

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2160 OF 2011

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by accused No.1 viz., Ajit Tewari requesting to quash the proceedings against him in C.C. No.49 of 2010 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam. Along with the petitioner, two more persons were arraigned as accused Nos.2 and 3 viz., Gujjala Venkata Ratnam and Yedurupadu Janarthan, respectively.

2. The petitioner worked as Chairman and Managing Director (C&MD) of Hindusthan Shipyard Limited, Visakhapatnam. Accused No.2 viz., Gujjala Venkata Ratnam was General Manager (Ship Repair) and accused No.3 viz., Yedurupadu Janarthan was Director (Technical) at the relevant time. Petitioner and accused No.3 were retired from service by the date of registration of the present case. They alleged to have committed the offences punishable under Sections 120-B and 420 of Indian Penal Code, 1860, (for short 'IPC') and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'PC Act').

3. Heard Sri K. Ramakrishna Reddy, learned Senior Counsel appearing for Sri K. Vivek Reddy, learned counsel for the petitioner, and Sri K. Surender, learned Special Public Prosecutor for C.B.I. Cases, and perused the material on record.

4(a) The learned senior counsel referred to the allegations set out in the charge sheet, the material on record and made submissions that since the petitioner was appointed as Chairman and Managing Director of Hindusthan Shipyard Limited by the President of India, by the Government of India Order No.SY-11011/1/2003-HSL dated 19.01.2004, and the terms of appointment order refer to disciplinary authority in this case would be the President of India and, thus, the petitioner can be removed by the President of India falling within the definition of 'Public Servant' under Section 21 IPC read with Section 197 of the Code, requires prior sanction of Government of India before taking cognizance, even though, he was not in service on the date of taking cognizance and hence the cognizance taken without prior sanction to launch prosecution against him is unsustainable and refers to rulings of the Hon'ble Supreme Court in **State of Madhya Pradesh v. Sheetla Sahai¹**, **R. Balakrishna Pillai v. State of Kerala²**, and **State of Orissa v. Ganesh Chandra Jew³**.

¹ (2009) 8SCC 617

² (1996) 1 SCC 478

³ (2004) 8 SCC 40

(b) The learned senior counsel would submit that charge sheet is silent as to whether prior sanction was obtained or not, and, therefore, the charge sheet is liable to be quashed.

(c) His next submission is that ingredients of the offence of cheating are not made out against the petitioner within the meaning of Section 415 read with Section 420 IPC, emphasising the essential ingredients of offence of cheating and relying on the ruling of the Hon'ble Supreme Court in **V.Y. Jose v. State of Gujarat**⁴ as the charge-sheet does not disclose that the petitioner had fraudulent or dishonest intention while making a false statement. The learned senior counsel would submit that since the charge-sheet does not disclose that the petitioner made any false statement or had dishonest intention or had fraudulently or dishonestly induced any person to deliver any property, prosecuting him is clear abuse of process of Court.

(d) The learned senior counsel also would submit that re-tendering after L-1 supplier M/s. Asian Associates, Mumbai, withdrew its bid and awarding contract to lowest bidder cannot be wrongful loss as the same was in accordance with law as laid down by the Hon'ble Supreme Court as per the directions of Chief Vigilance Commissioner's guidelines in **Centre for Public Interest Litigation v. Union of India**⁵.

⁴ (2009) 3 SCC 78

⁵ (2012) 3 SCC 1

(e) Touching criminal conspiracy in the context of offence punishable under Section 120(B) IPC alleged against the petitioner, the learned senior counsel would submit that nowhere, the investigating officer or the prosecution stated that the petitioner hatched a plan and by conspiracy entered into agreement to do or cause any illegal act by illegal means and the element of knowledge about indulgence either an illegal act or a legal act by illegal means is absolutely essential to prove the charge of conspiracy and has relied on the rulings of the Delhi High Court in **A.K. Ganju v. C.B.I.**⁶ and the Hon'ble Supreme Court in **Ajay Aggarwal v. Union of India**⁷.

(f) So far as the offence punishable under Section 13(1)(d) read with Section 13(1)(ii) of PC Act is concerned, submission of the learned senior counsel is that the complainant mentioned Section 13(1)(d) of PC Act alone in the charge sheet and did not indicate in the charge sheet whether they are invoking Section 13(1)(d)(i) or (ii) or (iii) of PC Act.

(g) The learned senior counsel would also submit that there is no allegation that the petitioner acted in a corrupt or illegal manner to make out an offence punishable under Section 13(1)(d) of PC Act and relies on the rulings of the Hon'ble Supreme Court in **C.K. Jaffer Sharief v. State (through CBI)**⁸ and **Major S. Kale v. State of Maharashtra**⁹.

⁶ MANU/DE/4216/2013

⁷ (1993) 3 SCC 609

⁸ (2013) 1 SCC 205

⁹ (1977) 2 SCC 394

(h) The learned senior counsel also would submit that there is no allegation in the charge sheet or in the documents filed by the C.B.I. that the petitioner obtained or tried to obtain any valuable thing or pecuniary advantage and in the absence of any reference to valuable thing or pecuniary advantage in the charge sheet, offence punishable under Section 13(1)(d) of PC Act cannot be said to have been made out, relying on the ruling in **A.K. Ganju**⁶ and also ruling of the Bombay High Court in **Cajy Fernandes v. State**¹⁰ and Orissa High Court in **Prakash Mishra v. State of Odisha**¹¹.

(i) In regard to invoking Section 482 of the Code to exercise extraordinary power, the learned Senior Counsel relies on the rulings of the Hon'ble Supreme Court in **Satish Mehra v. State (NCT Delhi)**¹², **State of Karnataka v. L. Muniswamy**¹³ and for the proposition that the prosecution cannot go beyond charge sheet and if charge sheet does not make out any offence, the Court can quash by invoking the power under Section 482 of the Code, he relies on the rulings of the Hon'ble Supreme Court in **Dr. Sharda Prasad Sinha v. State of Bihar**¹⁴, **R.P. Kapur v. State of Punjab**¹⁵ and the Delhi High Court in **Ataur Rehman v. State of Delhi**¹⁶.

¹⁰ 2014 SCC Online Bom 2275

¹¹ 2015 SCC Online Ori 196

¹² (2012) 13 SCC 614

¹³ (1977) 2 SCC 699

¹⁴ (1977) 1 SCC 505

¹⁵ AIR 1960 SC 866

¹⁶ MANU/DE/3022/2009

5(a) Per contra, the learned Special Public Prosecutor for C.B.I. Cases would submit that by the date of registering the crime on 05.08.2009 and later when charge sheet was laid on 27.09.2010, the petitioner had already demitted service and since the offence punishable under the provisions of PC Act is also clutched against the petitioner besides the offences punishable under Sections 420 and 120-B IPC read with other offences, no prior sanction is necessary to launch prosecution against the petitioner.

(b) The learned Special Public Prosecutor for CBI Cases would also submit that criminal intent behind commission of the act, which is alleged to have occasioned the crime will have to be established before the liability of the person charged with the commission of crime can be adjudged and doctrine of *mens rea* requires proof of either intention or knowledge on the part of the petitioner / accused and such proof is to be gathered from the surrounding facts established by the evidence and materials before the Court and not by a process of probe of the mental state of the accused, and, therefore, whether commission of offence under Section 12 of PC Act read with Section 120-B IPC had been occasioned by the acts attributed to the petitioner or not, is a matter that can be determined only after the evidence in the case is recorded and thereby contends that it is premature to tender any positive finding without the aid of evidence on record and to exonerate the petitioner. To fortify the said

submission, he placed reliance in **Rajat Prasad v. Central Bureau of Investigation**¹⁷.

6. Certain relevant facts are necessary to refer to in order to appreciate the submissions made by both sides and to arrive at whether the relief sought for by the petitioner can be acceded to.

(a) Prior to appointment as Chairman and Managing Director (CMD), Hindustan Shipyard Limited, Visakhapatnam, the petitioner was working as Assistant Chief of Naval Staff. By order dated 19.01.2004, the Under Secretary to Government of India, Ministry of Shipping, communicated his appointment order through the Order No.SY-11011/1/2003-HSL, appointing him as Chairman and Managing Director of Hindustan Shipyard Limited for a period of five (5) years with effect from the date of taking post or charge till the date of superannuation or the further orders whichever event occurs earliest.

(b) The petitioner as Chairman and Managing Director, held meeting with the Director (F&C), DGM (Finance), DGM (Purchase & Material), on 20.10.2005. A decision was taken to procure 1000 MT Ship Building Quality Grade-A Steel Plates for Buffer Stock to meet the requirement of repair vessels and to avoid procurement of Steel in piecemeal at higher price. The petitioner informed accused No.2 viz., G.V. Ratnam, who was then working as General Manager (Ship Repairs), to work out the sizes of 1000 MT Steel plates. He,

¹⁷ (2014) 6 SCC 495

accordingly, prepared a note on 22.01.2005 for procurement of 1000 MT steel plates of different thickness and the same was approved by accused No.2. The Drawing Office of HSL prepared a purchase indent and submitted to the Purchase Department to issue a tender and in view of urgent requirement, a limited tender was floated and was mailed to various suppliers to offer their technical and commercial bids to supply 1000 MT Mild Steel Plates. M/s. Asian Associates, Mumbai, was also one of the suppliers, who offered to supply material and found as L-1 supplier. But, instead of placing purchase order on L-1 supplier, the HSL requested L-1 supplier to extend offer validity period on several occasions and ultimately decided not to procure material from the said company and the subsequent purchase of same material from another supplier on fresh tender caused wrongful loss to the HSL. That has been allegation in the complaint.

(c) The allegations in the charge sheet are though, the tender was mailed to 40 suppliers, Purchase Department received tenders from nine (9) suppliers only. It forwarded the technical bids on 09.12.2005 to Material and Estimate Steels (M&ES) Section for technical evaluation. The suppliers are found technically suitable by the said department and forwarded the same to the Purchase Department on 14.12.2005. It appears, the Purchase Department sought commercial clarification from the technically suitable parties and, thus, finally six (6) parties were found suitable for opening of the price bids. M/s. Asian Associates, Mumbai, was figuring as fifth (5th)

supplier in the list. On 12.01.2006, price bids were opened. On approval granted by the Director (Technical), who is accused No.3, on behalf of the petitioner, on opening the bids, M/s. Asian Associates, Mumbai (representative of M/s. Salzitter Mannesmann, Germany), was found to be L-1 amongst the tenderers as they offered a competitive price beneficial to HSL with a substantial discount of 90 USD/Mt and 180 days of credit payment for supplying MS plates from rolling stock.

(d) Accused No.2, G.V. Ratnam, General Manager (Ship Repairs), who was in charge of the User Department, Dry Dock Ship Repair, on 22.11.2005, got approval of the petitioner for placement of order for immediate procurement of 250 MT steel plates separately from ex-stock by taking advantage of the existing tenders/quotations already received and handed over the same to J. Mohana Rao, DGM (P&M), on 07.01.2006 for further action.

(e) Price comparative statement was prepared by the Purchase Department on 18.01.2006 for procurement of 1000 MT MS Steel Plates on Rolling stock basis and price comparative statement for procurement of 250 MT on ex-stock basis and it was found that L-1 supplier M/s. Asian Associates, Mumbai, and M/s. Igawara Industrial Services & Trading Private Limited, Singapore, became successful for supplying the material on rolling and ex-stock basis respectively. Thereafter, the MES Department, prepared purchase advice for procurement of the above material and forwarded to accused No.2.

Accused No.2, instead of signing both the purchase advices, signed the purchase advice dated 19.01.2006 in Purchase Indent No.21115300 to procure 239.453 MT MS Plates on Ex-stock basis at a cost of Rs.67,46,772.21 paise from M/s. Igawara Industrial Services and Trading Private Limited, Singapore, only and did not sign the purchase advice dated 19.01.2006 in purchase indent No.21114800 for procurement of 979.679 MT of Steel plates at a cost of Rs.2,17,87,639.69 paise from M/s. Asian Associates, Mumbai, and returned both the purchase advices to the Purchase Department through MES on 20.01.2006. Pursuant thereto, the DGM, Purchase & Material Department, prepared a note and highlighted the following points:

- “1. Originally a limited tender was issued for procurement of 1000 MT based on the purchase indent No:21114800 on 24.10.2005.
2. Subsequently another indent No:21115300 dt.26.11.2005 was also received for procurement of 250 MT steel plates Ex-stock basis.
3. As the Tender for 1000 MT, has already been floated and the tender was not opened yet, by that time, it was decided to club this requirement with the 1000 MT with a view to save time.
4. After opening the Bids, it was observed that some of the vendors quoted that delivery period as against

Rolling and some of the vendors quoted delivery on Ex-stock basis.

5. Under the above circumstances a committee was formed and headed by GM (SR) and it was decided to procure 1000 MT against the rolling and additional requirement of 250 MT to be procured from Ex-stock suppliers depending on the L1 bidder of Ex-stock suppliers. *Accordingly approval from CMD had been obtained and opened Price bids.*
6. On comparison of Price and upon establishing the L1 status, Drawing Office was requested to issue necessary purchase advices for the above requirements.
7. Drawing Office vide their note dated 19.01.2006 informed that GM(SR) has signed only 250 MT requirement Purchase Advice and in respect of 1000 MT GM did not signed (*Sic. Sign*) since they required 250 MT urgently first against the above tender.”

(f) The Purchase Department then gave certain clarifications as in paragraph No.8 of the charge sheet, which are thus:

“8.1 The procurement of 250 MT in the first instat (*Sic. instance*) is not possible against the above tender as per the procedure as the tender was issued only for 1000 MT.

8.2 The offer validity for the above requirement has expired by 20.01.2006 and further extension is awaited from the vendor.

8.3 The bidder who becomes L1 for 1000 MT had expressed their inability to accept part order.

However they will supply 1000 MT by mid March 2006 if order is placed on them for 1000 MT as well as 250 MT and requested to treat this as urgent.”

(g) Thus, comments were sought with regard to procurement of 1000 MT as well as 250 MT and requested to treat it as urgent by the Purchase Department. On 23.01.2006, the DGM (P&M) made another note mentioning ‘discussed with Director (Tech.) and C&MD let us process the requirement of 1000 MT as Buffer stock as the same will be required for future repair vessels including the present vessels. The price at which HSL is getting the steel is very *lucrative and can process this under 180 days credit which was offered by the L1 supplier M/s Asian Associates, Mumbai*”.

(h) The Purchase Department, on 24.01.2006, recommended the proposal to place the order on M/s. Asian Associates, Mumbai, on lowest technically suitable offer basis for procurement of 979.679 MT SBQ Steel plates at the total value of USD 492,357.27 (Rs.2,19,93,599.25) CIF, Visakhapatnam. The said note was forwarded through Audit and Finance Department and the same was signed by accused No.3 viz., Y. Janardhan, Director (Tech.) on 27.01.2006 and the petitioner as C&MD approved the note on 28.01.2006 mentioning as “*please ensure prompt shipment.*” *Please let me know the payment method*”.

(i) The prosecution alleges that instead of placing the purchase order on L-1 supplier M/s. Asian Associates, Mumbai, to supply 979.679 MT MS steel plates, on 07.02.2006 C&MD held a meeting with accused Nos.2 and 3 and discussed about procurement of 1000 MT steel plates and decided not to procure 1000 MT steel plates. The DGM (P&M), advised not to take any action on this issue and decided to go for 500 MT only in the month of March or April 2006. Based on that, view of accused No.2 was sought by the Purchase Department on 07.02.2006. Accused No.2 has given his comments stating that 'procurement action may be initiated in the month of March/April 2006 for purchase of 500 MT LR Gr.A Steel Plates. A review of additional demand if any based on enhanced ship repair turnover can be undertaken during the middle of next financial year and suitable action can be initiated accordingly. An additional expenditure of Rs.2.00 to Rs.2.20 crores towards bulk steel procurement at this point of time especially keeping in view the present financial condition is neither desirable nor recommended.' The same was endorsed by accused No.3, who was in charge of all Technical Departments in HSL, and made a mention in the note that "we will procure only 500 Mt of LRS GR-A steel plates as projected by GM(SR)".

(j) The prosecution alleges that in fact, there was sufficient balance available in the O.D. Account in the name of Hindusthan Shipyard, Ship Repairs, with Indian Bank, Dabagardens,

Visakhapatnam, and the balance available as on 21.10.2005 was Rs.5,29,82,703/- i.e., on which day the decision was taken in C&MD's meeting to procure 1000 MT Steel plates for DDSR Buffer Stock and the balance available as on 07.02.2006 was Rs.8,74,72,241/-, that was the day on which GM(SR) mentioned in his note that the financial position is neither desirable nor recommended.

(k) The prosecution also alleges that HSL started pestering M/s. Asian Associates, Mumbai (L-1 supplier) to extend offer validity period on various grounds, but L1 supplier on 07.02.2006 informed HSL about the view of their principal M/s. Salzgitter Mannesmann Germany, thus:

“regret but cannot give any further extension of offer validity, this takes to long and prices are no longer valid we will close the file.”

(l) It is alleged that on 02.03.2006, accused No.2 raised requisition for procurement of 500 MTs steel plates and 250 MTs profiles for DDSR. Based on that, Material Estimates Steel Section raised an indent vide letter No.211157000 for procurement of 500.116 MTs of SBQ Grade-A MS Steel Plates at an approximate value of Rs.1,70,00,000/- and an another indent No.21220800 dated 02.03.2006 for procurement of 200.033 MTs SBQ profiles/sections at an approximate value of Rs.80,00,000/-, which allowed Purchase Department forwarding a note for issuing a limited tender in lieu of public tender for procurement of MS plates and Profiles for DDSR

buffer stock through Audit Department for getting approval from C&MD. After the formalities were completed in Finance Department, the note was signed by accused No.3 on 09.03.2006 and the same was approved by C&MD on 11.03.2006 and limited tender No.356/P1-21115700 and 21220800/2006 dated 13.03.2006 (second tender pertaining to this case) was issued/e-mailed on 20.03.2006 inviting competitive offers/bids for supply of Ship Building Quality MS Plates and profiles for DDSR buffer stock.

(m) In the month of March/April 2006, offers were received from eight (8) parties. Out of eight, six parties were found suitable for technical scrutiny and the same were forwarded to MES on 13.04.2006; MES Department made technical valuation and found that three parties were suitable for opening the price bids and forwarded to the Purchase Department for further action and further Purchase Department prepared a note on 21.04.2006 and put up for approval of C&MD for opening of price bids of three parties viz., M/s. Igawara Industrial Services & Trading Private Limited, Singapore, M/s. G Baglietto S.A.S. Italy (M/s E. Krishna Rao, Visakhapatnam) and M/s. Mitsui & Co. Chennai (M/s. Regency Steel Asia Private Limited, Singapore) and the said note was approved by the C&MD on 21.04.2006 to open the price bids and accordingly price bids were opened on 22.04.2006. After preparing basic price comparative statement by MES, final price comparative statement was prepared on 26.04.2006 and M/s. Igawara Industrial Services and

Trading Private Limited, Singapore, was found as L-1 for supply of MS Plates. M/s. G. Baglietto S.A.S. Italy (M/s. E. Krishna Rao, Visakhapatnam), was found as L-1 for profiles/sections and for 5mm & 6 mm MS Plates.

(n) Pursuant thereto, purchase advice No.PI 211157AO, dated 27.04.2006 to DDSR for 460.250 MTs of Steel plates at the value of SGD 526,757 (FOB) (Rs.1,49,33,561/-) from M/s. Igawara Industrial Services & Trading Private Limited, Singapore, Purchase Advice No.211157BO, dated 27.04.2006 for 40.648 MTs MS Plates at the value of Euro 29876.28 (FOB) (Rs.16,64,706.30) and Purchase Advice No.21220800, dated 27.04.2006 for procurement of 200.167 MS Sections (Profiles) at the value of Euro 143338.35 (FOB) (Rs.79,86,812.90) both from M/s. G. Baglietto S.A.S. Italy, (M/s. E. Krishna Rao, Viskhapatnam), were prepared and the same were signed by R.B. Rao, who took charge as General Manager, Ship Repair Department, from accused No.2.

(o) Later, other formalities were taken place which details have been mentioned in the charge sheet in a table, thus:

"Name of the Supplier	Quantity of M.S. Steel plates procured by HSL in Mts	Cost of the material in Indian Rupee.
M/s Igawara Industrial Services & Trading Pte. Ltd. Singapore	460.250	Rs.1,63,37,209.41
M/s G Baglietto S.A.S. Italy, (M/s. E Krishna Rao, Visakhapatnam)	40.648	Rs.18,81,118.34
M/s Hyundai Corporation, Korea	644.015	Rs.2,35,29,189.84
Total quantity procured	1144.913	Rs.4,17,47,517.59

- a. Purchase Advice prepared in favour of M/s Asian Associates, Mumbai to procure 979.679 M.T. to a cost of Rs.2,17,87,639.69
- b. 1144.913 M.T. of material was purchased at a total cost of Rs.4,17,47,517.59
- c. Cost of 979.679 M.T. of material at the rate paid by HSL for purchasing 1144.913 MT $\frac{4,17,47,517.59 \times 979.679}{1144.913} = \text{Rs.}3,57,22,510.16$ would have been
- d. Excess amount paid by HSL for purchasing 979.679 MT of Steel plates subsequently due to the decision taken by accused managers not to place supply order on L-1 M/s Asian Associates as per the 1st tender bidding Rs.3,57,22,510.16 – Rs.2,17,87,639.69 = Rs.1,39,34,870.47”

(p) On the investigation done by the Additional Superintendent of Police, C.B.I., A.C.B., Visakhapatnam, and Deputy Inspector General, the Investigating Officer arrived at the conclusion that had the HSL purchased steel plates from M/s. Asian Associates, Mumbai, based on the first tender, HSL, would have saved Rs.1,39,34,870/- and thus, accused Nos.1 to 3 caused wrongful loss to a tune of Rs.1,39,34,870/- to the HSL and they did not want to purchase steel plates from L-1 supplier, M/s. Asian Associates, Mumbai, as a result of criminal conspiracy and cheated the HSL by not purchasing steel plates at low cost and ultimately purchased more than 1000 MTs of steel plates at higher cost in a short span of time.

(q) Thus, the charge sheet was laid against the petitioner and two others alleging the offences punishable under Sections 120-B, 420 IPC and under Section 13(2) read with 13(1)(d) of PC Act.

(r) Since all the three accused retired from service and ceased to be public servants, opining that for launching prosecution no sanction is required under Section 19(1)(c) of PC Act for commission of offences under Section 13(2) read with 13(1)(d) of PC Act, 1988, and since J. Mohana Rao, the then DGM (P&M) is concerned, except his presence in the meeting of C&MD on 07.02.2006 and his initial recommendation for purchase of 1000 MTs of Steel Plate from L-1 supplier i.e., M/s. Asian Associates, Mumbai, no specific conspiratorial act has come to light warranting his prosecution, laid charge sheet against accused Nos.1 to 3 only.

7(a) The learned senior counsel raised various contentions and according to him, there is nothing on record to show that there was any cheating as the ingredients are conspicuously absent in the charge sheet and there is no material to show that even to establish the charge of conspiracy. Even submitted that there was no allegation in the charge sheet in relation to valuable thing or pecuniary advantage being obtained by the petitioner or tried to obtain, besides submitting that failure to obtain sanction to launch prosecution and prosecuting the petitioner would amount to abuse of process of Court.

(b) The learned senior counsel while reiterating that re-tendering and awarding contract to lowest bidder would not amount to causing wrongful loss as the same was in accordance with law as laid down by the Hon'ble Supreme Court as per the directions of CVC

in **Centre for Interest Litigation**⁵. The learned senior counsel refers to observations of Hon'ble Supreme Court in paragraph No.96, thus:

“96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.”

Based on the aforesaid decision, it is his submission that the charge sheet did not indicate anywhere that HSL violated any provision of law, rule or directions issued by CVC in carrying out purchases set out in the table mentioned in the charge sheet, and, therefore, the alleged offences punishable against the petitioner are unjust.

(c) In relation to IPC offences alleged against the petitioner, the learned senior counsel would submit that the terms of appointment order in paragraph No.13A indicates that the disciplinary authority would be the President of India, and, therefore, the petitioner can be removed only by the President of India and thus, falls within the definition of 'Public Servant' and without prior sanction by the Government of India, no cognizance can be taken even though, he

was not in service on the date of cognizance. While submitting that the expression ‘any person, who is or was’ occurring in Section 197 of the Code indicates that prior sanction is required even after demitting or retirement of service, relies on the ruling in **Sheetla Sahai**¹. The learned senior counsel relies on the observations of the Hon’ble Supreme Court contained in paragraph No.55, thus:

“55. 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.”

(d) In **R. Balakrishna Pillai**², the learned Senior Counsel refers to paragraph Nos.4 and 5:

“4. We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with **Section 197**, as it then stood, observed "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 prosecutions. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". It was in pursuance of this observation that the expression 'was' came to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.

5. A Constitution Bench of this Court in *M. Karunanidhi vs. Union of India* (1979 SCC (Cri) 691) was required to consider whether a Chief Minister was a public servant within the meaning of [Section 21](#) of the Indian Penal Code and [Section 197](#) of the Code. This Court referred to the decision of the High Court of Bombay in *Namdeo Kashinath Aher v. H.G. Vartak* (AIR 1970 Bombay 385) and extracted the following passage therefrom:

"Whatever be the practical and actual position, the fact remains that it is the Governor who can accept the resignation of the Ministry or Minister and it is the Governor again who can dismiss or remove the Minister from office. Under [Section 3\(60\)](#) of the General Clauses Act, 1897, the word 'State Government' has been defined. Clause (c) of [Section 3\(60\)](#) is applicable to the present case and, therefore, the State Government is to mean the Governor for the purpose of the present case. The result therefore is that Accused 1 is a public servant who can be said to be removable only by the State Government, meaning thereby the Governor, and I do not find any difficulty in coming to the conclusion that the second

requirement of [Section 197, CrPC](#) also is fully satisfied as far as Accused1 is concerned."

Taking note of the provisions of [Article 167 \(Article 164 for Ministers\)](#), it was pointed out that the Chief Minister is paid from public exchequer for performing a public duty and is, therefore, a public servant within the meaning of [Section 197](#) of the Code. So also a Minister of a State is paid from its public exchequer. He is paid for doing the duty entrusted to him as a Minister and, therefore, on the analogy of the observations relating to the Chief Minister, the Minister must also be held to be a public servant. Since he is appointed or dismissed by the Governor, he would fall within the expression "a public servant not removable from his office save by or with the sanction of the Government". In the instant case, as pointed out earlier, by virtue of the provisions in the [General Clauses Act, 1897](#) the expression 'Government' used in [Section 197](#) would mean the Governor in the case of a Chief Minister or a Minister. That being so, we are of the opinion that a Minister would be entitled to the protection of [Section 197\(1\)](#) of the Code."

(e) In **Ganesh Chandra Jew**³, the learned senior counsel relies on the observation of the Hon'ble Supreme Court contained in paragraph No.18, thus:

"18. We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed:

" It appears to us that protection under the section is needed as much after retirement

of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant.”

It was in pursuance of this observation that the expression “was” came to be employed after the expression “is” to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.”

(f) It is the submission of the learned senior counsel that even if a retired public servant is sought to be prosecuted, sanction under Section 197 of the Code is applicable.

(g) In **V. Y. Jose**⁴, relied on by the learned senior counsel, the Hon’ble Supreme Court had occasion to emphasise the essential ingredients of the offence of ‘cheating’ while dealing with the complaint therein which was essentially involves a civil dispute and expresses in paragraph Nos.13 and 14, thus:

“13. Section 415 of the Penal Code defines cheating as under:

“415. *Cheating*.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.”

14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out."

(h) So far as wrongful loss alleged by the prosecution, the learned senior counsel would submit that the prosecution did not project that the wrongful loss is of unlawful means of property as envisaged by the provisions of Section 23 of the Code.

(i) In relation to conspiracy, contending that there is nothing in the charge sheet allegations to impute knowledge about indulgence in either either an illegal act or a legal act by illegal means and placed reliance in **A.K. Ganju**⁶ referred to the observations in paragraph Nos.115 and 116, thus:

“115. Case of the CBI is that there was conspiracy between the Builder, Architect and the officers of the MCD. However, there is no statement of any witness which refers to or which alleges that there was active collusion and conspiracy between the aforementioned persons. To constitute an offence of conspiracy, meeting of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition that existence of conspiracy is to be deduced from the circumstances and each circumstance should be established by reliable evidence and the circumstances must form a chain of events from which the only irresistible conclusion would be against those persons. The criminal conspiracy is an independent offence in the Indian Penal Code. The unlawful agreement is a sine-qua-non for constituting an offence under the Indian Penal Code and not an accomplishment. In the case in hand, there is nothing to connect the petitioners inter se and there are no allegations which could form a chain of any conspiracy.

116. For the purpose of framing of charges, the Court has to sift and weigh the evidence with a view to examine whether any *prima facie* case is made out against the accused person. Charge can be framed only if there is grave suspicion of being involved in the offence against he persons.”

(j) In the same context, the learned senior counsel also relies on the ruling of the Hon’ble Supreme Court in **Ajay Aggarwal**⁷ referring to the observations in paragraph No.24, thus:

“Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or technics to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration of a

single conspiracy, its parts bound together as links in a chain, is the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers;, and the retailers knew that the middlemen must buy of importers of someone or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers; and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes to gather in a single conspiracy. It is not material that a rim is found only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well-defined group conspires to commit multiple crimes so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the first instance. Take for instance that three persons hatched a conspiracy in country 'A' to kill 'D' in country B with explosive substance. As far as conspiracy is concerned, it is complete in country A. One of them pursuant thereto carried the explosive substance and hands it over to third one in the country

B who implants at a place where D frequents and got exploded with remote control. D may be killed or escape or may be diffused. The conspiracy continues till it is executed in country B or frustrated. Therefore, it is a continuing act and all are liable for conspiracy in country 'B' though first two are liable to murder with aid of Section 120-B and the last one is liable under Section 302 or 307 IPC, as the case may be. Conspiracy may be considered to be a march under a banner and a person may join or drop out in the march without the necessity of the change in the text on the banner. In the comity of International Law, in these days, committing offences on international scale is a common feature. The offence of conspiracy would be a useful weapon and there would exist no conflict in municipal laws and the doctrine of *autrefois* convict or acquit would extend to such offences. The comity of nations are duty bound to apprehend the conspirators as soon as they set their feet on the country territorial limits and nip the offence in the bud.”

(k) Concerning the offences punishable under the provisions of PC Act, the learned senior counsel relies on the ruling of the Hon’ble Supreme Court in **A. Subair v. State of Kerala**¹⁸ that the CBI did not indicate in the charge sheet whether they are invoking Section 13(1)(d) or sub clause (i) or (ii) or (iii), and, therefore, it is his submission that the Court below ought not to have taken cognizance. The learned senior counsel relies on **C.K. Jaffer Sharief**⁸, referring to the observations in paragraph No.17, where charge sheet was quashed

¹⁸ (2009) 6 SCC 587

by the Hon'ble Supreme Court invoking Section 482 of the Code and he would also submit that there is no allegation of violation of any law or rule in the charge sheet, more particularly, L-1 supplier withdrew its offer and then only re-tendering and issuing new bid was resorted to and, therefore, it cannot be construed as acting in corrupt or illegal manner.

(l) As to valuable thing or pecuniary advantage occurring in Section 13(1)(d) of PC Act, the learned senior counsel relies on **A.K. Ganju**⁶ referring to the observations in paragraph Nos.113 and 114, thus:

“113. As regards the charge under Section 13(1)(d) of the PC Act, the violator should have obtained a valuable thing or pecuniary advantage for himself or for any other person. In the present case, in chargesheet, there are no allegations of any kind, whatsoever, of any demand, acceptance or giving of any bribe by anybody to anyone. For such an offence, the prosecution has to establish that the accused has obtained the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of statutory presumption available to him. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1)(d) of the PC Act cannot be held to be established.

114. In the case of Subhash Parbat Sonvane (supra), it is held that in Sections 7 and 13(1)(a) and

(b) of the Act the Legislature has specifically used the words ‘accepts’ or ‘obtains’. As against this there is departure in the language used in Clause (1)(d) of Section 13 and it has omitted the word ‘accepts’ and has emphasized the word ‘obtains’. The ingredient of Sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under Clause (ii) he obtains such thing by abusing his position as public servant and Sub-clause (iii) contemplates that while holding office as the public servant he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused obtained for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.”

(m) In the same context, the learned senior counsel places reliance in **Cajy Fernandes**¹⁰ referring to the observations in paragraph Nos.3 to 6, thus:

“3. The learned Counsel appearing for the petitioner inviting our attention to the allegations levelled in the complaint contends that on bare perusal of the complaint no offence under the provisions of Prevention of Corruption Act, 1988 is disclosed. The offence alleged against the petitioner, who is one of the members of Village Panchayat is under Section 13(1)(d) of the Prevention of Corruption Act punishable under Section 13(2) of the

Act of 1988. Section 13(1)(d) and Section 13(2) read as under:

13. Criminal misconduct by a public servant

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

4. What is alleged in the complaint is that one Mr. Xavier Fernandes, Proprietor of 'Portofino' Bar and Restaurant has connived with some Panch Members of the Village Panchayat of Colva and fabricated documents and produced before the Panchayat Body and managed to get NOC to run the Portofino Bar and Restaurant. It is alleged that there is a criminal nexus/broad conspiracy between the Panchayat Body of Colva, the Excise Department, the Electricity Department, the Health Officials, etc. all working hand-in-gloves with each other. The allegations contained in the complaint are quite general in nature and do not specify the specific acts allegedly committed by the petitioner. Even otherwise, the ingredients of Section 13(1)(d) of the Act of 1988 are not attracted. The requirements to attract Section 13(1)(d), is that the accused shall by corrupt or illegal means, obtain for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtain for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtain for any person any valuable thing or pecuniary advantage without any public interest. The phrase 'valuable thing' refers to any thing or moveable property, whereas pecuniary advantage refers to monetary benefits. On bare perusal of the complaint, it does not disclose that the petitioner has in any other way for himself or for any other person secured any available thing or pecuniary advantage. The acts allegedly committed by petitioner do not attract provisions of Section 13(1)(d). As such, the FIR registered alleging commission of offence under Section 13(1)(d) against

petitioner deserves to be quashed. In this context, reference can be made to the judgment of the Supreme Court in the case of *State of Haryana v. Bhajan Lal* reported in 1992 Supp (1) SCC 335. The Supreme Court in para 102 has laid down the principles of law, for exercise of inherent powers for quashing of the FIR. Para 102 reads thus:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases byway of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a

Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. In the matter of *C.K. Jaffer Sharief v. State(Through CBI)* reported in (2013) 1 SCC 2056,

the appellant besides holding office as the Minister of Railways was the head of the two public sector undertakings in namely, RITES (Rail India Technical and Economic Services Ltd.) and IRCON (Indian Railway Construction Co. Ltd.). It is alleged that the Minister prevailed upon RITES and IRCON to take 4 employees on deputation to London so as to facilitate the Minister to take their assistance while he was undergoing medical treatment. It is alleged that the Minister in performing certain tasks connected with the duties as a Minister has committed an offence attracting provisions of Section 13(2) and 13(1)(d) of the Prevention of Corruption Act. The appellant/Minister presented proceedings seeking quashment of the FIR. While dealing with the issue, the Supreme Court has observed in paragraph 17 of the judgment:

“..... It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforementioned four persons.....”

“.....If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the

words used i.e. corrupt or illegal means and abuse of position as a public servant.”

6. As has been observed above, in our opinion the complaint does not disclose allegations satisfying existence of ingredients of the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act. As such, the FIR to the extent of commission of the offence punishable under Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, stands quashed. It is needless to mention that if the Investigating Agency on the basis of material brought before the agency and on the basis of allegations made by complainant in the complaint is satisfied as regards existence of grounds or circumstances necessitating further investigation or inquiry in respect of any other offence, it would be permissible for the Investigating Agency to investigate into the matter and the instant decision shall not be treated as bar for taking steps in accordance with law.”

(n) The learned senior counsel further places reliance in **Prakash Mishra**¹¹ referring to the observations in paragraph Nos.51, 52 and 61, thus:

“51. In the instant case, no materials have been produced before this Court to show that the petitioners had any dishonest intention in sanctioning 100% advance towards purchase of cement and steel from the manufacturers/suppliers. Moreover, as has been admitted in the subsequent counter affidavit filed by the Vigilance Department, the practice and procedure of payment of 100% advance towards price of cement and steel was in vogue much before the

petitioners joined the Corporation and continued even after they left the service of the Corporation. Further, taking a bonafide decision in the best interest of the Corporation to procure steel from public sector undertakings, like SAIL and RINL and branded cement from renowned manufacturers like Ultratech, Lafarge, ACC, L & T, OCC etc. through a transparent procedure at non-trade price, which is much lesser than the market price, cannot be said to be an improper or illegal decision taken with dishonest interest, which would amount to criminal misconduct. Merely because some of the manufacturers/suppliers had failed to supply the materials in time or there has been some delay in such supply, the same cannot be the basis for implicating the petitioners for criminal misconduct. Therefore, there being no violation of the existing procedure and practice, which were being followed by the Corporation much prior to the petitioners joining and there being no extravagant display of redundancy or any improper or illegal exercise of power, no dishonest intention can be attributed to the petitioners in order to implicate them for the alleged offence under Section 13(1)(d) of the P.C. Act

52. Further, neither the F.I.R. nor the materials available in the case diary reveals any particulars of the steel and cement manufacturers/suppliers who have failed to supply the required materials and the exact amount of pecuniary advantage gained by them at the cost of the Corporation. Rather, the statement of witnesses recorded during investigation under Section 161 Cr.P.C. clearly shows that the policy adopted by the writ petitioner to procure steel from public sector undertakings and branded cement from

renowned manufacturers, to ensure quality product at minimum price has yielded excellent result for the Corporation.

61. From the facts detailed above, there is no manner of doubt that the Vigilance authorities have proceeded in the matter with a predetermined agenda to implicate the petitioners, more specifically the writ petitioner Prakash Mishra, irrespective of whether any material is available to substantiate the allegations. The Enquiry Officer has conducted the preliminary enquiry in a most perfunctory manner, in brazen disregard of all established norms of justice and fair play. The manner in which the preliminary enquiry has been conducted and method adopted by the Enquiry Officer in concluding the enquiry post-haste, without even verifying the relevant documents and examining any witness, clearly goes to show that he was bent upon implicating the petitioners and thereby facilitate registration of the F.I.R. against them. Hence, the entire action of the Vigilance authorities smacks of arbitrary and mala fide exercise of power with the oblique motive to harass the petitioners and damage their reputation.”

(o) In the context of scope of quash against charge sheet and exercise of power under Section 482 of the code, the learned counsel places reliance in **Satish Mehra**¹² referring to the observations contained in paragraph Nos.13 to 18 and also in **L. Muniswamy**¹³; the observations of Hon’ble Supreme Court in paragraph No.10, thus:

“10. On the other hand, the decisions cited by learned counsel for the respondents in *Vadilal Panchal v. D. D. Ghadigaonkar* ((1960) 3 SCR 388 : AIR 1960 SC 866) and *Century Spinning & Manufacturing Co. v. State of Maharashtra* (AIR 1960 SC 1113 : 1960 CrLJ 1499) show that it is wrong to say that the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In *Vadilal Panchal's* case, Section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering certain matters mentioned in the section, there was in his judgment no sufficient ground for proceeding with the case. To an extent Section 327 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of Section 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possess a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is

such on the basis of which a conviction can be said reasonably to be possible.”

(p) The learned senior counsel would submit that the charge sheet does not contain any offence, and, therefore, liable to be quashed by exercise of power under Section 482 of the code, places reliance in **Dr. Sharda Prasad Sinha**¹⁴ and the observations in paragraph No.2, thus:

“2. It is now settled law that where the allegations set out in the complaint or the chargesheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the magistrate taking cognizance of the offence. The question which, therefore, arises for consideration is whether the allegations set out in the complaint constitute any offence against the appellant. The offences charged against the appellant are under Section 54(1)(a) and Section 57(c) of the Act. Section 54(1)(a) provides that if any licensed vendor or any person in his employ and acting on his behalf, in contravention of Section 25, employs or permits to be employed, in any part of his licensed premises in contravention of Section 25. Now there can be no doubt that the Bankipur Club was a licensed vendor since it held an “OFF” licence in Form 2 given in the Bihar and Orissa Excise Rules. We will also assume for the purpose of argument that the place where the cabaret was going on was a part of the licensed premises. But in order that the alleged cabaret should constitute an offence under Section 54(1)(a), it was necessary that

the women who were performing the cabaret should be employed or permitted to be employed by the club and moreover that should be in contravention of Section 25. Section 25, sub-section (2) provides that no person who is licensed to sell foreign liquor for consumption on his premises shall, without the previous written permission of the Board, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without any remuneration, any woman, in any part of such premises in which such liquor is consumed by the public. It will be seen that this provision also comes into play only when a woman is employed or permitted to be employed by a person licensed to sell foreign liquor. Moreover, the employment of the woman should be "in any part of such premises in which such liquor is consumed by the public". It is therefore, obvious that there could be no offence under Section 54(1)(a) read with Section 25(2) unless it could be shown by the prosecution that the women who were performing the cabaret were employed or permitted to be employed by the club and they were performing the cabaret in a part of the club premises in which liquor was being consumed by the public. We may point out that it was contended on behalf of the appellant that sub-section (2) of Section 25 can have no application in case of a person who is holding an "OFF" licence as distinct from an "ON AND OFF" licence in Form 3 and since the appellant in the present case was holding an "OFF" licence, he could not be guilty of contravention of Section 25, sub-section (2) and hence no question of offence under Section 54(1)(a) could arise. But we will assume for the purpose of argument that the appellant was covered by Section

25, sub-section (2) and he was bound to obey the prohibition contained in that sub-section. But even so we find that the two essential ingredients of the offence under Section 54(1)(a) read with Section 25 sub-section (2) were not even alleged in the complaint. The complaint did not aver that either of the two women who were performing the cabaret was employed or permitted to be employed by the club or that liquor was being consumed by the public in the part of the club in which the cabaret was being performed. No offence under Section 54(1)(a) could in the circumstances be said to have been committed on the allegations contained in the complaint”

(q) In the same context, the learned senior counsel places reliance in **R.P. Kapur**¹⁵ for the proposition that the High Court has power to make such orders as may be necessary to give effect to any order under the Code to prevent abuse of process of Court by exercising power under Section 561-A of Code, relying on the decision in.

(r) Thus, referring to the aforesaid decisions and relying on the propositions, the learned senior counsel would submit that none of the essential ingredients of the offences punishable under the provisions of IPC or under PC Act provisions have been made out by the prosecution, and, it is a clear abuse of process of Court, and, therefore, sought to quash the proceedings in the C.C. against the petitioner.

8. In an attempt to project innocence of the petitioner, the learned senior counsel would submit that on 24.01.2006 when the petitioner has given direction to proceed with procurement, the Purchase Department recommended to place the order on L-1 supplier M/s. Asian Associates, Mumbai, for 1000 MT steel plates and on 27.01.2006, the Audit and Finance Department and accused No.3 signed the purchase proposal to place the order for 1000 MT steel plates and on 28.01.2006, the purchase proposal was put up before the Commissioner and he approved it on the same day, and, thus, twice, the petitioner approved purchase of 1000 MT steel plates as and when it was brought to his notice, making a note on the file 'please ensure prompt shipment' and 'please let me know the payment method', and, therefore, according to the learned senior counsel, the petitioner was keen to place order on L-1 supplier M/s. Asian Associates, Mumbai, at the earliest and as he approved it, the responsibility of issuing purchase order lies with the Purchase Department headed by J. Mohana Rao, DGM, (P&M), and since role of the petitioner as competent authority and approving them ends by giving approval to purchase 1000 MT, the responsibility of placing purchase order is of the Purchase and Material Department, and, therefore, the petitioner cannot be held responsible for not placing the purchase order before expiring its validity.

9. The second ground, in the same context, urged by the learned senior counsel is, on 07.02.2006, the request of HSL for

further extension was turned down by L-1 Supplier M/s. Asian Associates, Mumbai, on the ground that the prices quoted by them are no longer valid and thus, L-1 withdrew their offer for supply of 1000 MT steel plates and contrary to it, the Investigating Officer mentions in the charge sheet that accused No.1 along with other accused, decided not to procure steel plates which is totally a distorted version being pressed into service, more particularly, when CVC guidelines mandate that in case of L-1 supplier backing out, there should be re-tendering as per extant instructions and HSL being the Government entity, bound by the State guidelines. It is also submitted that the petitioner never passed any orders cancelling purchase of MT 1000 steel plates from L-1 supplier M/s. Asian Associates, Mumbai.

10. The learned senior counsel also refers to maintaining of overdraft account and according to his submission, no amount actually would be available and only when the account holder uses funds from overdraft account, the account holder is indebted to the bank and it has to pay interest to the bank on commercial basis, and, therefore, the averment made in the charge sheet that sufficient money in the overdraft account available is a misnomer and overdraft account means, poor financial condition of HSL and whatever amount available in overdraft account was meant to meet day-to-day administrative expenses.

11. The learned senior counsel, therefore, would submit that going for purchase of steel at reduced quantity by proper tendering

process was on account of financial constraints and that was the reason, quantity of 160.250 from Igawara Industrial, 40.658 from G. Baglietto and 644.015 from Hyudai Corporation were proposed and quoted according to CVC guidelines and in that connection, charge sheet averments do not indicate anywhere that HSL violated any provision of law or rules or directions issued by CVC in carrying out the purchases set out in the above table and certainly cannot be said to be a wrongful loss. Hence, the learned senior counsel would submit that it is a clear case where power under Section 482 of the Code is to be exercised to quash the proceedings.

12. When the aforesaid submissions made by the learned senior counsel are examined in the light of the contents of the charge sheet, the charge sheet allegations would show that after the petitioner approved note as aforesaid on 28.01.2006 to ensure prompt shipment, instead of placing the purchase order on L-1 supplier M/s. Asian Associates, Mumbai, to supply 979.679 MT SBQ Steel plates on 07.02.2006, discussed about procurement of 1000 MT steel plates and decided not to procure 1000 MT steel plates and Sri J. Mohana Rao, DGM (P&M), who was present in the meeting was advised not to take any action on the issue and decided to go for 500 MT only in the month of March or April 2006. The Purchase Department pursuant to the said advise / instructions of the petitioner, sought for the view of GM (SR). Accused No.2 has given comments stating that procurement action may be initiated in the month of March/April,

2006, for purchase of 500 MT Grade-A steel plates and a review of additional demand if any based on enhanced ship repair turnover can be undertaken during the middle of next financial year and suitable action can be initiated accordingly, and, expressed that an additional expenditure of Rs.2.00 to Rs.2.20 crores towards bulk steel procurement at this point of time especially keeping in view the then financial condition was neither desirable nor recommended. Accused No.3 made a mention in the said note to procure only 500 MT of LRS Grade-A steel plates as projected by accused No.2.

13. Thus, the said allegations, in fact, touch the active part of the petitioner and taking decision not to procure 1000 MT Steel Plates on discussing the issue with accused Nos.2 and 3. Though, in the submissions made by the learned senior counsel, Sri J. Mohana Rao, DGM (P&M), was stated to be responsible, but the charge sheet allegations do not support that submission. In fact, the petitioner advised him not to take any action for procuring 1000 MT steel plates and asking to go for 500 MT steel plates only in the month of March/April 2006. This allegation cannot be ignored as it touches the complicity of the petitioner, which requires a regular trial as the witnesses, who would be examined on behalf of the prosecution, require to be subjected to cross-examination on this aspect of the case initially by the prosecution to prove the complicity substantiating the said allegations and later on the part of defence to impeach the said allegations.

14. The learned senior counsel, no doubt, referred to the overdraft facility as adverted to in the above, however, the allegations mentioned in the charge sheet would refer to availability of balance in the OD account of HSL as on 21.10.2005 was Rs.5,29,82,703/- and Rs.8,74,72,241/- as on 07.02.2006. The said allegations also require examination in the light of the oral and documentary evidence of the witnesses and, certainly, at this stage, it is difficult to agree with the view projected by the learned senior counsel.

15. Thus, unless a full-fledged trial takes place in a case of this nature 'whether pecuniary loss is shown at Rs.1,39,34,870/-, had the purchase order with L-1 supplier M/s. Asian Associates, Mumbai, was placed on 07.02.2006 without going for reduced purchase of quantity by the petitioner, as the *mens rea*, can only be inferred from the surrounding facts established by evidence and materials before the Court and not by a process of probe of the mental state of the petitioner, which the law does not contemplate as held by the Hon'ble Supreme Court in **Rajat Prasad**¹⁷ relied on by the learned Special Public Prosecutor and even abetment defined by Section 107 IPC and whether commission of offence under Section 12 of PC Act read with Section 120-B IPC had been occasioned by the acts attributed to the petitioner or not' can be determined only after the evidence in the case is recorded.

16. Not only the allegation referred to in the above, whether the petitioner on 07.02.2006 on discussion with accused Nos.2 and 3 decided not to go for placing purchase order with L1 supplier M/s. Asian Associates, Mumbai, but also for the reason that the ingredients of the offences under the provisions of IPC and PC Act can only be established by a full-fledged trial as held in **Rajat Prasad**¹⁷, rulings relied on by the learned senior counsel needs no detailed reference.

17. Therefore, at this stage, it is difficult to examine whether the ingredients of the offences under IPC and PC Act have been attracted to the acts complained of against the petitioner by the investigating agency without there being a full-fledged trial.

18. Turning to the submission that for want of sanction under Section 197 of the Code so far as IPC offences are concerned, since the IPC offences as well as the offence under the provisions of PC Act, both are clutched together, and so far as PC Act offences are concerned, no sanction is required where the public servant, either demitted the office or retired on the date of filing of charge sheet, even, it is difficult to accede to the submission of the learned senior counsel at this stage. However, it is open for the petitioner to agitate the same at the final stage of Calendar Case.

19. Hence, it is not a case to view that prosecution of the petitioner would amount to abuse of process of Court as sought to be viewed by the petitioner.

20. The present Criminal Petition is, therefore, dismissed. However, it is made clear that any of the observations made hereinabove and the discussion on the submissions made by the learned Senior counsel appearing for the petitioner and the learned Special Public Prosecutor shall not be treated as findings being recorded and the learned trial Court shall dispose of the Calendar Case uninfluenced by any of the observations made herein.

21. Since the Calendar Case relates to the year 2010, the learned trial Court is directed to dispose of the same within four (4) months from the date of receipt of a copy of the order.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand dismissed.

A. SHANKAR NARAYANA, J

June 5, 2018.

PV