THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8498 OF 2016

ORDER:

This criminal petition is filed by petitioners/accused Nos.10 and 18 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings against them in C.C.No.27 of 2014 on the file of the Court of the Special Judge for CBI and ACB Cases, Hyderabad registered for the offence punishable under Sections 120-B, 409, 420, 468 and 471 of Indian Penal Code (for short "I.P.C.").

The respondent is the investigating agency. On receipt of credible information that the officers of Bank of Maharashtra are indulging in corrupt practices in sanction of various loans in collision with private persons, a joint surprise check was conducted on 11.02.2013 by Sri Roy Alexander, Additional Superintendent of Police and Sri. B.Ramdas, Inspector, CBI, ACB, Hyderabad at Bank of Maharashtra, Secunderabad Branch, Secunderabad in presence of independent witnesses. During Inspection, Sri Roy Alexander, Additional Superintendent of Police and Sri. B.Ramdas, Inspector, CBI, ACB, Hyderabad found certain irregularities and submitted a joint report. Basing on that report the then HOB recommended for registration of Preliminary Enquiry. Or receipt of orders from HOZ, a Preliminary Enquiry No.1/2013 was registered on 12.02.2013 by Sri.V.Srinivasa Rao, Inspector, CBI, ACB, Hyderabad and enquired into. On 28.03.2013 Sri V.Srinivasa Rao, Inspector, CBI, ACB, Hydereabad submitted his preliminary enquiry report with a recommendation to convert the Preliminary Enquiry No.1/2013 into Regular Case. Accordingly a case in RC.5/2013 was registered on

30.03.2013 by K.Raghavendra Kumar, Inspector, CBI, ACB, Hyderabad under Section 20-B r/w 420,465,468 and 471 I.P.C and 13(2) r/w 13(1)(d) PC Act-1988 against 1) Sri Sarath Babu Jelly, the then Senior Manager, Bank of Maharashtra Secunderabad Branch, Secunderabad, (2) Smt Donikena Purnasri, Managing Director, M/s Maven Life Sciences Pvt Ltd, Habsiguda, Hyderabad (3) Sri Donikena Sridhar Chief Executive Officer, M/s Maven Life Sciences Pvt Ltd, Habsiguda, Hyderabad, (4) Sri. Marella Srinivas Reddy, Additional Director, M/s Maven Life Sciences Pvt. Ltd, Habsiguda, Hyderabad, (5) M/s. Maven Life Sciences Pvt. Ltd., D.No.1-7-9/3, Harihara Estates, 2nd Floor, Opp.ISI Street No.8, Habsiguda, Hyderabad – 13 and other unknown persons and took up investigation.

Accused No.1 is the Senior Manager, accused No.2 is the Assistant General Manager, Bank of Maharashtra, Secunderabad Branch, Secunderabad, during the period 2012-2013. Donikena Sridhar is accused No.3, who is the Chief Executive Officer of M/s Maven Life Sciences Pvt. Ltd. (accused No.14). Smt.Donikena Purnasri (accused No.4), Managing Director, Sri Marella Srinivas Reddy (accused No.5), Additional Director, Sri. Donikena Yadagiri (accused No.7) , Additional Director M/s Maven Life Sciences Pvt. Ltd (Accused No.14), Sri Marella Laxma Reddy (accused No.6) F/o accused No.5. Sri Vempati Srinivas (accused No.8) Private Accountant, Sri Vatte Raja Reddy (accused No.9) is the proprietor of M/s Hyderabad Tablet Tools, Sri Vadde Naasariah (accused No.10) petitioner No.1 herein, who is the Managing Director of M/s Kiran Impex Pvt Ltd (accused No.18), petitioner No.2 herein. Sri B. Satya Suraj Reddy (accused No.11) is Managing Partner of M/s Sri Vaishanavi Pharma Chem, Ms.C.M.Jayshree (accused No.2), Bank

Panel Advocate, Sri.Ch.Krishnam Raju (accused No.13), Bank Panel Valuer, M/s Maven Life Sciences Pvt. Ltd (A-14) is incorporated limited company represented by its Directors/accused Nos.3, 4, 5, and 7, M/s Graupel Pharma Pvt. Ltd. (accused No.15) represented by its Director accused No.3, M/s Conferro Health Care Ltd (A-16) represented by its Director A-3, M/s Hydrabad Tablet Tools (A-17) represented by its Proprietor, accused No.9, M/s Kiran Impex Pvt Ltd (accused No.18) represented by its Managing Director accused No.10 and M/s Sri Vaishnavi Pharma Pvt Ltd (accused No.19) represented by its Managing Partner accused No.11, during the period from 2012 to 2013 entered in to criminal conspiracy to cheat Bank of Maharashtra by producing and fabricated documents for the purpose of availing various credit facilities to the tune of Rs.4,57,86,355/- and to cause wrongful loss to the Secunderabad Branch of Bank of Maharashtra and wrongful gain for themselves, created certain documents and obtained cash credit facility of Rs.2 Crores, Term loan facility of Rs.1 Core and Letter of Credit and Bank Guarantee of Rs.2 Crores. Thus, total amount of Rs.5 Crores was sanctioned to the various accused referred supra.

The petitioner No.2 herein is the accused No.18. Accused No.18 is a Company engaged in trading of Bulk Drugs. Petitioner No.1 herein is the Managing Director of accused No.18. Petitioners filed the present petition to quash the proceedings against them for the offences referred supra.

The specific allegations made against the petitioners herein are set out in paragraph No.33 of the charge sheet.

According to the allegations made in the charge sheet that M/s Kiran Impex Pvt. Ltd. (accused No.18) is a company represented by

Vadde Naasaraiah, accused No.10, engaged in trading bulk drugs. Donikena Sridhar (accused No.3), Chief Executive Officer of M/s Maven Life Sciences Pvt. Ltd (accused No.14) in connivance with the petitioner No.1 herein, who is the Managing Director of M/s Kiran Impex Pvt. Ltd. (accused No.18) siphoned off an amount of Rs.75 lakhs by taking letter of credit in favour of M/s Kiran Impex Pvt. Ltd., (accused No.18) by submitting fake purchase order for supply of 5436 Kgs of "***2-chloro, 1-3-Bis (Dimethylamino) Trimethinium hexaflouro Phosphate***" from M/s Kiran Impex Pvt. Ltd. (accused No.18).

Investigation further revealed that Sri Suhas Kalyan Ramdasi (accused No.2), Assistant General Manager Bank of Maharashtra and Sri. Sarath babu jelly (accused No.1), Senior Manager credit without receiving Lorry Receipt details from M/s Kiran Impex Pvt Ltd (accused No.18) released Rs.75 Laks of Letter of credit in favour of M/s Kiran Impex Pvt Ltd (accuse No.18) by violating Banking rules, regulations, terms and conditions.

M/s Kiran Impex Pvt Ltd (accused No.18) submitted a Tax invoice cum Delivery challan to UCO Bank, Jubilee Hills Branch. In turn UCO Bank forwarded the Tax invoice cum delivery challan to Bank of Maharashtra. On perusal of Tax invoice cum delivery challan it is mentioned in the delivery challan that the material i.e. 2-chloro, 1-3-Bis (Dimethylamino) Trimethinium hexaflouro Phosphate was purchased from M/s Graupel Pharma Pvt Ltd (accused No.15) which is none other than sister concern company of M/s Maven Life Sciences Pvt. Ltd. (accused No.14). It is also mentioned in the tax invoice cum delivery challan that the material was transported and delivered by vehicle bearing No.AP 31 TW 7159 on 29.07.2012. The vehicle No.AP 31 TW 7159 which was mentioned by M/s Kiran Impex Pvt Ltd (accused No.18) in their Tax invoice cum Delivery Challan vide No.EXS-68 dated 29.07.2012, is only a Trailer belongs to Smt.Ganguboina Arunakumari and it is also revealed that the trailer was never used for transportation of material in Hyderabad.

Thus, M/s Kiran Impex Pvt Ltd (accused No.18) in pursuance of criminal conspiracy with the borrowers of the company M/s Maven Life Sciences Pvt. Ltd (accused No.14) cheated the bank by diverting the funds in Letter of Credit to M/s Graupel Pharma Pvt. Ltd (accused No.15) sister concern company of M/s. Maven Life Sciences Pvt. Ltd(accused No.14) and thereby caused loss to the bank to a tune of Rs.75.00 Lakhs.

By applying the same modus operandi the accused obtained cash credit and other loans from the Bank of Maharashtra at Secunderabad in collusion with the bank officials and committed serious economic fraud against Bank of Maharashtra, Secunderabad branch. The outcome of material collected during investigation is that Sri Suhas kalyan Ramdasi, Asst General Manager, Bank of Maharashtra, Sri Vempati Srinivas Private accountant, Sri Vette Raja Reddy Prop.M/s Hyderabd Tablet Tools, Sri Vadde Naasaraiah Managing Director M/s Kiran Impex Pvt Ltd, Sri Bathula Satya Suraj Reddy, Managing Partner M/s Sri Vaishanavi Pharamachem, Ms.C.M.Jayashree Bank Panel Advocate, Sri Ch.Krishnam Raju Bank Panel Valuer, Sri Donikena Yadagiri Additional Director M/s Maven Life Sciences Pvt Ltd, Sri Marella Laxma Reddy, M/S Graupel Pharma Pvt Ltd, M/S Conferro Health Care Pvt Ltd, M/s Hyderabad Tablet Tools, M/s Kiran Impex Pvt Ltd, M/s Sri Vaishanavi Pharamachem are the accused as they all conspired together and committed fraud on the bank and filed charge sheet for various offences referred supra.

The Special Judge for CBI and ACB Cases, Hyderabad took cognizance of offences and issued summons to the petitioners herein and other accused.

The petitioners/accused Nos10 and 18 in C.C.No.27 of 2014 on the file of Special Judge for CBI and ACB Cases, Hyderabad, filed the present petition under Section 482 of Cr.P.C. to quash the proceedings contending that the allegations made in the charge sheet do not constitute an offence punishable under Sections 120-B, 409, 420, 468 and 471 of I.P.C. and that no material was collected during investigation to conclude that the petitioners conspired together to cheat the bank and fabricated documents and that the petitioners have no role in the alleged conspiracy or fabrication of any document as the petitioners received purchase order in usual course of business and made arrangements for supply through accused No.15 on the transport agreed to be arranged by accused No.14 represented by accused No.3, raised Tax invoice and paid all necessary statutory payments to the Government including Value Added Tax and Excise Duty, as such the allegation that the petitioners herein helped the other accused in siphoning off Rs.75,00,000/- from Bank of Maharashtra is wholly absurd and contrary to record.

The letter dated 29.07.2012 issued by accused No.3 representing accused No.14 confirming about arrangements made by them to transport the stocks directly referring to vehicle number is a positive proof to show that the petitioner herein did not involve in the offence.

It is also contended that in the entire allegations made in the charge sheet nothing was alleged against the petitioners herein. The questionnaire was served by the investigating officer by letter dated 27.05.2014 calling for explanation for 9 questions and those questions were replied by the petitioners. However, without reference to such answers and totally ignoring those answers, investigating agency filed charge sheet against the petitioners and filing of charge sheet against the petitioners is an error apparent on the face of the record.

Finally, it is contended that the relationship between the petitioners herein and accused Nos.14, 15 and 3 was purely a seller and buyer of the goods as supplied by the petitioners through accused No.15 and there is no reason to enrope the petitioners in the alleged crime in collusion with the bank officials etc. Thus, there is absolutely no material to conclude that the petitioners are liable for the prosecution for the offences punishable under Sections 120-B, 409, 420, 468 and 471 of I.P.C., in such case this Court can exercise power under Section 482 of Cr.P.C. and requested to quash the proceedings.

Sri Eranki Phani Kumar, learned counsel for the petitioners while reiterating the contentions urged in the petition drawn the attention of this Court to certain documents like Tax invoice and the answers given to the questionnaire served on the petitioners and its non-consideration in the charge sheet. He also contended that the petitioners are not concerned with the truck provided for transportation and accused No.14 represented by accused No.3 addressed letter mentioning the number of the vehicle and in the same vehicle goods were transported to accused No.14 through accused No.15 and payment of Value Added tax and excide duty itself is a positive proof to conclude that the transaction is genuine and the question of petitioners playing fraud on the bank conspiring with other accused does not arise and requested to quash the proceedings since the allegations made in the charge sheet do not constitute any offence much less offence punishable under Sections 120-B, 409, 420, 468 and 471 of I.P.C.

Sri K.Surender, learned Special Public Prosecutor for C.B.I. supported the prosecution while contending that M/s Graupel Pharma Pvt. Ltd (accused No.15) is the sister concern company of M/s Maven Life Sciences Pvt. Ltd (accused No.14) under the management of same persons. Thus, the petitioner No.1 herein/accused No.10 being the Managing Director of the Company is a middleman, who played major role in creation of documents to show that the transaction is genuine though no goods were purchased and transported from M/s Graupel Pharma Pvt. Ltd (accused No.15) to M/s Maven Life Sciences Pvt. Ltd (accused No.14) by sale and it is only paper transaction. Therefore, purchase of goods from M/s Graupel Pharma Pvt. Ltd (accused No.15) and the sale of the same to M/s Maven Life Sciences Pvt. Ltd (accused No.14) itself is a improper one and apart from that the transportation of such chemical in a truck is not permissible since the said chemical allegedly transported cannot be preserved in any place where the temperature is more than 8^0 Celsius and it should be preserved in any place or in vehicle etc., where the temperature is 0 to 8^0 Celsius. Therefore, transporting the chemical in a truck is unbelievable as the normal temperature will never be 8^0 Celsius in the City of Hyderabad and requested to dismiss the petition.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

"Whether the allegations made in the charge sheet would constitute any offence much less the offence punishable under Sections 120-B, 409, 420, 468 and 471 of I.P.C., if not, whether the proceedings in* C.C.No.27 of 2014 on the file of the Court of the Special Judge for CBI and ACB Cases, *Hyderabad are liable to be quashed?

P O I N T:

It is an undisputed fact that M/s Graupel Pharma Pvt. Ltd. is the sister concern of M/s Maven Life Sciences Pvt. Ltd., and the accused No.3 – Donikena Sridhar is the Chief Executive Officer and whereas his wife Donikena Purnasri, accused No.4 is Managing Director of the company and the accused No.5 is Additional Director of M/s Maven Life Sciences Pvt. Ltd.

The alleged availment of cash credit facility with Bank of Maharashtra for Rs.75,60,621/- on the basis of tax invoice – cum – delivery challan No.EXS - 068 dated 29.07.2012 is not in dispute. M/s Kiran Impex Pvt. Ltd., petitioner No.2 herein is represented by petitioner No.1/accused No.10 allegedly purchased 5436 Kgs of 2-chloro, 1-3-Bis (Dimethylamino) Trimethinium hexaflouro Phosphate from M/s Graupel Pharma Pvt. Ltd. and supplied to M/s Maven Life Sciences Pvt. Ltd. and the goods are transported by vehicle bearing No.AP 31TW 7159 from M/s Graupel Pharma Pvt. Ltd. to M/s Maven Life Sciences Pvt. Ltd. worth Rs.75,60,621/- under tax invoice – cum – delivery challan dated 29.07.2012 and the alleged date of payment due is noted as 16.10.2012. The purchase order issued by M/s Maven Life Sciences Pvt. Ltd. is also placed on record and according to the purchase order, the value of the goods i.e. 2-chloro, 1-3-Bis

(Dimethylamino) Trimethinium hexaflouro Phosphate was Rs.64,14,480/-, excise duty, education cess, Sh cess are in addition to the value of the goods and VAT thereon is 5% and the total comes to Rs.75,60,621/-. Thus, purchase order for Rs.75,60,621/- and the goods said to have delivered through UCO Bank, Jubilee Hills Branch, which in turn forwarded the tax invoice – cum – delivery challan to Bank of Maharashtra and on the basis of said tax invoice – cum – delivery challan, accused No.1/Senior Manager and accused No.2/Assistant General Manager released cash credit facility to a tune of Rs.75,00,000/- based on such delivery challan.

The case of the prosecution is that the said tax invoice – cum – delivery challan was created for the purpose of availment of cash credit facility of Rs.75,00,000/- with Bank of Maharashtra, whereas the contention of the learned counsel for the petitioners is that the petitioner No.1 herein - accused No.10 paid Excise duty, Education Cess, Sh.Cess, VAT etc., on the value of goods vide Tax invoice – cum – Delivery Challan. If really, the goods/chemicals were not purchased, the question of payment of Education Cess, Sh. Cess, VAT etc. does not arise and taking advantage of such payments, learned counsel for the petitioners contended that the petitioner No.1 paid value of the goods to M/s Graupel Pharma Pvt. Ltd. and supplied to M/s Maven Life Sciences Pvt. Ltd.

As per Tax invoice – cum – Delivery Challan, the same was issued by M/s Kiran Impex Pvt. Ltd. for an amount of Rs.75,60,621/- with stamp of M/s Kiran Impex Pvt. Ltd. and signature of the person concerned. In the Tax invoice – cum – Delivery Challan, the lorry number was mentioned as AP 31TW 7159. On verification, it was found that the vehicle bearing No.AP 31TW 7159 is a Truck. Mere payment of Excise duty, Education Cess, Sh.Cess and VAT etc., is not sufficient to accept that the purchase has taken place. When Tax invoice – cum – delivery challan allegedly created for the purpose of availment of cash credit facility with the bank, C.B.I. examined the case in depth and on verification, it was found that the lorry bearing No.AP 31TW 7159 is only a truck and the chemical allegedly purchased from M/s Graupel Pharma Pvt. Ltd. cannot be transported in a truck bearing No.AP 31TW 7159 to M/s Maven Life Sciences Pvt. Ltd. for the reason that the alleged chemical has to be preserved in the temperature 0 to 8^0 Celsius and it cannot be exposed to temperature of more than 8^0 Celsius and if it is transported in open truck, it will have serious consequences in view of exposing goods to ordinary temperature, that too transportation allegedly took place on 29.07.2012, which is not even winter and normal temperature would be more than 20^0 Celsius in July.

During the month of July, transportation of bulk drug in open truck, which is required to be preserved in a temperature between 0-8^0 Celsius cannot be accepted. The component of bulk drug is extracted hereunder:

> ***"2-Chloro-1,3-bis(dimethylamino)trimethinium hexafluoro phosphate***
> ***≥ 99% (HPLC)***
> ***Purity Limit≥ 99%***
> ***(HPLC)Molecular Formula C7H14ClN2·F6P***
> ***Molecular Weight306.62CAS***
> ***Appearance - Pale yellow crystalline powder***
> ***Storage Temperature Store at 0-8 °C"***

During investigation, statements of witnesses under Section 161 (3) of Cr.P.C. were recorded by the investigating agency and on the basis of such statements, the C.B.I filed charge sheet. But those statements and other material collected during investigation is not placed on record except tax invoice – cum – delivery challan, purchase order etc. In the absence of those statements, based on the allegations made in the charge sheet, this Court cannot exercise power under Section 482 of Cr.P.C. since the statements of witnesses recorded during investigation and other material collected forms part of the record.

Failure to produce the material, including the statements recorded under Section 161(3) Cr.P.C is sufficient to deny the relief claimed in the present petition, since the statements recorded under Section 161(3) Cr.P.C form part of the charge-sheet. Though, this Court can exercise its power in rarest of rare cases, it cannot be used to stifle the legitimate prosecution, the only requirement is verification of the allegations made in the charge sheet to find out whether the allegations on their face value constitute offence punishable under the penal provisions of any Act. The test to be applied by the Court is "whether uncontroverted allegations made in the complaint would establish any offence". In "***State of H.P. v. Pirthi Chand***[1]" the Apex Court held that "the power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the FIR/charge-Sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter and decide whether the allegations constitute the offence. It must be remembered the FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid the

[1] 1996 (2) SCC 37

prosecution produces the statements of the witnesses recorded under Section 161 Cr.P.C in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of *mala fide* initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power."

Thus, in view of the law declared by the Apex Court in "***State of H.P. v. Pirthi Chand***" (referred supra) unless the Court come to a conclusion that the averments in the charge sheet and the statements of witnesses on the record in support thereof whether Court could take cognizance of the offence on that evidence and proceed further with the trial, if, it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the proceedings.

As discussed above, the prime duty of the Court is to verify the allegations made in the charge sheet and the statements of witnesses recorded by the investigating agency during investigation, the statements produced before the Court, more particularly statements recorded under Section 161(3) Cr.P.C. which forms part of the charge-sheet. Though, such statement recorded under Section 161(3) Cr.P.C is not a substantive piece of evidence, it can be used only for limited purpose of contradicting the witness under Indian Evidence Act. However, this Court is competent to deduce its conclusion on the statements recorded under Section 161(3) Cr.P.C during investigation, though not a substantive piece of evidence.

Yet another strange fact is that M/s Graupel Pharma Pvt. Ltd. is the sister concern of M/s Maven Life Sciences Pvt. Ltd. If M/s Maven Life Sciences Pvt. Ltd. is intended to purchase bulk drug from M/s Graupel Pharma Pvt. Ltd., the M/s Maven Life Sciences Pvt. Ltd. can directly purchase the same from M/s Graupel Pharma Pvt. Ltd. instead of approaching M/s. Kiran Impex Pvt. Ltd./accused No.18, petitioner No.2 herein represented by accused No.10/petitioner No.1 herein. Purchase of bulk drug through a trader – accused No.18 represented by accused No.10, petitioners herein creates any amount of suspicion about the genuineness of purchase transaction. In addition to that, transportation of bulk drug referred above in a truck is another suspicious circumstance since the bulk drug cannot be shifted in a truck though such truck number was furnished by M/s Maven Life Sciences Pvt. Ltd. to the petitioner No.2 herein allegedly.

According to the prosecution, in addition to the above facts, statements recorded by the investigating agency during investigation disclosed that purchase transaction of bulk drug by the petitioner No.2 herein from M/s Graupel Pharma Pvt. Ltd. and supplied the same to the M/s Maven Life Sciences Pvt. Ltd. is a fake transaction.

Learned counsel for the petitioners contended that the transaction is genuine and the petitioner No.1 herein has nothing to do with the relationship between the M/s Graupel Pharma Pvt. Ltd. and M/s Maven Life Sciences Pvt. Ltd. The petitioners herein being the trader purchased the bulk drug from M/s Graupel Pharma Pvt. Ltd. and paid necessary Excise duty, Education Cess, Sh.Cess and VAT etc.

Learned counsel for the petitioners has drawn the attention of this Court to various documents more particularly questionnaire dated 27.05.2014 and the answers given by the petitioners to the said questionnaire. In the answers given by the petitioners to the questionnaire furnished by C.B.I., the petitioners thrown the entire burden on the purchaser i.e. M/s Maven Life Sciences Pvt. Ltd. and the vehicle number is also mentioned in the letter by the M/s Maven Life Sciences Pvt. Ltd. and tried to shirk his responsibility for the grave offence punishable under Sections 120-B, 409, 420, 468 and 471 of I.P.C.

Section 482 of Cr.P.C. dealing with the saving of inherent powers of High Court, has to be exercised only within the framework of the said section which also clearly demarcates the sphere within which the said discretion contemplated under this section can be exercised. Nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. were highlighted by the Apex Court in long line of perspective pronouncements, which are as follows:

In "***R.P. Kapur v. State of Punjab***[2]", the Apex Court laid down the following principles:

> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
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> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no

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[2] AIR 1960 SC 866

justification for interference by the High Court as held by the Apex Court in ***"Mrs.Dhanalakshmi v. R.Prasanna Kumar[3]"***

In "***State of Haryana v. Bhajan Lal[4]"*** the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (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.
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> (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.
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> (3) Where the 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.
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> (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.
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> (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.

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[3] AIR 1990 SC 494
[4] 1992 Supp.(1) SCC 335

(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.

One of the offences allegedly committed by the petitioners is punishable under Section 420 of I.P.C. Section 420 of I.P.C. deals with punishment for the offence of 'cheating'.

Cheating is defined under Section 415 of I.P.C and it is as follows:

"**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".

The essential ingredients to constitute the offence of cheating are:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In ***V.Y.Jose v. State of Gujarat***[5] the Apex Court laid down following ingredients to constitute cheating.

> "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
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> (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
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> (iii) 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.
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> 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 absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

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[5] (2009) 3 SCC 78

An offence of cheating may consist of two classes of cases:
(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

In "***Hridya Rajan Pd. Verma and Ors. v. State of Bihar and another***[6]" the Apex Court discussed about the basic ingredients of offence of 'cheating'. In the facts of the above judgment, a complaint was filed that the accused persons therein had deliberately and intentionally diverted and induced the respondent society and the complainant by suppressing certain facts and giving false and concocted information and assurances to the complainant so as to make him believe that the deal was a fair one and free from troubles. The further allegation was that the accused person did so with the intention to acquire wrongful gain for themselves and to cause wrongful loss to the Society and the complainant and they had induced the complainant to enter into negotiation and get advance consideration money to them. The two-Judge Bench referred to the judgment in "***State of Haryana v. Bhajan Lal***" (referred supra) wherein the Apex Court has enumerated certain categories of cases by way of illustration wherein the extraordinary power under Article 226 or the inherent powers Under Section 482 of the Code of Criminal Procedure could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Bench also referred to

[6] AIR 2000 SC 2341

the decisions in "***Rupen Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill***[7]", "***Rajesh Bajaj v. State NCT of Delhi***[8]" and "***State of Kerala v. O.C. Kuttan***[9]" wherein the principles laid down in Bhajan Lal (supra) are reiterated. The Court posed the question whether the case of the appellants therein came under any of the categories enumerated in Bhajan Lal (supra) and whether the allegations made in the FIR or the complaint if accepted in entirety did make out a case against the accused-Appellants therein. For the aforesaid purpose advertence was made to offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint. The Court took the view that main offence alleged to have been committed by the appellants is cheating punishable Under Section 420 of the Indian Penal Code. Scanning the definition of 'cheating' the Court opined that there are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set-forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. Thereafter, the Bench proceeded to state as follows:

> "16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole

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[7] AIR 1996 SC 309
[8] (1999) 3 SCC 259
[9] AIR 1999 SC 1044

> test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

After laying down the principle the Bench referred to the complaint and opined that reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction had neither been expressly stated nor indirectly suggested in the complaint. All that the respondent No.2 therein had alleged against the appellants therein was that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No.2 part with property was not alleged expressly or even impliedly in the complaint. Therefore, the core postulate of dishonest intention in order to deceive the complainant-respondent No. 2 was not made out even accepting all the averments in the complaint on their face value and, accordingly, ruled that in such a situation continuing the criminal proceeding against the accused would be an abuse of process of the Court.

The offence allegedly committed by the petitioners is punishable under Section 120-B of I.P.C. i.e. punishment for criminal conspiracy.

The most important ingredient of the offence 'criminal conspiracy' is the agreement between two or more persons to do an illegal act or an act not illegal by illegal means (See:**Kehar Singh and others v. State (Delhi Admin.)[10]"**. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established (See: ***Lennart Schussler and another v. Director of Enforcement and another***[11]).

The basic ingredients to constitute an offence punishable under Section 120-B I.P.C. is that there must be an agreement between the parties to do an act by illegal means or to do an act, which is not illegal by illegal means. In "***Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra***[12]**"**, an identical issue came up for consideration before the Honourable Apex Court and the Honourable Apex Court clearly laid down distinction between Section 34, Section 109 and Section 120-B I.P.C. and held that Section 34 I.P.C. embodies the principle of joint liability in doing a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or

[10] AIR 1988 SC 1883
[11] AIR 1970 SC 549
[12] AIR 1971 SC 885

illegal omission. Turning to the charge under Section 120-B I.P.C., criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107 of I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.

As seen from the principle laid down by the Honourable Apex Court in the above judgment, there must be two or more persons to do an unlawful act by illegal means to constitute an offence punishable under Section 120-B of I.P.C.

Section 468 of I.P.C. deals with forgery for purpose of cheating and forgery is defined under Section 463 of I.P.C., which reads as under:

> **463. Forgery:-** Whoever makes any false document or false electronic record or part of a document, or electronic record with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause by person to apart with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery.
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> 464. Making a false document:- A person is said to make a false document or false electronic record --
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> First :- Who dishonestly or fraudulently (a) makes, signs, seals or executes a document or part of a document; (b) makes or transmits any electronic record or part of any electronic record; (c) affixes any digital signature or any electronic record; (d) makes any mark denoting the execution of a document or the authenticity of the digital signature.
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> with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed executed transmitted or affixed by or by the authority of a person by whom or whose authority he knows that it was not made, signed, sealed, executed, or affixed or,
>
> Secondly:- Who, without lawful authority, dishonestly, or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any person, whether such person be living or dead at the time of such alteration; or
>
> Thirdly:-Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature or any electronic record, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know

the contents of the document or electronic record or the nature of the alteration.

Section 471 of I.P.C. reads as under:

471. Using as genuine a forged document or electronic record:- Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Section 464 of I.P.C. deals with making a false document. The alleged act of the petitioners herein i.e. creation of tax invoice – cum – delivery challan dated 29.07.2012 by paying necessary Excise Duty, Education Cess, Sh.Cess, VAT etc and availed cash credit facility for the benefit of M/s Graupel Pharma Pvt. Ltd. and M/s Maven Life Sciences Pvt. Ltd. would constitute *prima facie* offence of making false document punishable under Sections 468 and 471 of I.P.C. since the transaction of purchase of bulk drug from M/s Graupel Pharma Pvt. Ltd. by the petitioners herein and transported the same to M/s Maven Life Sciences Pvt. Ltd. represented by accused No.3 is fake transaction and created such Tax invoice to siphon off huge amount of Rs.75,00,000/- attracts *prima facie* offence punishable under Sections 120-B, 409, 420, 468 and 471 of I.P.C.

When the allegations made in the charge sheet *prima facie* disclose a serious economic fraud against a public financial institution, the Court cannot exercise inherent power under Section 482 of Cr.P.C. to quash the proceedings.

In "***State v. R. Vasanthi Stanley***[13]", the Apex Court held that load on the criminal justice dispensation system is concerned it has an insegragable nexus with speedy trial. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. That can never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of.

The Supreme Court in "***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation***[14]" held that Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

Thus, the Apex Court itself has described the offences *prima facie* committed by the accused therein as grave offences causing dent to the economy of State and affecting the economy of the country. Grave economic offences, for that matter the offence causing dent to the economy of the country can be classified as serious and grave offences and the Court would not normally exercise its discretion.

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[13] 2016 (6) SCJ 56
[14] AIR 2013 SC 1933

In view of the law declared by the Apex Court in the judgments referred supra and more particularly when the allegations made in the charge sheet prima facie constitute offences punishable under Sections 120-B, 409, 420, 468 and 471 of I.P.C., this Court cannot exercise power under Section 482 of Cr.P.C. to quash the proceedings. Consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

26.09.2018
Ksp