⁵⁴. Since we have dealt with the law with respect to criminal conspiracy in detail in *R. Venkatkrishnan v. Central Bureau of Investigation*-(Criminal Appeal 76 of 2004 decided today) we need not deal with it here at once again.

We may however notice that this court most recently in *Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh and Anr. v. C.B.I.* through its Director⁵⁵, after taking recourse to law governing the field noted thus:

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

11)(B) On Section 420 IPC:

11)(B)(a). Coming to Section 420 IPC, the Apex Court in *Anil Mahajan Vs. Bhore Industries Limited*⁵⁶ held that to attract the offence of cheating, fraudulent and dishonest intention must be shown to be existing from the inception of the transaction and failure to keep promise at a subsequent stage will attract no offence and mere use of

⁵³ [(1996) 4 SCC 659]

⁵⁴ 2005 12 SCC 631

⁵⁵ 2008 (14) SCALE 240

⁵⁶ 2005 10 SCC 228

expression cheating in the complaint is of no consequence for no basis to the averment of deciding cheating or fraudulent intention of accused at the time of entering into the transactions.

11)(B)(b). The other expression of the Apex Court in *Uma Shanker Gopalika Vs. State of Bihar*⁵⁷, it was held that breach of contract would amount to cheating if only intention to cheat was existing from the inception and if such intention developed later that would not amount to cheating.

11)(B)(c). The other expression of the Apex Court in *Ram Jas Vs. State of U.P.*⁵⁸ also it is laid down on the ingredients required for the offence of cheating that there should be fraudulent or dishonest inducement by deceiving from the inception.

11)(B)(d). In *SVL.Murthy vs. State-CBI*⁵⁹ while holding the ingredients required for the offence of cheating should be fraudulent or dishonest inducement by deceiving from the inception by referring to catena of expressions, so far as criminal conspiracy, it is held the prosecution must show that there had been meeting of minds at the time of the facility applied for and granted.

11)(B)(e). The three Judge Bench of the Apex Court in *Ajay Mitra v. State of M.P.*⁶⁰ held that mensrea of inducing the persons deceived to deliver property is essential to constitute offence of cheating and in ultimately quashing the FIR therein by referring to the other expressions.

11)(B)(f). In *A.L. Panian Shanmugam Vs. State of Andhra Pradesh*⁶¹ it was held in the mercantile transactions, consignments which are delivered on credit and very often the payment cannot be made on due date, that does not attract penal consequences.

⁵⁷ (2005) 10 SCC 336

⁵⁸ AIR 1974 SC 1811

⁵⁹ (2009) 6 SCC 77

⁶⁰ (2003) 3 SCC 11

⁶¹ 1991 SCC (Crl.) 84

11)(B)(g). In *Bishan Das v. State of Punjab*⁶² it was held that mere issuing of false certificate does not constitute offence of cheating but for on showing it was issued with dishonest intention for wrongful gain.

11)(B)(h). In *V.P.Srivastava V. Indian Explosives Limited*⁶³ referring to several expressions including *Ram Jas supra*, *Medchal Chemicals & Pharma (P) Limited V. Biological E. Ltd*⁶⁴ and *Hira Lal Hari Lal Bhagwati V. C.B.I*⁶⁵ particularly at paras 20 to 25 held that, it is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making representation or promise and such a culpable intention right at the time of entering into the agreement must be established by showing from facts and that cannot be even be presumed including from any failure to keep his promise subsequently or for mere dereliction of any duty or any omission or lapse.

11)(B)(i). In *Vimala V. Delhi Administration*⁶⁶ and *State of U.P V. Ranjit Singh*⁶⁷ it was held further that to constitute the offence of Section 420 I.P.C there should not only the cheating but as a consequence of such cheating the accused should have been dishonestly induced the person deceived and the complaint must be by the person deceived or on his behalf. The criminal culpability to attract for certain specified acts alleged to have been done fraudulently or dishonestly to constitute an offence it cannot be assumed that the person committed the offence merely by alleging or showing that he acted fraudulently unless such a fraudulent act is specifically made an offence under I.P.C or some other law. The expression 'defraud' involves two elements of deceit and injury to the person deceived and such injury is something

⁶² (2014) 15 SCC 242

⁶³ 2010 (10) SCC 361

⁶⁴ 2000 (3) SCC 269

⁶⁵ 2003 (5) SCC 257

⁶⁶ AIR 1963 SC 1572

⁶⁷ 1999 (2) SCC 617

other than economic loss and it will include any harm caused to any person in body, mind or reputation or such others and it is a non-economic or nonpecuniary loss and the benefit or advantage to the deceiver will almost always cause loss of detriment to the deceived.

11)(B)(j). In Mohd. Ibrahim Vs. State of Bihar⁶⁸ the Apex Court held referring to Section 415, 420, 463, 471 & 25 IPC in relation to the offence of cheating and on the allegations of forgery including for the purpose of cheating and using as genuine a forged document that the criminal culpability cannot be presumed merely by alleging that accused acted fraudulently, unless the fraudulent act is specifically made out from specific averments and as to what offence therefrom it constitutes either under IPC or some other law to sustain the accusation.

11)(C). On criminal breach of trust:

11)(C)(a). The Apex Court in S.W. Palanitkar Vs. State of Bihar⁶⁹, held that every breach of trust may not result in a penal consequence unless there is evidence of mental act of fraudulent misappropriation and if the breach of trust is coupled with mensrea. Further in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.” The above view in Palanitkar’s case was referred to and followed in Rashmi Jain vs. State of Uttar Pradesh & Anr.⁷⁰.

⁶⁸ (2009) 8 SCC 751

⁶⁹ (2002) 1 SCC 241

⁷⁰ (2014) 13 SCC 553

11)(C)(b). Further by the three Judge Bench in *Madhav Raojiwajirao Sindia Vs Sambhaji rao Chandrojirao*⁷¹ it was held that a case of breach of trust may be both a civil wrong and a criminal offence. The Court must consider from facts and circumstances the intentions and actions and to see whether the uncontroverted allegations made by prosecution prima-facie establish the offence.

12). Before coming to the other merits on facts with reference to the ingredients required to be made out prima-facie to sustain the accusation for the offences punishable under sections 120-B r/w 420, 420 and 409 of IPC, so far as the requirement of prior sanction from competent authority to take cognizance for the offences punishable under sections 120-B r/w 420, 420 and 409 of IPC and Sections 13(2) r/w 13(1)(c) & (d) of the P.C.Act, in C.C. No.12 of 2013, by the special judge for CBI cases, for the offences allegedly committed by her by abusing her official position, while she was working as the Secretary, Industries and Commerce Department, Govt. of A.P., concerned;

12).(i). in the first undated typed office note placed before the special judge, at page-2, it is mentioned that sanction for prosecution of her for the offences punishable under sections 13(2) r/w 13(1)© & (d) of the P.C.Act, is awaited from the Competent Authority. The learned judge observed in his hand written note on 13.05.2013 in taking cognizance for the offences punishable under sections 120-B r/w 420, 420 and 409 of IPC against the petitioner, leave about others, (pages 2&3) that –perused the charge sheet, relevant record and office note. In the light of the above material the charge sheet is taken on file as follows:

A1---

A2---

A3---

A4---

A5-for the offences U/S 120-B r/w 420, 420 and 409 of IPC

A6---

A7---

A8---

⁷¹ (1988) 1 SCC 692

A9---
A10---
A11---
A12---
A13---

Office is directed to register CC and issue summons to accused for their appearance before this Court on 7/6/13. Since A1 is in judicial custody inform the jail authorities.

12).(ii). in the second handwritten office note dated 17/2/2014 placed before the special judge, at page-3(which is in continuation of first note and order supra of pages 1-3), it is mentioned that cognizance U/ S 120-B r/ w 420, 420 and 409 of IPC is taken against A.5(Y.Srilakshmi) and cognizance U/ S 13(2) r/ w 13(1)(c) & (d) of the P.C.Act, was not taken against her. Now the CBI has filed memo SR 429/2014, DT. 12/2/2014 along with sanction order issued by the Govt. of India, Ministry of personnel public Grievance and pensions, Dept. of personnel and training, dt.20//1/2014 according sanction for the prosecution of Smt. Y.Srilakshmi-A5 in CC 12/2013. Hence cognizance U/ S 13(2) r/ w 13(1)(c) & (d) of the P.C.Act, is to be taken against Smt. Y.Srilakshmi-A5.

The learned judge observed in his hand written note on the even date that- taken on file for the offence U/ S 13(2) r/ w 13(1)© & (d) of the P.C.Act against A5, issue s/ s by 21/3.

12(a). From the above material that is even not in dispute by either side, though reasons are required to be given generally in the order taking cognizance of any offence and against any respective accused where more than one, the mere omission to give reasons is no way fatal to quash the order of cognizance taken, if otherwise it is sustainable from perusal of the material on record, as laid down by this Court in N.Srinivasan Vs The State - CBI⁷² at paras 51&52, referring to the three Judge Bench expression in Sunil Bharti Mittal Vs The State- CBI⁷³ and Four Judge Bench expression in Sarath Mathew Vs IOCV⁷⁴.

⁷² CrLP.7584 of 2015, dt.18.03.2016.

⁷³ (2015) 4 SCC 609

⁷⁴ (2014) 2 SCC 62

12(b). Even considering by keeping said principle in mind, there is a non-application of mind by the learned Special Judge as to the mandatory requirement of prior sanction under Section 197 CrPC, to take cognizance even for the offences punishable under sections 120-B r/w 420, 420 and 409 of IPC against the petitioner-Smt. Y. Srilakshmi as A.5, from the very prosecution charge sheet allegations taken on its face value are that the petitioner-A5 in discharge of her official duties as the then Secretary, Industries and Commerce Department, Govt. of A.P., by abusing her official position, with dishonest intention by colluded with other accused committed the offences of criminal breach of trust and cheating with conspiracy in issuing the orders granting mining leases and also for the conditional transfer of the mining leases with out going into merits and contrary to the earlier file notings of ineligibility and contrary to the provisions of MMDR Act, 1957 and the MC Rules, 1960 in benefit other accused persons to have wrongful gain and by causing loss to the public exchequer. The impugned first order of the learned judge on 13.05.2013 in taking cognizance for the offences punishable under sections 120-B r/w 420, 420 and 409 of IPC against the petitioner-Smt. Y. Srilakshmi as A.5 is thus unsustainable and without jurisdiction, but for the second order dated 17/ 2/ 2014 in taking cognizance for the offence punishable under section 13(2) r/w 13(1)(c) & (d) of the P.C.Act against her from prior sanction of the competent authority produced to validate the same, no doubt with out prejudice to all the available defences of the accused on sustainability of said sanction order for left open such contention during trial to raise as even from said sanction order of the competent authority produced, there is nothing to show it also covers specifically sanction for the IPC offences to take fresh cognizance therefrom.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

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

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

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

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

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

12)(f). From the above, the difference between the two provisions is that sanction under Section 197 CrPC is mandatory even to take cognizance after retirement of the public servant for the acts done in discharge of official duties for the IPC offences. Whereas under Section

19 of the PC Act, the emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed.

12)(g). No sanction under Section 197 CrPC is required for the PC Act offences and the law is clear in this regard from C.K. Jaffer Sharief v. State⁷⁵, where it was based on the allegation against the appellant-accused-Jaffer Sharief, former Union Railway Minister and ex-officio head of RITES (Rail India Technical and Economic Services Ltd.) and IRCON (Indian Railway Construction Co.Ltd.), public sector undertakings, at relevant time, that he had prevailed upon RITES and IRCON to take four employees on "deputation", despite neither RITES nor IRCON had any pending business in London and that none of four persons had performed any duty pertaining to RITES or IRCON while they were in London, yet to and fro air fare of all four persons was paid by above two public sector undertakings, which deputation and sending them to London is for the sole purpose in connection with medical treatment of appellant and thereby the appellant had abused his office and caused pecuniary loss to the two public sector undertakings by arranging visits of four persons in question to London without any public interest, from the closure final report filed by CBI from refusal of sanction to prosecute, that was declined to accept by the Special Judge with a direction to further investigate and submit entire material afresh for sanction and as sanction again declined a supplemental closure final report again was filed by CBI. The Learned Special Judge, CBI again having declined to accept the closure report, took cognizance of the

⁷⁵ (2013) 1 SCC 205

offences punishable under Sections 13(2) r/w S 13(1)(d) of PC Act, vide order dated 26.07.2008 observing that sanction under section 19 of the PC Act is not required as the petitioner had ceased to be a public servant on 10.11.2000. Thereafter, an application dated 04.09.2008 was submitted by the petitioner in the trial Court seeking discharge on the ground of lack of sanction under section 197 CrPC to prosecute him. Same was dismissed on 27.01.2010 saying: "...Thus, the act of accused, being beyond the scope and range of his official duty, would not be covered under the purported discharge of his duty. The application dated 04.09.2008 for discharge is thus dismissed" The High Court also dismissed his application by affirming the order of trial court and thereby he moved the Apex Court.

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

12)(i). As also held in *Subramaniam Swamy v. Manmohan Singh* and another⁷⁶ in case where the person is not holding the said office as he might have retired, superannuated, be discharged or dismissed then the question of removing would not arise.

12)(j). The same view was expressed in *Parkash Singh Badal supra* by negating the argument of even though some of the accused persons had ceased to be Ministers, they continued to be the Members of the Legislative Assembly and one of them was a Member of Parliament and as such cognizance could not be taken against them without prior sanction. It was also held that the embargo contained in Section 19(1) of the PC Act operates only against the taking of cognizance by the Court in respect of the offences punishable under Sections 7, 10, 11, 13 and 15 of the PC Act committed by a public servant.

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

12)(l). In *Kalicharan Mahapatra vs. State of Orissa*⁷⁷, the Court compared Section 19 of P.C. Act with Section 197 of the Code. After considering several decisions on the point and also considering Section 6 of the old P.C. Act, 1947 which is almost identical with Section 19 of the P.C. Act, 1988 and also noting Law Commission's Report, at paragraph 13 of *Kalicharan (supra)* came to the following conclusions:

"13. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC

⁷⁶ (2012) 3 SCC 64

⁷⁷ (1998) 6 SCC 411

Act, 1988 without any change in spite of the change made in Section 197 of the Code."

12)(m). The above passage in Kalicharan (supra) has been quoted with approval in *Lalu Prasad vs. State of Bihar*⁷⁸ at paragraph 9, page 54. In paragraph 10, (page 54) it was held in *Lalu Prasad* (supra) that "Section 197 of the Code and Section 19 of the Act operate in conceptually different fields".

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

12)(o). In *Rakesh Kumar Mishra* supra it was held in this regard and on the scope of Section 197 CrPC that the policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties, without sanction. Further, the words "when any person who is or was a public servant" employed in 197 CrPC were based on the observation at paragraph 15.123 of the 41st Report of the Law Commission of "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the

⁷⁸ 2007 (1) SCC 49

expediency of prosecuting any public servant". Above position was highlighted in R.Balakrishna Pillai supra of 1996 and reiterated in the later expressions in State of M.P. vs. M.P. Gupta⁷⁹, State of Orissa through Kumar Raghvendra Singh and Ors. vs. Ganesh Chandra Jew⁸⁰ and Shri S.K. Lutshi and Anr. vs. Shri Primal Debnath⁸¹.

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

12)(q). On the scope of sanction whether required or not to decide for prosecution on the acts alleged as offence committed by a public servant and the stage when to raise and the way how to understand the expressions with reference to facts, the Apex Court in N.K.Ganguly Vs. CBI, New Delhi⁸², while saying a decision is an authority for what it actually decides and reference to a particular sentence in the context of the factual scenario cannot be read out of context, held referring to the earlier expressions right from that of Federal Court in Hori Ram Singh⁸³, of Privy Council in H.H.B. Gill⁸⁴, of Calcutta High Court in Abani Kumar Benarji⁸⁵, of the Apex Court in R.R.Chari-I⁸⁶, also of the Apex Court in Sreekantaiah⁸⁷, also of the Apex Court in Amrit Singh⁸⁸, also of the Apex Court in Matajog Dobey⁸⁹, also of the Apex Court in K.Satwanth Singh⁹⁰, also of the Apex Court in R.R.Chari-II⁹¹, also of the Apex Court

⁷⁹ [2004] 2 SCC 349

⁸⁰ [2004] 8 SCC 40

⁸¹ [2004] 8 SCC 31

⁸² 2016(2) SCC 143

⁸³ AIR 1939 43

⁸⁴ AIR 1948 128

⁸⁵ AIR 1950 437

⁸⁶ AIR 1951 207

⁸⁷ AIR 1955 287

⁸⁸ AIR 1955 309

⁸⁹ AIR 1956 44

⁹⁰ AIR 1960 266

in Bajnath⁹², also of the Apex Court in B.Saha⁹³, also of the Apex Court in R.S.Nayak⁹⁴, also of the Apex Court in R.Balakrishna pillai⁹⁵, also of the Apex Court in Abdul Wahab Ansari⁹⁶, also of the Apex Court in Pakesh Kumar Mishra⁹⁷, also of the Apex Court in Sankaran Moitra⁹⁸, also of the Apex Court in Prakash Singh Badal⁹⁹ and also of the Apex Court in Sheetla Sahai¹⁰⁰ and by quoted with approval Hori Ram Singh supra among other including the three judge bench of this Court in the case of Amrik Singh supra and of the Constitution Bench in B.Saha supra that the issue of requirement of prior sanction under Section 197 of CrPC can be raised at any stage of the proceedings. It was also held referring to the above among other including H.H.B.Gill supra, three judge bench in Baijnath supra and another Constitution bench in Matajog Dobey supra, that Prior sanction for taking cognizance is required in the three situations of, a) the act complained of attached to the official character of the person doing it; b) cases in which the official character of the person gave him an opportunity for the commission of the crime; and c) the offence was committed while the accused was actually engaged in the performance of official duties. It can be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. No doubt, there must be a reasonable connection between the act and the discharge of official duty to have the protection. If the

⁹¹ AIR 1962 1573

⁹² AIR 1966 220

⁹³ 1979 (4) SCC 177

⁹⁴ 1984 (2) SCC 183

⁹⁵ 1996 (1) SCC 478

⁹⁶ 2000 (8) SCC 500

⁹⁷ 2006 (1) SCC 557

⁹⁸ 2006 (4) SCC 584

⁹⁹ 2007 (1) SCC 1

¹⁰⁰ 2009 (8) SCC 617

act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

12)(r). The three judge Bench expression of Apex Court in P.K.Pradhan Vs. State of Sikkim Rep. by the CBI¹⁰¹ held at paras-5 to 16 by referring to several of the earlier expressions right from Hori Ramsingh , HHB Gill, Amrik Singh, Sreekantiah Ramayya Munipalli, Matajog Dobey, Omprakash Gupta, B.Saha, Baijnath Gupta, Abdul Vahab Ansari, K.Satwant Singh, at para- 5 held that the legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the Statute from taking cognizance. It is well settled that the question of sanction u/ sec. 197 of CrPC can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, any appeal. In Rajib Ranjan Vs. R.Vijakumar (supra) at paras 14 to 18, it is observed that sanction is necessary if the offence alleged against the public servant is committed by him after acting or purporting to act in the discharge of his official duties as held in Buddi Kota Subbar Rao Vs. K.Prakasham (supra) para-6

¹⁰¹ AIR 2001 SC 2547

of the act or omission on facts found a reasonable connection to the discharge of his duty by the accused, sanction is required.

12)(s). In *Anil Kumar vs M.K. Aiyappa supra*, it was observed referring to *Subramaniam Swamy v. Manmohan Singh supra* that the expression “cognizance” which appears in Section 197 CrPC came up for consideration before a three-Judge Bench in *State of Uttar Pradesh v. Paras Nath Singh*¹⁰², and this Court expressed the following view:

“6.....So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, ‘no court shall take cognizance of such offence except with the previous sanction’. Use of the words ‘no’ and ‘shall’ makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black’s Law Dictionary the word ‘cognizance’ means ‘jurisdiction’ or ‘the exercise of jurisdiction’ or ‘power to try and determine causes’. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.”

12)(t). In the case of *General Officer, Commanding v. CBI*¹⁰³, the Apex Court held that-If the law requires sanction and the court proceeds against a public servant without sanction; the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.

12)(u). It was also quoted with approval *N.K.Ganguly supra*, another Constitution bench in *R.S.Nayak supra* that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts, before according sanction and grant of sanction is not an idle formality but a solemn and

¹⁰² (2009) 6 SCC 372

¹⁰³ [2012] 5 SCR 599

sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants.

12)(v). By referring to or relying upon the other expressions supra including in R.Balakrishna Pillai, Abdul Wahab Ansari, Shankaran Moitra and Sheetla Sahai supra it was held that when the acts constituting the offence were alleged to have been committed in discharge of his official duty, it was not open to the Special Judge court to take cognizance of the offences without obtaining the previous sanction of the Government by the respondent-CBI. It was held therefrom that it is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused.

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

12)(x). It is the well settled proposition of law that Court cannot ignore while taking cognizance any non-compliance with mandatory requirements. In fact, in dealing with the offence under Section 7 of the P.C.Act, the Apex Court in State of Karnataka through CBI Vs. C.Nagarajaswamy¹⁰⁴, held that once it is mandatory for taking cognizance sanction as required under law by a statutory provision, ordinarily, the question has to be dealt with at the stage of taking cognizance. Even cognizance was taken in ignorance of it or erroneously, once the same comes to the Court's notice at any later stage, a finding to that effect has to be given by the Court and the accused is also entitled to take such plea at any point of time including, even in hearing the appeal before the appellate Court once sanction from competent authority is required under law. When all the mandatory requirements of the statutory formalities not complied with, the cognizance cannot be taken by the Court practically and as such for the non-compliance the entire proceedings vitiate to revert the clock back to pre cognizance stage, if at all to proceed therefrom further. Same is the conclusion from State of Goa Vs. Babu Thomas¹⁰⁵ holding that when sanction is required from the act connected with the duty of the public servant, taking cognizance by a Court without sanction is incompetent and the error was so fundamental that invalidates the proceedings right from the stage of cognizance.

12)(y). In this regard even from the decisions placed reliance by the learned special Public Prosecutor for CBI, in Umesh Kumar supra, what was held is that the High Court in exercise of the inherent powers under Section 482 CrPC can only evaluate the material on record to the prima facie satisfaction of existence of ground for framing charges and

¹⁰⁴ 2005(8)SCC 37

¹⁰⁵ 2015 (3) ALT (Crl.) 143 SC

proceeding with trial or not. Same also held at para 10 of Kishan Lal Pardhan supra.

12)(z). Even in State of Tamilnadu Vs Mariya Anton Vijay¹⁰⁶ it was while holding the High Court got inherent powers under Section 482 CrPC to exercise, however held on the facts in dispute as to arms and ammunition seized from the vessels of accused is covered by the penal provisions of the Arms Act as contending by the Prosecution or exempted from the penal provisions of the Arms Act as contending by the accused is a matter to decide during trial and quashing the proceedings is held thereby unsustainable for same is in ignorance of the guidelines well laid down in State of Haryana Vs. Bhajan Lal¹⁰⁷ and State of M.P. Vs. S.B. Joshi.¹⁰⁸ For that conclusion referred the observations in Joshi supra referring to earlier expressions including Bhajan Lal supra among other in saying instead of the High Court considering existence of prima-facie case from averments and accusation as to sufficient ground to frame charges and proceed with trial or not, went wrong in appreciating and weighing the material of the prosecution as if it is a mini trial. In fact by referring to earlier expressions, at para 7 of Joshi supra, which is part of para 55 of Mariya Anton Vijay supra, it is observed that Court in a quash proceeding under Section 482 CrPC, is required to evaluate the material and documents on record of the prosecution with a view to find out from its face value whether disclosing existence of ingredients of the alleged offence.

13). Suffice to say the Special Court could not have been taken cognizance of the IPC offences against the accused for want of sanction under Section 197 of CrPC as prerequisite and as such from right of accused to raise the same at any stage and also duty of Court, which

¹⁰⁶ 2015(9)SCC 294

¹⁰⁷ 1992(supp) 1 SCC 335 paras 102 & 103

¹⁰⁸ 2000 2 SCC 57 paras 4-7

term include not only trial court but also revision or appellate or other superior court, to decide and give finding thereon immediately from such objection raised impugning cognizance, the continuance of proceedings for all the IPC offences against the accused then amounts to abuse of process and as such, to that extent the proceedings right from taking cognizance are liable to be quashed. In fact in Bhajan Lal supra one of the guidelines for quashing of the proceedings speaks (No. 6 of the 7 guidelines) from any legal bar engrafted by any provision of the Code or other Act concerned to the institution or cognizance or continuation of the proceedings.

14). Thus the taking cognizance of the offences punishable under sections 120-B r/w 420, 420 and 409 of IPC against the petitioner-Smt. Y. Srilakshmi as A.5, for the very prosecution charge sheet allegations taken on its face value are that the petitioner-A5 in discharge of her official duties committed the alleged acts, from the mandatory requirement of prior sanction under Section 197 CrPC that is lacking, the proceedings are unsustainable and are liable to be quashed, with out necessity of going into other merits of how far the accusation against her otherwise for the offences punishable under sections 120-B r/w 420, 420 and 409 of IPC are made out and sustainable and even for arguments sake taken made out, irrespective of no direct material to attract the offence under Section 420 IPC and 120B IPC and the contention of the petitioner that power to allot lease/licence for mining is not an entrustment to hold commission of criminal breach of trust even and there is no element of cheating the government by any allotment as officer of the Government, representing the Government, apart from nothing even remotely to show any privy with other accused.

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

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

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

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

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

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

(d) if he,—

- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

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

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

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

15)(b). In the case of *State v. A. Parthiban*¹⁰⁹, the Supreme Court held as under: Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1) (d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1) (d) of the Act.

15)(c). In *S.P. Bhatnagar Vs State*¹¹⁰ it was held that it is for the prosecution to prove affirmately that the accused acted dishonestly by corrupt or illegal means or by abusing his position and obtained any pecuniary advantage for some other person and deliberately caused loss to the department as held in *S.K.Kale vs State*¹¹¹ and *M.N.Nambiar Vs State*¹¹².

15)(d). In *Sheetla Sahai supra* on the scope of section 13(2) r/w 13(1)(c) & (d) of the P.C.Act r/w. 120B IPC to make out prima-facie, it

¹⁰⁹ (2006) 11 SCC 473

¹¹⁰ AIR 1979 SC 826

¹¹¹ AIR 1977 SC 822

¹¹² AIR 1963 SC 1116

was observed referring to Bharat Petroleum Corp. Ltd. vs. T.K. Raju¹¹³ that: In Inspector Prem Chand v. Govt. of N.C.T. of Delhi & Ors.¹¹⁴, this Court observed: "In State of Punjab and Ors. Vs. Ram Singh Ex. Constable¹¹⁵, it was stated:

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

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

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

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

54. Even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a sine qua non...

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

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

56. It is also interesting to notice that the prosecution had proceeded against the officials in a pick and choose manner. We may notice the following statements made in the counter-affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the government, viz., M.N. Nadkarni who worked as Chief Engineer till 24.03.1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19.06.1989 have been made

¹¹³ [2006 (3) SCC 143]

¹¹⁴ [2007 AIR SCW 2532]

¹¹⁵ [1992 (4) SCC 54]

accused but, on the other hand, those who were one way or the other connected with the decision, viz., Shri J.R. Malhotra and Mr. R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.

57. In Soma Chakravarty (supra), whereupon strong reliance has been placed by Mr. Tulsi, this Court opined:

"23. In a case of this nature, the learned Special Judge also should have considered the question having regard to the "doctrine of parity" in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completely exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy."

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

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

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

.....

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

15)(e). From the above position of law, coming back to the further relevant facts on record, the prosecution allegation is even *M/s. Jaya Minerals* a family partnership firm of Mr. A.C. Reddy, his wife and daughters of 1997 earlier applied for grant of prospective license for limestone in 407.05 hectares of Talamanchipatnam which was pending from 1997 to 2000, so also in 520 hectares of same village of the application from 1999, LW.4 K.Meenakethana Reddy the then JD Mines taken steps to obtain its financial soundness and technical experience and found it is not in existence at the address shown in the application, showing lack of interest. The partnership later changed after combinations with SRK Reddy joined as Managing Partner, and applied by Eswar Cements Pvt. Limited incorporated in 1999 to which SRK Reddy is one of the Directors with SD Reddy and other family members and of them said SD Reddy is a close confident of A.1 and his late father, the then CM, who applied saying *Jaya Minerals* was took over by Eswar Cements Private Limited as a sister concern and Dalmia Cements entered MOU in 2006 with Eswar Cements on condition of getting prospective license within 3 months and to acquire mining lease by joining one of the employees of the Dalmia Cements into Eswar Cements and the Director of Mines Raj Gopal (A.6) chosen to ignore the recommendations of LW.4-Meenakethana Reddy- Joint Director and also of LW.3-A. Dayakar Reddy from that proposal A.5 as Secretary Industries without going into the merits of the case independently agreed said proposal with a rider of conditional transfer and forwarded the file that was accepted by the Minister concerned. The prospective license for 407.05 hectares was covered by GOMs.No.183 dated 14.07.2006 of *Jaya Minerals* to transfer to Eswar Cements, the 100%subsidiary of Dalmia as per MOU between them dated 12.04.2006, to benefit Dalmia as quid pro

quo to the investments by Dalmia with A.1's sponsored entities and it is contending of same is not conformity with Rules 9 & 14 of the MC Rules 1960 and there is a dishonest intention on the part of A.5 in not rejecting the prospective license instead of granting the conditional license for the above and also for the other 520 hectares. Though there is nothing in this regard therefrom to attribute any criminal conspiracy and cheating against the petitioner/A.5 for nothing shown of she involved by any agreement with other accused to conspire and privy and to cheat the Government even, leave about any criminal breach of trust if at all the powers of processing the file is dominion over property to construe entrustment from such duty to perform, for which even from there is no prior sanction to take cognizance, the cognizance order is held unsustainable to sub serve the ends of justice. However and therefrom in so far as the PC Act offences referred supra concerned, there is nothing to quash for once the allegations show attracting of Section 13 of PC Act, this Court cannot ignore the face value of the allegations and conduct a roving enquiry as a mini trial with reference to the documents including on the submissions of the Rules 9 & 14 of MC Rules 1960 or other provisions of MM (D&R) Act 1957 not violated and the licenses granted are in conformity with the provisions and as per the Government Business Rules and Secretariat instructions with collective responsibility of Council under Rule 8 read with Rule 10 of it and that the petitioner is innocent and having no knowledge about any privy of other accused but for duty bound in giving effect to the government policy in her processing the file from the recommendation by the Director of Mines and his subordinates in seeking to process and that too when a conditional transfer is no way invalid, for same is in vogue and even permissible under Rule 37 of the Rules 1960 and there are

affidavits as required thereunder filed to act upon apart from the CBI accusing the petitioner in charge sheeting as a pick and choose by leaving others responsible without accusationing them etc., apart from not undertaking any meticulous discussion with reference to the Mining Act provisions and Rules from the judicial restraint in considering the scope of the lis for not a mini trial to undertake but for left open all such contentions for those are the matters that are required to be considered in full dressed trial, and it is made clear that any of the above observations no way prejudice any such right of defence of the petitioner/ A.5 and also of any other accused; the quash petition to that extent of accusation under Section 13 of PC Act is dismissed for this Court is unable to quash for nothing shown within the meaning of its continuation is an abuse of process, though the same is the contention, from what is an abuse of process is laid down by the Apex Court in Chandran Ratnaswami V. K.C. Palanisamy¹¹⁶ on abuse of process and duty of the Court to quash the proceedings in such case that:

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

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

31. In the leading case of Bennett vs. Horseferry Road Magistrates’ Court, (1993) 3 All ER 138, on the application of abuse of process, the

¹¹⁶ (2013)6 SCC 740

court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

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

16). Accordingly and in the result, the Criminal Petition is allowed in part viz.,

a) by quashing the cognizance order of the learned Special Judge for the offences punishable under Sections 120-B read with 420, 420 & 409 IPC for want of sanction to take cognizance, apart from the ingredients constituting the offences under Sections 120-B and 420 IPC prima facie not made out from the facts in so far as against the petitioner/ A.5; and

b) The petition is dismissed in so far as the cognizance order of the learned Special Judge for the offence punishable under Section 13 of PC Act, against the petitioner/ A.5 which is without prejudice to any of the defence of the petitioner/ A.5 in trial. It is made clear that if any charge so far framed in relation to the above pursuant to the cognizance order, said charges other than for the offence punishable under Section 13 of PC Act, is also unsustainable, for all proceedings pursuant to the cognizance order goes without any further clarification for want of sanction including for any offence under criminal breach of trust for the other IPC offences covered by the cognizance order held not made out supra.

Consequently, miscellaneous petitions, if any in this petition shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

Dt.01.06.2017
vvr