

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.6047, 6064, 6609, 8743 of 2013 & 10616 of 2016

COMMON ORDER:

Crl.P.No.10616 of 2016 & Crl.P.Nos.6064, 6609, 8743 & 6047 of 2013 respectively of accused Nos.2, 3, 4, 5, 6 & 9 and 7 & 8 of crime No.311 of 2010 of CCS, Hyderabad are for the offence punishable under Sections 468, 418, 420, 423 read with Section 120-B IPC. These quash petitions along with quash petition Crl.P.No.7370 of 2013 of A.1 abated by the order of the Court dated 21.07.2015 since died, came for common hearing and disposal as outcome of same crime, which is in fact outcome of private complaint of Smt. Fatima Hasna of Kachiguda, Hyderabad dated 12.11.2010 and same when referred by learned Magistrate to the police for investigation under Section 156 (3) Cr.P.C., the CCS, Hyderabad received and registered on 29.11.2010 for said offences.

2. The averments of the private complaint shows that house bearing No.3-5-1102, Narayanaguda originally belonged to father of the complainant (died on 28.05.1996) who possessed the same upon death of his mother Khairunnisa Begum Saheba as per the oral gift dated 12.12.1966 and deed of confirmation of said oral gift with plan for identity of the property covered by 731 square yards of property of the oral gift out of total area of 1776 square yards. The said properties are inherited therefrom by the complainant and her brother and 3 sisters viz., Akramuddin Hasan, Smt. Karima Siddiqua, Smt. Saleha Asmatunnisa and Smt. Sadika Khairunnisa. Their father Afzaluddin Hassan (since died on 28.05.1996) in his lifetime, on 25.05.1989 entered into

development agreement with M/s. Banjara Constructions Company Private Limited, however for lack of funds to the company for development, the development agreement was cancelled and amount paid was reimbursed of Rs.3,00,000/- respectively dated 31.10.1995 and 31.12.1995 and possession was taken back from cancellation of the development agreement. However, after death of their father on 28.05.1996, it was on 14.06.1996, A.3 of private complaint by name Abid Rassol Khan tried to trespass into the property and for that on her compliant, Narayanaguda Police Station registered crime No.159/1996 of even date under Sections 448 & 380 IPC and the complainant also filed a day prior to that, O.S.No.1989/1996 against A.3 and others for permanent injunction relief and counter filed by M/s. Banjara Construction Company Private Limited and A.3-Abid Rasool Khan supra. The complainant then came to know that a document was brought into existence alleging assignment of rights by M/s. Banjara Construction Company Private Limited in favour of A.3 herein representing M/s. NRI Housing Company Private Limited and therefrom the complainant herein reported to Chaderghat Police Station, who registered crime No.177/1996 under Sections 418 & 420 read with Section 120-B IPC against M/s. Banjara Construction Company Private Limited and 7 others including Abid Rasool Khan of M/s. NRI Housing Company Private Limited as deed of assignment is created is forged on non-judicial stamp paper to gain forceful entry as if a builder. The non-judicial stamp paper of Rs.100/- on which the document created is confirmed by the Sub Registrar Office, Uppal by letter No.178/1996 dated 08.08.1996 was sold to one P. Appala Swamy and not at all to NRI

Housing Company Private Limited. Thereafter, A.3 one way or the other is trying to grab the property bearing Nos.3-5-1102 & 1102/1 of Narayanaguda. The Complainant's sisters also filed O.S.Nos.1403 of 1999 against M/s. Banjara Construction Company Private Limited represented by its Managing Director who is none other than Abid Rasool Khan who had changed the name of the company and the brother of the complainant Mohd. Akramuddin Hasan (A.1) for permanent injunction and there was a status quo order therein in I.A.No.1652 of 1999 dated 04.11.1999 and said Abid Rasool Khan (A.3) filed I.A.No.415 of 2005 to vacate the status quo order, which was ended in dismissal on 01.12.2005.

2a). The private complaint averments further show that their brother A.1 Akramuddin Hasan colluded with A.3 Abid Rasool Khan by drawing A.4 & A.6 joined by A.7 to A.9 supra and conspired together to cause wrongful loss to the complainant and other co-owners, to create and put to use forged and fabricated documents setting up title over the property in favour of A.1 their brother and by claiming thereunder to grab the same and as part of the conspiracy, firstly created a will in Urdu purported to be executed by the paternal grandmother of the complainant in favour of her son and daughter in law viz., Afzaluddin Hasan and Liaquathunnisa Begum for their lifetime and vested remainder to A.1-Akramuddin Hasan, created a will in Urdu on a non judicial stamp paper of Nizamat Jung on Rs.3/- and 8 anas bearing No.035102 of the year 1949 (fasli 1368) said to have been executed on 02.04.1950 and also created another forged and fabricated document styling as deed of confirmation (Hiba Bil Musha) dated 08.03.1990 saying orally gifted to A.1 on 29.08.1989 and orally

handed over physical possession to him on even date and the said oral gift covered by the alleged deed of oral confirmation dated 08.03.1990 of A.1 accepting the gift in 1989 supra and came into possession. The property bearing No.3-5-1102 possessed by said Khairunnisa Begum Saheba and the property purchased by her from Nizamath Jung bearing door No.3-5-1101 of Narayanaguda and said 3-5-1101 property sold by A.1 to one K.S.Raghunath on 19.12.1977 and the total area of 2 properties is 1776 square yards and A.1 Akramuddin Hasan tried to link up those as if house bearing Nos.3-5-1102 & 1102/1 of 1101. The Urban Land Ceiling Authority, Hyderabad by order dated 16.11.1992, from the declarations filed by A.1 Akramuddin Hasan and Afzaluddin Hasan under Section 6(1) of the Act in H1/1565 and 1566/1976 holding portion of property held by Afzaluddin Hasan is for premises Nos.3-5-1102 & 1102/1 of 1320.14 square meters=1776 square yards and Afzaluddin Saheb (their father) already orally gifted a portion of house property bearing No.3-5-1102 of 731 square yards out of 1776 square yards to his wife Liaquathunnisa Begum on 21.11.1966. A.1 styling himself to be owner of the premises No.3-5-1102 of Narayanaguda admeasuring 811.25 square yards instead of the correct extent of 1045 square yards claiming under the alleged will and alleged oral gift and confirmation, created a registered lease dated 01.12.2008, bearing document No.3107/2008, permitting A.4 as lessee to sub lease the extent to HPCL represented by A.6 establishing a retail outlet and within two months thereafter A.4 executed registered sub lease dated 30.01.2009, bearing registered document No.228/2009, to which A.8 & A.9 are the attesting witnesses, to deprive the complainant

and other co-owners of their right over the property and A.1 also executed another lease deed on 01.12.2008, bearing document No.3108/2008, in favour of A.4 for house bearing No.3-5-1102/1 alleged premises styling also for 811.25 square yards in the place of correct area of 731 square yards, saying there is a oral gift dated 29.08.1989 by his father Afzaluddin Hasan by setting up will by his father's mother Khairunnisa Begum Saheba with wrong door numbers and wrong description as referred supra and by putting in use forged and fabricated documents referred supra with false claim of exclusive ownership for A.1 over the property bearing door Nos.3-5-1102 & 1102/1 of Narayanaguda. It is pursuant to the said lease and sub lease based on the forged document supra to set up the retail outlet of A.5-HPCL represented by A.6 there was excavation work started in the 2 properties. Subsequently in 2009, complainant and other co-owners in Dassera Vacation having noticed the same issued notice to the Commissioner of Police to furnish information under RTI Act particulars of application made by A.5-HPCL for grant of NOC to set up retail outlet. Thereby all the accused are liable for the offence of cheating, forgery and using as if genuine a forged document for purpose of cheating etc.

3. The private complaint referred 16 enclosures viz., (1) Original Urdu document, sale deed with plan bearing No.52 of 1351 fasli in favour of Khairunnisa Begum dated 30.10.1941 AD, (2) English translation of the sale deed with plan dated 30.10.1941, (3) copy of FIR No.159/1996 of P.S. Narayanaguda dated 14.05.1996, (4) copy of the deed of assignment executed by M/s. Banjara Constructions in favour of NRI Housing Company

Private Limited dated 20.04.1995, (5) copy of FIR No.177/1996 of P.S. Chaderghat dated 06.08.1996, (6) copy of order of status quo granted by the Court of the IV Senior Civil Judge, CCC, in I.A.No.1652/1999 dated 04.11.1999, (7) copy of docket order in I.A.No.405 of 2005 passed by the XI Additional Chief Judge, CCC, Hyderabad dated 01.12.2005, (8) copy of decreetal order passed by IX Additional Chief Judge, CCC, Hyderabad in I.A.No.415 of 2005 dated 01.12.2005, (9) copy of the registered lease deed executed by A.1 in favour of A.4 with plan and annexure for H.Nos.3-5-1102, Narayanaguda, Hyderabad dated 01.12.2008, (10) copy of registered sub lease deed executed by A.4 in favour of A.5 represented by A.6 for H.No.3-5-1102 dated 30.01.2009, (11) copy of registered lease deed executed by A.1 in favour of A.4 with plan for H.No.3-5-1102/1, Narayanaguda, Hyderabad dated 01.12.2008, (12) copy of registered sub lease deed executed by A.4 in favour of A.5 represented by A.6 for H.No.3-5-1102/1, (13) copy of confirmation of gift of H.No.3-5-1102/1, Narayanaguda, executed by Afzaluddin Hasan in favour of his wife Smt. Liaquathunnisa Begum, (14) copy of Hyderabad Metropolitan Water supply and Sewerage Board card No.2662 in the name of Smt. Liyaquathunnisa Begum H.No.3-5-1102/1 in July 1989, (15) copy of I.A.No.369-1996 in O.S.No.1989/1996 dated 17.06.1996 and (16) NOC details provided by C.P. Hyderabad under RTI Act 2005 dated 13.01.2010 respectively. It is from the quash petitions there were interim orders of stay of investigation of crime No.311 of 2010 particularly obtained by A.4 on 05.07.2013 extending from time to time leave about also by others if any.

4. The averments in the respective quash petitions to quash the said FIR proceedings and to stay the investigation reads respectively of quash grounds are that:

4(a). Crl.P.No.10616 of 2016 of A.2-Abid Rasool Khan, the then Managing Director of M/s.NRI Housing Company Private Limited in 1987 which name changed as M/s. Everest Constructions Private Limited in 1995 claimed dissolved or wound up in 2011 and A.3 in his individual name in Crl.P.No.6064 of 2013 are that by the time the complaint filed the entity is not in existence and he is shown as representing the nonest entity, even either the entity or he in individual capacity during its existence not at all guilty for any offence and they are unnecessarily roped for non-settlement of internal disputes between the family of A.1 and his sisters including the defacto complainant etc. The defacto complainant filed similar complaints against A.1 and Everest Constructions Private Limited showing Abid Rasool Khan as its Managing Director as was for the original entity NRI Housing Company which is covered by private complaint referred to Police Mirchowk Police Station who registered crime No.81/2000 on 06.07.2000 and submitted final report for lack of evidence on 12.07.2001. The dispute is purely of civil nature and the present crime cannot be sustained thereby apart from estoppel and obiter. It is also the contention that having vexed with the litigations since in the year 2000 in O.S.No.277 of 2000 in the course of his (Abid Rasool Khan) evidence, he filed affidavit on 20.09.2010 and deposed stating he is no more interested in developing the suit property and relinquishing all of his rights and claims covered by decree in O.S.No.240/2000 and he invested more than Rs.60 lakhs

by paying to A.1 by way of cheques and cash and spent huge amounts for cause vacating 2 old tenants and clearing terms with M/s. Banjara Construction Company Private Limited which originally obtained the development agreement and thereby the crime proceedings are liable to be quashed against A.2 and A.3. It is the contention of A.4 in the quash petition Crl.P.No.6609 of 2013 by name M.Srikanth that there are civil disputes since 1996 covered by 5 suits right from O.S.No.277/2000 and W.P.No.685 of 2010 between A.1 and his sisters, A.2 & A.3 and criminal complaints and counter criminal complaints inter se which the petitioner/A.4 came to know after received Court notices in O.S.No.506 of 2001 where he was sought to be impleaded as co-defendant. The execution of registered lease deed by A.1 (Akramuddin Hasan) in his favour (A.4) and in turn execution of sub lease in favour of A.5 (HPCL) cannot by itself be termed as for purpose of cheating and forgery and those are false documents in fact neither the lease deeds nor the sub lease deeds are false documents but duly and properly executed and it is there A.1 saying he is the owner and on source of title from the will dated 02.04.1950 and deed of confirmation dated 08.03.1990 which are not subject matter of challenge by any civil proceeding and it is not the case of the defacto complainant that this accused offered her any inducement to deliver any property or to give consent in relation thereto in execution of any document and A.4 did not commit any offence and the allegations in the complaint referred to police and registered as FIR no way disclose any offence against the petitioner/A.4 and the private complaint case is filed malafide and it is nothing but unnecessary harassment. Even from the case

of the defacto complainant in claiming the property belongs to A.1 and defacto complainant and sisters, a co-owner can execute lease. The lease obtained by A.4 and in turn executed sub lease to A.5 no way requires to be made a ground to implicate any criminal case and the alleged criminal conspiracy between A.4 and A.5 much less with A.5 to A.9 is baseless even it was the allegations on face value for nothing makes out and the proceedings are therefore liable to be quashed against A.4.

4(b). Coming to Crl.P.No.6047 of 2013 of A.7 & A.8 they are only the attestors of the lease deeds with A.9 employee of A.5 HPCL and there is nothing to say they attested as part of privy and with conspiracy to sustain the allegation and the FIR so far against A.7 & A.8 thereby liable to be quashed.

4(c). Coming to Crl.P.No.8743 of 2013 of A.5, A.6 & A.9, A.5 HPCL represented by its Attorney S.Hari Prasad, Chief Regional Manager, A.6-S.K. Suri, the then CRM Retails and now DGM and A.9-R.Umapati, Manager of HPCL saying there are civil disputes between A.1 and his sisters including defacto complainant since 1996 which the A.5, A.6 & A.9 did not aware including as on the date of sub lease deeds obtained by A.4 on 30.01.2009 and later they came to know having received summons in the implead petitions in the pending civil suits particularly O.S.No.506 of 2001 and there are criminal complaints and counter criminal complaints against each other between defacto complainant and sisters and their brother A.1 Akramuddin and it is for non settlement of inter se disputes. Thus petitioners are falsely roped and they are nothing to do with their disputes. A.5 entered sub lease with A.4

only after taking legal opinion and as per company policy and A.6 signed the sub lease deeds on 30.01.2009 in his official capacity being the CRM and duly constituted attorney of HPCL, but for that A.6 has no personal interest in the subject property nor gain anything nor acted personally for anything and A.9 sales officer of said region stated as a witness to sub lease deed dated 30.01.2009 and is neither personal interest in the site and has gained anything therefrom and they are no way connected with the above properties nor related to any other accused nor the complainant. In fact a co-owner can even lease out the property to validate the lease and they did not create any false document to make them liable for any offence and thereby the proceedings are liable to be quashed against them.

5. The learned counsel for the complainant reiterated the complaint averments and sought for dismissal of the quash petitions stating there are prima facie accusations against all the petitioners even the case against A.1 abated and for the acts of A.3 as Managing Director of entity of A.2 even shown dissolved or wound up cannot escape from prosecution so also for the personal acts of A.6, A.9 & A.7 and A.8 apart from A.4 main privy with A.1 and thereby all the quash petitions are liable to be dismissed.

6. Heard arguments of both sides at length and perused the material on record.

7. So far as A.7 & A.8 concerned they are mere attestors of the lease deeds or sub lease deeds of the year 2008 & 2009 executed by A.1 in favour of A.4 and in turn by A.4 in favour of A.5. It is their contention of they have no knowledge of the

contents and they have no knowledge of the transactions of source of title of A.1 and claim with reference to will dated 02.04.1950 and deed of confirmation dated 08.03.1990. The law is fairly settled at least from the 3 Judge expression of the Apex Court in **M. L. Abdul Jabbar Sahib vs H. V. Venkata Sastri & Sons**¹ that attestation no way fixing attesting witness with knowledge of contents of the document or implying consent for contents of documents, unless it is established by any independent evidence that to the signature was attached the express condition that it was intended to convey something more than mere witnessing to the execution or attestation. The attestation mainly to mean executing, signing or affixing in the presence of 2 or more witnesses each of whom has seen the executant signing and vice versa and not necessarily more than one of such witness shall present and no particular form of attestation is necessary. From the private complaint averments so far as A.7 and A.8 concerned, there is nothing specifically mentioned of their active role either in committing any offence of cheating or forgery or forgery for purpose of cheating or using as genuine a forged document or the like. Having regard to the above, even on the face value of complaint averments, there is no any offence made out against A.7 & A.8 therefrom of mere attestation in view of the settled proposition of law, for nothing to presume any knowledge of them to the contents of the documents leave apart from no duty caste upon them to verify genuineness of source of title of executant of the document for their attesting.

¹ AIR 1969 SC 1147

7a). Thus, the proceedings of crime No.311 of 2010 in so far as A.7 & A.8 are liable to be quashed and accordingly, quashed by allowing the Crl.P.No.6047 of 2013.

7b). Though it is the contention of A.9 that he is also placed in same position from attestation of the sub lease deed dated 30.01.2009, it requires further discussion in considering any further role of A.9, so also of A.6 being the employees of the entity - A.5, for the sub lease is in favour of A.5 executed by A.4 the lessee from A.1.

8. It is not the case of the complainant or accused or any others of the lease deeds and sub lease deed transactions are not taken place or any of the signatures are forged or anybody impersonated for purpose of cheating, but for to say A.1 executed the document of lease by pretending as if got source of title by relying upon forged and fabricated documents to the false claim of title in execution of lease in favour of A.4 and in turn by A.4 to A.5. In this regard there is no need of repeating the private complaint averments of the referred complaint registered as FIR. The allegation in nutshell in this regard is that A.1 is not the absolute owner of the properties, but for one of the co-owner or co-sharer along with the defacto complainant and other sisters of them and he falsely claimed as if he is the owner for purpose of cheating by using as if genuine forged and fabricated documents of so called will and so called deed of confirmation. The so called will is of the year 1950 and the so called deed of confirmation is of year 1989-1990 and the alleged oral gift prior to that is of 1966. The lease deeds obtained by A.4 from A.1 are of the year 2008, leave about

the so called mis-description of the door numbers of 3-5-1102 & 1102/1 instead of 3-5-1101 and the mis-description of the extents much less out of total area of 1776 square yards of the site covered by door No.3-5-1102, for some extent sold by A.1 to one K.S. Raghunath on 19.12.1977 that was the property purchased from Nizamath Jung by Khairunnisa Begum, the paternal grandmother of A.1 for door No.3-5-1101. In the complaint it is averred that these documents were created viz., the so called will and confirmation with anti dates for purpose of the lease in claiming by A.1 as if absolute owner, though his sisters also got undivided interest therein. It is the averment of A.4 privy to it in obtaining the lease deeds from A.1, who died and the prosecution of the said crime is abated undisputedly against A.1. If at all it is forged and fabricated by A.1 including for purpose of cheating his sisters though he is one of the co-owners along with his sisters in claiming as if absolute owner, A.1 alone liable in the absence of showing A.4 is also privy for purpose of getting the lease deeds from A.1 to cause wrongful loss to the other rightful owners, the sisters of A.1. So far as the contention of all the accused that, even a co-owner can execute lease to bind the other co-owners, it is unnecessary to consider apart from same is not even the recital admittedly in the lease deeds to give any credence to the contention. Once it is the allegation of A.4 is privy to it, there is nothing to quash the proceedings prima facie against A.4 even from death of A.1, but for to permit the police to proceed with investigation however not to arrest pending investigation, but for if at all requires his presence by notice to appear including for any interrogation and to submit any information and to cooperate for investigation and for any non-

compliance to invoke Section 41-A CrPC procedure for arrest or the like.

9. So far as A.5, A.6 & A.9 concerned, A.5 entity is the sub lessee from A.4 in the sub lease deeds and there is no any forgery or fabrication or using as genuine by them any forged or fabricated documents knowingly. At the cost of repetition, the lease deeds executed by A.1 in favour of A.4 dated 01.12.2008 are not the forged documents and pursuant to the lease deeds, A.4 executed sub lease deeds in favour of A.5 dated 30.01.2009 and those are also not the forged documents. A.5 entity represented by A.6 obtained legal opinion from their Standing Counsel on 04.09.2006 with reference to the claim by A.1 of the source of title of A.1 to execute lease in favour of A.4 for in turn to obtain sub lease from A.4 by A.5 in giving license to the retail outlet to A.4. The opinion speaks that the documents were verified, also EC dated 17.05.2005 from 1941-1980, EC dated 01.06.2006 from 28.06.1980 to 31.01.1996 and EC dated 01.06.1996 from 01.02.1996 to 31.05.2006, besides the GHMC records of tax demand notices and tax receipts that were given by A.1 Akramuddin Hasan. No doubt the complainant filed as additional material, the NOC issued by the Commissioner of Police that was cancelled and prosecution was initiated against A.1 (Akramuddin Hasan), A.4 (M.Srikanth) and A.5 HPCL in crime No.221/2016 for the offences under Sections 417, 420, 468 & 471 IPC.

10. The crime No.221/2016 was registered from the report of one Damodhar, Junior Administrative Officer of the Office of Commissioner of Police, Hyderabad, dated 06.06.2016 against 3

accused by name Abid Rasool Khan, M.Srikanth and Chief Regional Manager Retails, HPCL Limited. Said complaint/report in L&O/M7/1899/2016 dated 06.06.2016 addressed to the SHO supra reads that on 25.01.2006 an application for obtaining NOC certificate for installation of retail outlet MS (Petrol), HSD (Diesel) and Auto LPG at H.No.3-5-1102 & 3-5-1102/1, Narayanaguda, Hyderabad with necessary documents received and the same was processed and granted NOC vide office letter L&O/M7/584/2006 dated 17.03.2006. It was on 04.05.2015 (9 years later) a complaint has been received from Mohd Khalid Shareef of Syed Nagar, MLA Colony, Road No.12 Banjara Hills, alleging that HPCL obtained NOC certificate for installation of retail outlet supra and the dealer submitted forged documents to the HPCL by claiming as if Abid Rasool Khan (A.1) is owner of the land and saying the NOC was granted without verification of the genuineness of the documents, the HPCL based on those forged documents submitted by dealer obtained valuation report for the site in the name of said Abid Rasool Khan (A.1) as if he is owner. From said complaint of Mohd Khalid Shareef dated 04.05.2015, the Office of the Commissioner of Police conducted enquiry by issuing notice to the HPCL for producing copies of the documents they furnished to the Commissioner of Police Office for NOC, since originally filed is missing from office of Commissioner of Police and they did not produce the copies despite reminders and final show cause notice, but for submitted irrelevant documents. It is learnt that Srikanth is selected dealer in collusion with Abid Rasool Khan and the Chief Regional Manager (Retails) of HPCL obtained the NOC by furnishing false documents and by practicing deception on the

authority (Office of Commissioner of Police) for NOC claiming Rasool (A.1) is owner of the land. As per the complaint of Mohd Khalid Shareef supra, the premises for which the NOC granted by the Commissioner of Police originally belonged to Afzaluddin Hassan and not that of Abid Rasook Khan (A.1) hence to take action. The said report/complaint of the JAO of Commissioner of Police dated 06.06.2016, as per the endorsement of the Inspector of Police, Narayanaguda, received on 30.06.2016, in registering the said crime No.221/2016 against 3 persons (Abid Rasool Khan, Srikanth and CRM (R), HPCL) for the offences punishable under Sections 417, 420, 468 and 471 IPC. It also discloses the NOC issued on 17.03.2006 was cancelled on 06.06.2016, by separate order in L&O/M7/1899/2016, that no way even show from existence of crime in privy of officials of HPCL in creating any documents in favour of A.1 with anti date like will or gift or confirmation deeds, much less with anti dates, as the whole case of the complainants herein is the lease deeds and sub lease deeds obtained and NOC obtained is to support the false claim of A.1 that he is the absolute owner, though he is one of the joint owners along with his sisters and for that he created the documents so to execute leases in favour of A.4 and sub leases in favour of A.5 in turn by A.4.

11. In fact the execution of lease or sub lease is outcome of very paper publication of A.5-HPCL on 03.10.2005, for requirement of a site on lease to set up a retail outlet and the A.4 applied for dealership showing A.1 leased out the property. A.4 Srikanth produced the registered lease deeds dated 01.12.2008 obtained from A.1 with clause therein for sub lease in favour of HPCL by A.4

for setting up the retail outlet. The sub lease in turn executed on 30.01.2009. In fact the NOC applied was pursuant to the paper publication as per Rule 144 of the Rules 2002, made under Section 4 of the Petroleum Act, shows NOC is to be obtained from Commissioner of Police in Form No.9 with plan. There it is if at all pretended by A.4 set up A.3 pursuant to the development agreement in favour of A.2 executed by father of A.1 for development of the site and A.2 in turn changed the name as A.3 as a separate entity by attornment if at all of the development agreement, leave about the contentions of the complainant of original development agreement is already cancelled and there is nothing to substantiate still A.3 representing A.2 changed entity was shown for purpose of NOC that was filed, if at all from the documents to be applied by A.4 & A.5. There is something to say role of A.3 in this regard even from the complaint averments referred supra. However, coming to A.6 representing A.5 even shown initially as co-applicant if any of NOC by HPCL of the so called development agreement as if not substantiates in favour of A.2 represented by A.3 for claiming by A.4 if at all in collusion with A.1 by them, A.6 cannot be made liable personally, nor applied for NOC but for A.5 if at all even represented by A.6 for no any specific personal act to attribute against A.6, other than by A.5, for there is no statutory vicarious liability of an individual representing the entity, when the entity got the heart and soul and it is heart and soul of the person representing the entity to attribute and therefrom the representatives cannot be made personally liable, but for the entity as per the settled law from several expressions of the Apex Court that also reiterated in the recent past expression of

this court in Criminal Petition No.7584 of 2015 N. Srinivasan, (India Cements) Vs. CBI, judgment dt.18.03.2016. In fact there is offer letter by A.1 to lease out by claiming as owner for A.4 to apply even referring to A.3, A.2 and A.1 the legal notice issued by the complainant's sisters to HPCL is only dated 01.10.2009, but the sub lease deeds were dated 30.01.2009, executed by A.4 in favour of A.5 pursuant to the lease deeds obtained by A.4 from A.1 on 01.12.2008.

12. In fact as referred supra, the officials of A.5 based on the legal opinion obtaining from their standing counsel dated 04.09.2006 proceeded further in obtaining the sub lease deeds pursuant to the lease deeds obtained by A.4 from A.1. There is thus nothing even to say A.9 and A.6 of A.5 were parties to the so called documents forged or fabricated by A.1 and if at all also with A.4 as link documents to the property including the so called will or gift or confirmation documents of 1950, 1966 & 1989-1990 respectively. It is also not possible to stretch anything, as the paper publication of HPCL for retail outlet supra was dated 03.10.2005 and even from the complaint averments covered by FIR the so called assignment deed of A.3 & A.2 of the so called development agreement, inter se between M/s. Banjara Construction Company Private Limited and NRI Housing Company Private Limited was prior to 1996 and even the complainant obtained a letter dated 08.08.1996 from the Sub Registrar showing the non judicial stamp worth Rs.100/- not sold to A.2 or A.3 of NRI Housing or the earlier entity Banjara Constructions but it was sold earlier to one P. Appala Swamy to say if at all the stamp paper purchased and available in the name of Appala Swamy was made

use by A.2 and A.3 and A.1 if at all respectively to make an allegation only against them and cannot be against A.5, A.6 and A.9, leave against A.4 even to that extent. There is nothing even to attribute against A.6 & A.9 have knowingly used as if genuine any forged documents including those referred supra, if at all forged by A.1, A.2 or A.3 or A.4 as the case may be.

13. Having regard to the above, the participation in the lease or sub lease by A.6 or attestation by A.9, apart from want of sanction by competent authority under Section 197 CrPC to prosecute as contended, even to left open any such defence to decide later, they otherwise even cannot made personally liable for any of the offences. Even so far as A.5-entity, as referred supra, the paper publication was dated 03.10.2005. The so called activity of cleaning the premises by the accused persons A.1 or A.4 as the case may be were started in 2006. The lease deeds obtained by A.4 from A.1 were subsequently in December 2008. No doubt pursuant to the legal opinion obtained by A.5 dated 04.09.2006. Even the letter of intent dated 17.01.2006 of HPCL, cannot attribute on A.5-HPCL any acts of forgery or fabrication much less for purpose of cheating or using as genuine any forged documents, much less to say privy with A.1 or A.4 or A.1 to A.4. It is pursuant to the paper publication by A.5, applied by A.4 with offer letter of A.1 as owner, the letter of intent came into existence. The mere stray averments in the complaint of the unregistered will deed of 1950 with anti date created or confirmation of oral gift of 1966, shown made on 08.03.1990 or 29.08.1989 as if father of A.1 executed to A.1 and also made with anti date, any of those cannot make A.5 or its employees A.6 & A.9 as privy with A.1 or A.4 or A.1

to A.4 as the case may be, even those documents were forged and created much less with anti date by A1 or any among A1-4.

14. Even from the complaint averments showing paper publication of A.5 for land to establish retail outlet invite dealers on 03.05.2005 and it provided for selection of dealers and after selection within 2 months from the date of letter of intent being issued land to be provided by dealer to officials concerned even earlier there was a status quo order of 2005, and A.2 and A.3 filed an application to vacate the status quo order and the same was dismissed on 01.12.2005 and thereby A.4 was set up if at all by A.1, A.2 and A.3, for the dealership concerned, it is at best showing a privy between A.1 to A.4 and nothing between them with A.5, much less to attribute anything against officials of A.5 viz., A.6 or A.9 specifically. Even the irregularities in the valuation report mentioning Everest Constructions represented by A.3 or A.4 is shown as benamidar of A.3 for entering lease transaction therefrom, there is nothing to attribute anything against A.5, A.6 or A.9 of they are privy with them, that to when they are acted on behalf of A.5 and based on the legal opinion referred supra dated 04.09.2006.

15. No doubt in the quash proceedings as laid down by the Apex Court in **Rukmini Narvekar Vs. Vijaya Satardekar and Others**² accused is also entitled to bring on record any material in their favour though otherwise shown from the complaint averments and that too quash cannot be entertained but for in exceptional cases at the nasal stage of the crime from FIR without

² (2008) 14 SCC 1

completion of investigation. However so far as against A.6 & A.9 and also A.7 & A.8 concerned as referred supra, there are no worth allegations and even on the face value of the allegations, for no case made out against them in the absence of showing specific overt acts attributing knowledge of even using as genuine any documents knowingly those are forged at least to attract 471 IPC for other penal provisions have not at all apply against them as concluded supra. Thereby the crime proceedings against A.6 to A.9 are liable to be quashed.

16. Coming to the decision placed reliance by learned counsel for the petitioners/accused Nos.2 to 4 on the expression of the Apex Court in **Chandran Ratnaswami V. K.C. Palanisamy**³ that where it is an abuse of process to continue the proceedings, it is the duty of the Court to quash the proceedings in such case by clarifying what is meant by abuse of process of court, that:

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

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

³ (2013)6 SCC 740

what is, in all other respects, a perfectly supportable case.

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

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

17. The other expression placed reliance is **Kishan Singh Vs. Gurpal Singh and Others**⁴ also speaks of inherent power to quash the proceedings exercised where it is abuse of process of law and where it is malafide outcome to wreak vengeance. Here it is needful to mention that though **Kishan Singh supra** also in relation to outcome of some civil disputes, it is settled law that each depends upon own facts and there can be no precedents on facts, for even a little change in facts may tilt the result. Apart from that there is nothing to say the continuation of proceedings from the observations supra against A.2 to A.4 in way amounts to abuse of process. Coming to the other decision in **Devendra Vs. State of U.P.**⁵ it speaks on the ingredients of cheating of the *mens rea* must be from the inception to deceive and so far as forgery making of a false document is sine-quo-non. The other expression placed reliance is **Dr. Vimla Vs. The Delhi Administration**⁶, to attract the offence under Section 468 IPC of forgery for purpose of cheating, the fraud involve two elements of deceit and injury to person deceived. As discussed supra in the facts, once there is prima facie accusation on the face value of the allegations in the

⁴ (2010) 8 SCC 775

⁵ (2009) 7 SCC 495

⁶ AIR 1963 SC 1572

FIR, this Court cannot conduct a mini trial on the correctness or otherwise of the same, that too at the nasal stage by preventing investigation. As concluded supra, there is prima facie accusation and as such there is nothing to quash the proceedings invoking inherent power and even applying the guidelines of the Apex Court in **State of Haryana and Others Vs. Bhajanlal and Others**⁷. It is needful to say that the Apex Court in **Umesh Kumar Vs. State of A.P.**⁸ while speaking on existence of extraordinary power under Section 482 Cr.P.C. with the High Court to exercise, however says sparingly either to secure the ends of justice or to prevent abuse of process, which power to exercise is *ex debito justitiae*, and however in exercise of such powers, it is not permissible for the High Court to appreciate the evidence, as it can only assess on face value of the material on record to satisfy prima facie accusation of sufficient ground for proceeding or not, for not to conduct a mini trial or roving enquiry on correctness and even any allegation of ill-will and proceeding to wreak vengeance, that cannot be a ground to quash the proceedings if otherwise sustainable.

18. Having regard to the above and as concluded supra from there is prima facie accusation against A.1 to A.4 and of whom so far as against A.1 since abated, and so far as against A.2 claim is not in existence for there is no record of the Registrar of Companies showing winding up, much less by any Court proceedings even, for any material to support any such contention, it is left open to submit during investigation before the IO to

⁷ (1992) Supp 1 SCC 335

⁸ 2013 (10) SCC 591

consider and but for that observation so far as A.2, there is nothing to quash the proceedings even against A.2.

19. Accordingly and in the result, the quash petition of A.2 subject to the above observations and of A.3, A.4 are dismissed in Crl.P.Nos.10616 of 2016 & 6064 & 6609 of 2013 and the quash petition in Crl.P.No.8743 of 2013 is allowed in so far as against A.6 & A.9 and also against A.5 and the quash petition in Crl.P.No.6047 of 2013 of A.7 and A.8 is also allowed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 01.06.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

