

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.9034 and 9035 of 2015

COMMON ORDER:

These criminal petitions No.9034 and 9035 of 2015 are filed by the petitioners/accused Nos.3, 4, 7, 8 and 9 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.26 of 2013 on the file of the Principal Special Judge for CBI Cases at Hyderabad, registered for the offences punishable under Sections 120-B and 420 of Indian Penal Code (for short "I.P.C.") and under Section 12 of Prevention of Corruption Act (for short "P.C.Act").

The petitioner in CrI.P.No.9034 of 2015 is one Puttamreddy Prathap Reddy, he is arrayed as accused No.3, who allegedly committed offence punishable under Sections 120-B, 420 of I.P.C. and Section 12 of P.C.Act. The petitioners in CrI.P.No.9035 of 2015 are M/s PR Energy Holding Limited/accused No.4, M/s Penna Cement Industries Limited/accused No.7, M/s Pionner Holiday Resorts Limited/accused No.8 and M/s. Penna Tandur Cement Company Limited/accused No.9. Sri Raj Kumar Singh is the Director and Authorised Signatory of all the aforesaid companies. The petitioners also allegedly committed offences punishable under Sections 120-B and 420 of I.P.C.

It is a case where serious allegations of political corruption is alleged against the petitioners herein, accused No.1, son of the then Chief Minister late Dr.Y.S.Rajashekara Reddy, and highly placed Government officials by abusing their power either political or official in conferring undue official favour on the petitioners,

violating various provisions of the enactments and circumventing certain provisions of A.P.Act 09 of 1977. Though it is not a case, where any of the parties lost their property or suffered any loss, but the State being the custodian of the public property in view of the Doctrine of Public Trust, it is allegedly transferred the property and right of enjoyment in different ways and means. Therefore, the petitioners are beneficiaries in one way or the other, but the State is the loser. Therefore, in view of the serious allegations of deep rooted political corruption, it has to be examined in a different angle than ordinary case for the offences punishable under Section 120-B and 420 of I.P.C. Since the main allegation is that in view of conferring undue official favour on the petitioners, they invested certain amount on different dates in the companies floated by accused No.1, son of the then Chief Minister late Dr.Y.S.Rajashekara Reddy i.e. *quid-pro-quo*. Whether the concept of *quid-pro-quo* is applicable to criminal prosecutions or not will be dealt with at a later stage of this order. Hence, keeping in mind, the serious allegations of fraud and cheating, more particularly about the land administration and transfer of enjoyment of natural resources like mining, the Court has to examine the same in a different perspective unlike any other criminal offence. It appears from the allegations made against the petitioners, political corruption spreads like a cancer that eats away citizen's faith in democracy, which diminished the instinct for innovation and creativity; already-tight national budgets, crowding out important national investments, it wastes the talent of entire generations. It scares away investments and jobs, it dents economy of the State.

Therefore, political corruption, embezzlement or fraud are all characteristics which exist in the present facts of the case.

The respondent in pursuance of the directions issued by this Court in W.P.Nos.794 and 6604 of 2011 dated 10.08.2011 registered crime, issued F.I.R. and took up investigation. During investigation, the investigating agency herein examined as many as 73 witnesses; recorded their statements and collected several documents.

The charge sheet/final report dated 10.09.2013 is filed for various offences referred supra. It is a case where serious allegations were made against Late Dr.Y.S.Rajashekara Reddy, the then Chief Minister of erstwhile Andhra Pradesh and his son Y.S.Jagan Mohan Reddy, who is arrayed as accused No.1, the then Member of Parliament, including his associate V.Vijay Sai Reddy, invited investments in the companies floated by accused No.1 from his kith and kin as quid-pro-quo for allotting Government land (largesse) in return to various companies, including the company of the petitioner.

Sri P.Pratap Reddy – accused No.3 is the Chairman and Managing Director of M/s Penna Cement Industries Limited and he is major stakeholder in other group of companies and holding the position of either Director or Chairman or holding major stake. During the period from 2006 to 2009, he invested an amount of Rs.68.00 crores into group of companies floated by Y.S.Jagan Mohan Reddy (accused No.1) as quid-pro-quo for the undue official favour received from the Government of A.P. in the form of:-

- i) alienation of Government Land;**
- ii) grant of prospecting licence for limestone;**
- iii) grant of first renewal of mining lease for limestone; and**
- iv) permission for hotel construction and relaxations.**

The details of investments made by M/s. Penna Group of Companies in the companies owned by Sri Y.S.Jagan Mohan Reddy are as under:

Sl.No.	Name	Date of Investment	Amount Rs.In Crore	Present Status
1	Carmel Asia Holdings Pvt.Ltd.	22.12.2006	10.00	Still holding
2	Carmel Asia Holdings Pvt.Ltd.	27.12.2006	13.00	Still holding
3	Jagati Publications Ltd.	03.12.2007	20.00	Still holding
4	Jagati Publications Ltd.	04.03.2009	10.00	Still holding
5	Jagati Publications Ltd.	23.04.2009	10.00	Still holding
6	Jagati Publications Ltd.	06.06.2009	5.00	Still holding

			68.00	

One J.Prabhakar of M/s Jagadisan and Company, Chartered Accountant, prepared the valuation report dated 12.07.2007 and the business value of M/s Jagati Publications Private Limited is inflated to Rs.3,450/- crores.

Sri V.Vijaya Sai Reddy – accused No.2 had contacted J.Prabhakar of M/s Jagadisan and Company over phone during November/December, 2006 to carry out valuation of M/s Carmel Asia Holdings Private Limited and provided inputs regarding business strategy, project cost, projected balance sheets, future cash flows and projected profit and loss accounts, and the data was sent through Murali, Chartered Accountant. J.Prabhakar had taken the relevant material by copying the same for valuation through the laptop of Sri Murali and the report was prepared during January, 2007.

Sri J.Prabhakar had prepared the business valuation of M/s Jagati Publications Pvt. Ltd., M/s Indira Television Ltd., and M/s Janani Infrastructure Pvt. Ltd., which are subsidiaries of M/s Carmel Asia Holding Pvt. Ltd., as per the details given below.

Name of Subsidiary	Percentage of holding by Carmel Asia Holdings Private Limited (CAHPL)	Value of business in the region (Rupees in Crores)	
		From	To
Indira Television Ltd.	75%	137	139
Jagati Publications Pvt. Ltd.	76%	136	149
Janani Infrastructure Pvt. Ltd.	71%	21	21

Sri J.Prabhakar of M/s Jagadisan and Company had prepared the antedated report as 01.11.2006 valuing the business range of M/s Jagati Publications Pvt. Ltd., from 136 crores to 149 crores at the instance of V.Vijaya Sai Reddy, and subsequently

during December 2007, V.Vijaya Sai Reddy had contacted J.Prabhakar of M/s Jagadisan and Company and requested him to hike or inflate the valuation of M/s Jagati Publications Pvt. Ltd., again and projected the valuation as Rs.3,400 crores as against the value of 136 to 149 crores.

The valuation of M/s.Jagati Publications Pvt. Ltd. was based on the projections/inputs provided by V.Vijaya Sai Reddy – accused No.2 and not on the basis of ground realities. In order to solicit investments in the form of bribes, V.Vijaya Sai Reddy – accused No.2 conspired with Y.S.Jagan Mohan Reddy – accused No.1, fixed the value of premium @ Rs.350/- per share and to justify the premium V.Vijaya Sai Reddy had approached J.Prabhakar of M/s. Jagadisan and Company to give inflated valuation report of M/s.Jagati Publications Pvt. Ltd., at Rs.3,450 crores. Accordingly, in pursuance of the conspiracy, J.Prabhakar prepared report with antedate as 12.07.2007 at the instance of V.Vijaya Sai Reddy – accused No.2 assessing the value of M/s Jagati Publications Pvt. Ltd., and cheated the genuine investors and received bribe at a premium of Rs.350/- per share from various companies as a quid-pro-quo for the benefits received by them from the Government by influencing father of accused No.1 by name Dr.Y.S.Rajashekara Reddy, the then Chief Minister of erstwhile State of Andhra Pradesh.

V.Vijaya Sai Reddy – accused No.2 is the confederate of Y.S.Jagan Mohan Reddy - accused No.1 and his father Y.S.Rajashekara Reddy, the then Chief Minister of erstwhile State of Andhra Pradesh. Late Dr.Y.S.Rajashekara Reddy, the then Chief

Minister of erstwhile State of Andhra Pradesh by using his official powers in view of his close association with V.Vijaya Sai Reddy – accused No.2 got him nominated to coveted posts in the Governing Bodies of Tirumala Tirupathi Devasthanams (TTD) and Oriental Bank of Commerce evidencing the affinity of accused No.2 with the family of accused No.1 and his father late Y.S.Rajashekara Reddy. In pursuance of criminal conspiracy with accused No.1 and his father and also with the remaining co-conspirators exaggerated the value of M/s.Jagati Publications Private Limited at inflated rate and also fixed the premium of Rs.350/- per share and also got evaluated M/s.Jagati Publications through M/s Deloitte Touche Tohmatsu India Pvt. Ltd., and thereby facilitated the receipt of bribe to the tune of Rs.45 crores through M/s Pioneer Infrastructure Holding Ltd (presently known as PR Energy Holding Ltd. i.e accused No.4).

Sri V.Vijaya Sai Reddy – accused No.2 being the confederate of Sri Y.S.Jagan Mohan Reddy – accused No.1 and his father late Dr.Y.S.Rajashekara Reddy, the then Chief Minister of erstwhile State of Andhra Pradesh was instrumental in inflating the share price of M/s.Jagati Publications Ltd. and getting the same fixed at a high premium of Rs.350/- without there being any rationale and before commencement of business by using Delloitte Report which was got inflated as V.Vijaya Sai Reddy – accused No.2, strongly urged P.N.Sudarshan to do so. He also got artificially inflated the credit worthiness of M/s Carmel Asia Holding Pvt. Ltd., an investment company of holding M/s Janani, M/s.Jagati and M/s Indira Television held by accused No.1, by

ante-dating the valuation report of M/s Carmel Asia Holding Limited – accused No.6.

Accused No.3 and his companies – accused Nos.4, 7, 8 and 9, the petitioners herein to obtain grant from the Government, M/s.Penna Cement Industries Limited represented by its General Manager (Works), Sri C.J.Reddy, submitted representation dated 22.04.2006 to the District Collector, Anantapur, requested for alienation of Government land on payment of market value, for setting up of cement plant in the Yadiki Mandal of Anantapur District.

In view of the representation, the then District Revenue Officer, Anantapur District, who was in-charge Joint Collector, forwarded the request of M/s Penna Cement Industries to the Revenue Divisional Officer (R.D.O.), Anantapur on 02.06.2006, for identifying the Government Lands having road access and to take further action on the representation.

M/s. Penna Cement Industries Limited submitted a representation dated 25.08.2006 to the District Collector, Anantapur stating that M/s Penna Cement Industries Ltd, has purchased Patta Lands enclosing Govt. lands and sought an extent of 144.13 acres in Kundanakota Village and 96.83 acres in Gudipadu village of Government land for setting up of the said cement plant. Subsequently, on 18.09.2006 M/s. Penna Cement Industries Limited made a request for alienation of land to the extent of Ac.30.71 in Kamalapadu village, Ac.1.25 in Kundanakota Village.

The Mandal Revenue Officer (M.R.O.), Yadiki Mandal instead of submitting the detailed report immediately to the District Collector regarding the status of lands, shared the information of assigned lands with the company officials and facilitated the company in persuading the assignees to relinquish their assigned lands. Accordingly, company officials pressurized the assignees by way of inducement and lured with money, as a result, the assignees relinquished their assigned lands and received sale consideration from the company. The Mandal Revenue Officer (for short "M.R.O.") did not follow due procedure for resumption of assigned lands by the Government and accepted the relinquishment letters. Thus, the M.R.O. facilitated and helped the company due to their influence without conducting any enquiry into the relinquishment of assigned lands before allotting the same to the petitioner. The M.R.O. – Smt.M.Yallamma high-handedly accommodated M/s Penna Cement Industries Limited (for short "M/s PCIL") by accepting the relinquishment letters from the assignees and paved way to M/s PCIL to make payments to the assignees without awaiting for the orders of resumption by the Government and re-allocation of the same to M/s.PCIL in anticipation.

As per the norms, compensation was to be fixed by the Government to the assignees on relinquishment of the assigned lands only on resumption of lands officially by the Government. In the absence of any rule or convention to settle or pay compensation or sale consideration in anticipation of allotment of the resumed lands, M/s PCIL had paid an amount ranging from Rs.20,000/- to Rs.60,000/- per acre to various assignees and took

signatures of the assignees on payment vouchers showing the reasons that the payments were made towards compensation for standing crop, development of land and some of the farmers were forced to sell their lands as the company has started construction of compound wall and restricted entry to the farmers to their lands and that the relinquishment letters were got signed by the farmers under coercion. In this regard, Smt. Yallamma, M.R.O., Yadiki Mandal did not act or conduct proper enquiry and facilitated the forcible relinquishment which resulted in undue official favour to M/s PCIL.

Based on relinquishment letters from assignees, the MRO, Yadiki Mandal, instead of conducting enquiry into the reasons for voluntary relinquishment, has issued notices to the farmers for violation of D. Form Patta conditions and resumed lands to the Government. Sri M.Sudarshan Reddy, District Revenue Officer, Anantapur, facilitated the process of alienation proposal by way of sending replies to the queries raised by the Chief Commissioner, Land Administration (CCLA), without the orders/approval of the Joint Collector or Collector. Thus, M.Sudarshan Reddy, District Revenue Officer, Anantapur also played major role at the behest of the petitioners.

In pursuance of criminal conspiracy, Sri P. Pratap Reddy submitted request letter dated 28.12.2007 to the then Chief Minister late Sri Y.S. Rajashekara Reddy for alienation of 237 acres of land in Yadiki Mandal to M/s PCIL, after completion of quid-pro-quo investment of Rs.20 crores into M/s Jagati Publications Private Limited by his company, namely M/s Pioneer Infrastructure Holding Ltd, presently known as M/s PR Energy

Holding Limited. Acting upon the letter, the Chief Minister's Office issued a memo dated 03.01.2008 to the Principal Secretary, Revenue, with copies to the CCLA and the District Collector, Anantapur for examining the request of Sri P. Prathap Reddy – accused No.3. CCLA received a telephone call from the then Principal Secretary to the Chief Minister (late Dr. P.Subrahmanyam) on 03.06.2008 to place the proposal regarding alienation of land to M/s Penna Cement Industries Ltd before the Empowered Committee headed by CCLA to be held on 04.06.2008. Accordingly, the Empowered Committee, in the meeting held on 04.06.2008, recommended the proposal for alienation of land over an extent 231.09 acres at a market value of Rs.50,000/- per acre subject to completion of all formalities under Section 4(1) of A.P. Assigned Lands (POT) Act, 1977. This clearly indicates the role of the then C.M. late Dr.Y.S. Rajashekara Reddy in the criminal conspiracy *prima facie* with M/s PCIL and petitioners herein in alienation of lands to the extent of 231.09 acres in favour of M/s PCIL.

The then Principal Secretary, Revenue, Sri M. Samuel, instead of notifying the lands under Section 4(1) of POT Act, as recommended by the Empowered Committee, interpreted a general opinion given by the Advocate General with regard to relinquishment of assigned lands and non applicability of provisions of A.P.Act 9 of 1977 and thereby facilitated in a manner by which the company was able to acquire a large extent of assigned lands by placing the matter before the Council of Ministers, after its approval by the Minister for Revenue and the Chief Minister.

The opinion of the Advocate General is not based on any law declared by Courts, but it was general in nature and was not sought in any specific instance or for any specific purpose, especially regarding the alienation of 231.09 acres, out of which an extent of 114 acres is assigned land.

The proposal of alienation of land requested by P.Prathap Reddy – accused No.3 reached the Council of Ministers with the active involvement of the then Chief Minister late Y.S. Rajashekara Reddy on 20.11.2008 and was approved by the Council of Ministers in their 110th meeting vide Council Resolution No. 381/2008, which culminated in issuance of G.O. Ms.No.1490, Revenue (Asn.V) Department, Dated 12.12.2008 alienating land over an extent of Ac. 231.09 Cts. in Kamalapadu, Gudipadu, Kundanakota and 23/2 Nittoor Villages of Yadiki Mandal, Anantapur District in favour of M/s Penna Cement Industries Limited (Petitioner in CrI.P.No.9035 of 2015) on payment of market value of Rs.50,000/- per acre. The alienation of Ac.231.09 cents of land (referred supra) was made only to reciprocate the proposed investment agreed to be made by the petitioner in Criminal Petition No.9034 of 2015 (accused No.3) in the companies floated by Y.S. Jagan Mohan Reddy, namely M/s Carmel Asia Holdings and M/s Jagati Publications. The details of the allotment and G.Os. including date of investment, for better appreciation, are given in the following table.

Date	Favour	Date of investment	Amount of Investment	Invested in
16.12.2006	Completion of resumption of assigned lands to the extent of 114 acres (approx) facilitated by	22.12.2006	Rs.10 Cr	M/s.Carmel Asia Holdings Private Limited.

	MRO, Yadiki, Anantapur District	27.12.2006	Rs.13 Cr.	M/s. Carmel Asia Holdings Private Limited.
28.12.2007	Written request to the Chief Minister by Sri P.Prathap Reddy for alienation of lands to the extent of 237 acres. (including 114 acres of assigned lands)	03.12.2007	Rs.20 Cr.	M/s Jagati Publications Private Limited
12.12.2008	Issue of G.O.Ms. No.1490 Revenue (Asn.V) Department dated 12.12.2008	09.03.2009	Rs.10 Cr.	M/s Jagati Publications Limited.

The details given in the aforesaid table are sufficient to conclude *prima facie* that the petitioners committed offences (referred supra) since the allotment was in violation of the provisions of A.P.Act 9 of 1977. Thus, the petitioner in Criminal Petition No.9034 of 2015 in connivance with Y.S.Jagan Mohan Reddy and the then Chief Minister Dr.Y.S.Rajasekhar Reddy got allotment as quid-pro-quo for the proposed investment to be made in M/s Carmel Asia Holdings and M/s.Jagati Publications.

The other major allegation made against the petitioners is that granting of prospecting license over an extent of 304.740 ha. in Kurnool District for a period of 3 Years vide G.O.Ms.No.91 Industries & Commerce (M.I) Department dated 29.03.2008.

As per the averments made in the charge sheet M/s UltraTech Cement Limited submitted Mining Lease application dated 5.10.2005, for an extent of 1032.31 Acres in various Survey number of Kowlapalli, hamlet of Burugula Village, Peapully Mandal, Kurnool District for a period of 20 years. One Sri P.

Lakshminarayana has also submitted Mining Lease application dated 9.3.2007 for the extent of 47.52 acres within the vicinity.

On 04.06.2007, M/s Penna Cement Industries Limited submitted application for Prospecting License for an extent of 800 acres, overlapping the extents applied for Mining Lease by M/s UltraTech Cement Limited and Sri P. Lakshminarayana. After obtaining No Objection Certificate (NOC) from the concerned authorities for the applied extent, the Assistant Director, Mines & Geology (ADM&G) got the survey conducted and forwarded to DM&G recommending for grant of Prospecting Licence (PL) in favour of M/s Penna Cement Industries Limited to the extent of 304.740 Ha. for a period of three years. The ADM&G while forwarding the proposal of M/s Penna Cement Industries Limited has recommended for rejection of Mining Lease application of M/s UltraTech Cement Ltd under Section 5(2) of MMDR Act, 1957.

During pendency of the proposal of M/s PCIL with DM&G office, an amount of Rs.20 crores was invested by Sri P. Pratap Reddy – accused No.3 through his company M/s Pioneer Infrastructure Holding Ltd. in M/s Jagati Publications Private Limited on 3.12.2007, and subsequently, the DM&G, under the influence of the then Chief Minister Late Dr.Y.S.Rajashekara Reddy, facilitated in processing the file in utmost haste and recommended for grant of Prospecting Licence to M/s PCIL without obtaining proper withdrawal letter from M/S UltraTech Cement Ltd., but the DM&G simply relied on the oral information of the company representative of M/s UltraTech Cement Ltd., and forwarded the proposal to Industries & Commerce Department for further course of action. The then Secretary, Industries &

Commerce Department facilitated in recommending the proposal without insisting for the proper withdrawal letter from M/s UltraTech Cement Limited and forwarded the proposal to the Minister for Mines and Geology for approval. Later, the then Minister for Mines and Geology facilitated by approving the proposal based on the recommendation of the then Secretary without insisting for the withdrawal letter from M/s UltraTech Cement Limited.

After assent by the Minister, the Industries and Commerce Department has issued a memo to DM&G seeking withdrawal letter of M/S UltraTech Cement Limited stated to have been submitted by the company. The said company submitted a letter addressed to the Secretary, Industries & Commerce Department expressing its readiness to withdraw their Mining Lease (ML) application subject to transfer of Mining Lease held by M/S Dakshin Cements, and the said letter was treated as if it was a withdrawal of ML application and the same was recommended by the then DM&G when sought for his remarks by the Industries & Commerce Department. Thus, the Secretary, Industries & Commerce Department has facilitated while considering the recommendation of the then DM&G issued a G.O., granting Prospecting License in favour of M/s Penna Cement Industries Limited for an extent of 304.740 Ha. for three years in Kurnool District vide G.O.Ms.No.91, Industries & Commerce (M.I) Department dated 29.03.2008, without getting approval of the Minister for Mines & Geology.

It is revealed during investigation that the conditional withdrawal submitted by M/s UltraTech Cement Limited has to be

rejected. Instead of rejecting the same, since it was not submitted by a Notarized Affidavit without any conditions, required as per procedure, the officials and Government construed that the conditional withdrawal submitted by M/s UltraTech Cement Limited was in order.

In order to facilitate the company M/S Penna Cement Industries Ltd., the then DM&G Sri V.D. Rajagopal has recommended to accept the conditional withdrawal of M/s UltraTech Cement Ltd., by violating the procedure. Whereas, the Govt. of A.P. should have rejected the ML application of M/s UltraTech Cement Ltd by giving a reasonable opportunity under Rule 26(1) of M.C. Rules, 1960, instead, granted Prospecting License to M/s Penna Cement Industries Ltd by accepting the conditional withdrawal letter of M/s UltraTech Cement Limited as quid-pro-quo in favour of P.Pratap Reddy, accused No.3, who invested Rs.68 crores in the companies of Y.S.Jagan Mohan Reddy during the period from December 2006 to June 2009.

The third allegation against the petitioners is with regard to Renewal of Mining Lease in favour of M/s.Walchand Tandur Cement Company Limited vide G.O.Ms.No.76, Industries and Commerce (M.I) Department, dated 26.02.2009 and change of name of company from M/s Walchand Tandur Cement Company Limited to M/s Penna Tandur Cement Company Limited., vide G.O.Ms.No.25, Industries and Commerce (M.I) Department, dated 29.01.2009.

The allegation, in brief, made against the petitioners with regard to the said violation is that M/s Walchand Tandur Cement Company Ltd was initially holding mining lease over an extent of

1021.30 acres from 1969 to 1979 and since then the company could not set up cement plant and the Govt. of A.P. issued order cancelling the mining lease. As per the request of the company M/s Walchand Tandur Cement Company Limited, the Government of India by an order dated 05.09.1980 has set aside the order of Government of Andhra Pradesh. Thereafter, the company made efforts to set up the cement plant during the period 1980 - 87, but the company could not set up the plant and the lease was expired by then. Subsequently on 29.07.1987, the company has further applied for renewal of mining lease, and the request was rejected by the State Government. Aggrieved by rejection of renewal of lease, the company filed a revision application to Government of India, who in turn has sought for written comments of the Government of Andhra Pradesh. The State Government after hearing the request of the company had again rejected the plea of the company. The Government of Andhra Pradesh, in the meanwhile issued a notification for grant of Mining Lease for the same area and in response to the notification M/s Visakha Cement Industries Limited has applied for grant of mining lease for an extent of 951.26 acres, the same area which had been applied by M/s Walchand Tandur Cement Company Limited.

The issue pertaining to change of name of company from M/s Walchand Tandur Cement Company Limited to M/s Penna Tandur Cement Company Limited has chequered history and same will be narrated, in detail, at appropriate stage of this order.

Investigation disclosed that after issuance of G.O.Ms.No.76, dated 26.02.2009 and execution of mining lease by the company on 07.03.2009, an amount of Rs.10 crore was invested on

09.03.2009 by M/s Pioneer Infrastructure Holding Limited, to which P.Pratap Reddy – accused No.3 is Chairman as quid-pro-quo into M/s Jagati Publications Limited, a company owned by Y.S. Jagan Mohan Reddy – accused No.1 in furtherance of criminal conspiracy with other accused.

Further allegation is that M/s. Pioneer Corporation Limited was incorporated with an objective of setting up of a Four Star Hotel with 19 rooms facilitating international standards complying with the Government policy of promoting Tourism in the State and the said project was promoted by P.Prathap Reddy – accused No.3. A Memorandum of Understanding (MoU) was entered by M/s.Pioneer Corporation Limited with Government of Andhra Pradesh during the Partnership Summit held on 07.01.2003 for setting up of a Four Star Hotel at Banjara Hills. As per the MoU a Bank Guarantee for Rs.1,00,000/- was taken from the company which was valid for 6 months and renewed periodically till the issue of provisional registration by the Tourism Department.

The Director of Tourism Department addressed to the Managing Director, M/s Pioneer Holiday Resorts Limited, stating that M/s Pioneer Holiday Resorts Limited, Plot No.8-2-268/1, Road No.3, Banjara Hills, Hyderabad is registered provisionally under Tourism Project for a period of two years as Tourism unit under item No.3 of Annexure – VI of Tourism Policy and the same is subject to obtaining necessary approvals from the concerned and requested to submit fresh Bank Guarantee for two years period.

After completion of two years of validity period i.e. from 08.07.2005 till 2007, M/s. Pioneer Holiday Resorts Limited neither

got the registration renewed nor requested for further extension of provisional registration, and thereby the renewal period of the hotel project was lapsed.

P. Pratap Reddy (accused No.3), Chairman of Pioneer Holiday Resorts Limited, requested the then Chief Minister Late Dr.Y.S.Rajashekara Reddy, to extend all the relaxations/benefits as given to M/s Blitz Hotels, (another hotel project which is also a registered tourism project situated at Banjara Hills). The said request of P.Pratap Reddy, accused No.3, was processed and put up before the then Chief Minister Late Dr.Y.S.Rajashekara Reddy, who approved the said proposal and gave his assent extending all the concessions to M/s Pioneer Holiday Resorts Limited as given to M/s Blitz Hotels and Resorts Private Limited by using his extraordinary powers. Accordingly, an order was issued by the then Principal Secretary, MA&UD, vide Memo No. 2710/M1/2009, dated 03.03.2009 extending all concessions to M/s Pioneer Holiday Resorts Limited and by this order, the status of tourism project has got revived though it was lapsed in the year 2007. As a quid-pro-quo P. Pratap Reddy – accused No.3, invested an amount of Rs.10 crores each into M/s Jagati Publications Limited owned by Y.S.Jagan Mohan Reddy on 09.03.2009 and 23.04.2009 through his company M/s Pionner Infrastructure Holding Limited and has got the above mentioned benefits.

As per the investigation, the Minutes of Meeting of the Board of Directors of M/s.Jagati Publications held on 21.05.2009, M/s Pioneer Infrastructure Holding Limited of P. Prathap Reddy was allotted 6,94,444 shares of Rs.10 each at a premium of Rs.350/- per share for a total value of about Rs.25 crores. Thus,

P.Pratap Reddy, accused No.3, and his group of companies in pursuance of their conspiracy obtained official favours from the then Chief Minister and committed above offences.

In view of serious fraud allegedly committed by the petitioners in connivance with the officials of the Government including bureaucrats, the Regional Director, Ministry of Corporate Affairs, South Eastern Region, Hyderabad inspected M/s. P.R.Energy Holding Limited and M/s.Jagati Publications Limited and unearthed investment of Rs.68 crores by M/s P.R.Energy Holding Limited in M/s.Jagati Publications Limited. A letter along with questionnaire was sent to the Regional Director, Ministry of Corporate Affairs, South Eastern Region, Hyderabad, by the investigating agency and in response, received inspection reports along with addendum inspection report.

The inspection report revealed that even entire Rs.68 crore invested by M/S P.R. Energy Holding Limited was significantly funded actually by its own other associate/group/sister concerns to the tune of 58 crores and remaining 10 crore from Sri K. Rama Mohan Rao, who is presently CEO of M/s Anrak Aluminum Ltd. Though money was invested by Sri K.Rama Mohana Rao way back in December 2006, the investor did not insist for allotment of shares nor for refund of the money.

The inspection report further revealed that out of Rs.58 crore sourced from other group companies, an amount of Rs.20 crore was received by P.R. Energy Holding Limited from M/s Anrak Aluminum Limited. The investment of Rs.20 crore by M/s Anrak Aluminum into M/s P.R. Energy Holding Limited, was made in violation of Memorandum and Articles of Association, Sections

193, 209, 211 and Section 372-A of the Companies Act read with Ministry of Corporate Affairs General Circular No.8/99 dated 04.06.1999. Inspection report further disclosed that the said amount paid by M/s Anrak Aluminum was shown and classified as "Capital Working Progress including Capital Advances" instead of showing/classifying under investments vide balance sheet of M/s Anrak Aluminum Limited and M/s Anrak Aluminum has accounted the said payment of 20 crore as their project cost (Alumina Refinery Plant) and that the said payment of Rs.20 crore was accounted as part and parcel of their project cost and not as investment. Thus, M/s P.R.Energy Holding Limited manipulated several investments for official favours.

The inspection report disclosed that out of Rs.58 crore sourced from other group of companies an amount of Rs.18 crore was received by P.R. Energy Holding Limited from Pioneer Builders Limited. The alleged investment of Rs.18 crore made by M/s Pioneer Builders into P.R. Energy Holding Ltd., was in violation of Memorandum and Articles of Association, Sections 300, 287, 193, 372A, 209, 211 of the Companies Act read with Ministry of Corporate Affairs Circular No.8/99 dated 04.06.1999.

Inspection report disclosed that out of 58 crore sourced from other group companies an amount of Rs.20 crore was received by P.R.Energy Holding Limited from Pioneer Power Limited. The alleged investment of Rs.20 crore made by M/s. Pioneer Power Limited was in violation of Memorandum and Articles of Association, Sections 193, 209, 211, 293, 295 and 372-A of the Companies Act read with Ministry of Corporate Affairs Circular No. 8/99 dated 04.06.1999.

Inspection report further revealed that investment of 45 crores by M/s P.R. Energy Holding Limited into M/s Jagati Publications Limited and Rs.23 crores into M/s Carmel Asia Holdings Limited was ultra vires and void. It is further disclosed that such investment transactions were not recorded in their books of accounts at their substance of the transaction, instead regarded as investments. It is also disclosed that such investment of 68 crores is neither for promotion of companies bonafide objectives nor for securing highest dividend or for securing highest rate on investments but not in good faith of the investing company. It is further disclosed that corporate powers were abused for making such payment of Rs.45 crore into Jagati Publications Private Limited and Rs.23 crore into Carmel Asia Holding Limited. The investment of Rs.68 crores made by M/s.P.R. Energy Holding Limited in M/s Carmel Asia Holding Limited and M/s Jagati Publications Private Limited was not legal since the company did not obtain certificate of registration from Reserve Bank of India. Thus, the petitioners have committed serious offences punishable under Sections 120-B read with 420 of I.P.C. in pursuance of criminal conspiracy with other accused to cause loss to the State and to have wrongful gain.

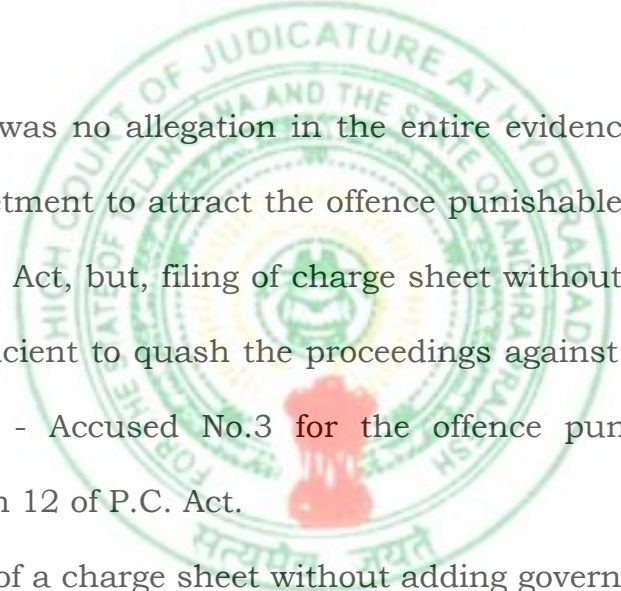
The learned Special Judge for trial of C.B.I cases took cognizance of the offence punishable under Sections 120-B and 420 of I.P.C. and under Sections 12 of P.C. Act against accused No.3 and under Sections 120-B and 420 of I.P.C. against accused Nos.4, 7, 8 and 9.

On receipt of summons, the present petitions under Sections 482 of Cr.P.C. are filed by the petitioners herein, who are accused

Nos.3, 4, 7, 8 and 9 to quash the proceedings in C.C.No.26 of 2013 on the file of the Principal Special Judge for CBI Cases at Hyderabad on various grounds explaining each allegation in the petition.

The petitioners in both the criminal petitions raised same grounds except to the extent of additional grounds of vicarious liability in CrI.P.No.9034 of 2015, while pointing out the illegalities in each allegation, with reference to the statements of the witnesses recorded under Section 161 Cr.P.C during investigation.

The common grounds in both the criminal petitions are as follows:

- 
- a) There was no allegation in the entire evidence to constitute an abetment to attract the offence punishable under Section 12 P.C Act, but, filing of charge sheet without any allegation is sufficient to quash the proceedings against Sri P. Prathap Reddy - Accused No.3 for the offence punishable under Section 12 of P.C. Act.
 - b) Filing of a charge sheet without adding government servants, against petitioners under the provisions of Prevention of Corruption Act is another grave illegality and the Principal Special Judge for C.B.I Cases at Hyderabad, lacks jurisdiction to try and dispose of C.C.No.26 of 2016.
 - c) Cognizance taken by the Trial Court against these petitioners is without consideration of contents of charge sheet, statements of the listed witnesses and documents filed along with the charge sheet, which led to miscarriage of justice and taking cognizance against P.Pratap Reddy (A-3) for the offence punishable under Section 12 of P.C. Act is a serious

illegality. On this ground alone, the proceedings against these petitioners are liable to be quashed.

- d) Sri P. Pratap Reddy (A-3) is only the Managing Director of M/s Penna Cement Industries Limited (A-7) and promoter of M/s PR Energy Holding Limited (A-4), M/s Pioner Holiday Resorts Limited (A-8) and M/s. Penna Tandur Cement Company (A-9). In the absence of any allegations of false inducement or representation knowingly to deprive the property or otherwise to have undue gain for himself or any group of companies, the allegations would not constitute an offence punishable under Section 120 I.P.C, thereby, the question of attaching any vicarious liability against A-4 to A-9 (petitioners in CrI.P.No.9035 of 2015) is an illegality.
- e) Investment made by M/s PR Energy Holding Limited (A-4) into company permitted by A-1 are not made by A-3 (petitioner in CrI.P.No.9034 of 2015) in his personal capacity and not from his resources and thereby, the illegal gratifications allegedly ***Quid Pro Quo*** for the petitioner group of companies is false on the face of record and the allegations are not sufficient to proceed against these petitioners for the offences referred supra, attaching vicarious liability, based on the principles laid down in **Standard Chartered Bank v. Directorate of Enforcement**¹.
- f) The other common contentions raised by the petitioners are that, the entire charge-sheet does not disclose any ingredients of cheating and criminal conspiracy and that, no government servant or public servant is arrayed as an

¹ (2005) 4 SCC 530

accused in the entire charge sheet. In the absence of arraying any other accused, the allegations to constitute offences punishable under Sections 420 & 120-B IPC, the proceedings against these petitioners cannot be continued, as the uncontroverted allegations made in the charge sheet prima facie do not establish any of the offence against these petitioners, as held in **Madhavrao Jiwajirao Scindia and others v. Sambhajirao Chandroji Rao Angre and others**² and **Sunil Bharti Mittal v. Central Bureau of Investigation**³.

The Central Bureau of Investigation filed charge-sheet against these petitioners without any material, making bald allegations, it would not constitute an offence and that too, taking cognizance by the Court specially constituted for C.B.I cases is without any application of mind and such order is liable to be quashed, in view of the judgments in **M.P. Narayana Pillai v. M.P. Chacko**⁴, **Ghansham Das v. State**⁵, **Sati Kanta Guha v. State**⁶ **All Cargo Movers (India) Private Limited and others v. Dhanesh Badarmal Jain and another**⁷.

Granting permission to A-7 to A-9 is in accordance with law and as per the State policies, when such permission was granted, the same would not constitute any offence, as held by the Apex

² 1988 CriLJ 853

³ (2015) 4 SCC 609

⁴ 1986 CriLJ 2002 (Ker)

⁵ 1992 CrLJ 2594 (P&H)

⁶ 1977 CrLJ. 1644 (Cal)

⁷ (2007) 14 Supreme Court Cases 776

Court in **Arun Kumar Agarwal v. Union of India**⁸ and **Pathan Mohammed Suleman Rehamat Khan v. State of Gujarat**⁹.

It is also contended that, though serious allegation of **Quid Pro Quo** is made, it is not an offence under the Prevention of Corruption Act or any statute, as such bringing the concept of **Quid Pro Quo** as if it appears that it has criminal law connotation, is an abuse of process of the Court and when the allegations are absurd and concocted, the proceedings against these petitioners cannot be proceeded, in view of the law declared by the Supreme Court in **Rukmini Narvekar v. Vijaya Satardekar**¹⁰, **Manjula Sinha v. State of Uttar Pradesh**¹¹, **State of Haryana v. Bhajan Lal**¹², **Parminder Kaur v. State of U.P**¹³ and **Dr. Dattatraya Narayan Samant v. State**¹⁴. Based on the above grounds, the petitioners sought to quash the proceedings against them for various offences referred supra.

During hearing, learned counsel for the petitioners while drawing attention of this Court to several judgments would contend that the allegations made in the charge sheet would not constitute any offences, muchless, offences punishable under Sections 420 & 120-B I.P.C and he filed written submissions on behalf of the petitioners in both the petitions and they will be referred at appropriate stage, depending upon the factual issue subject to relevancy. The following are judgments which are relied upon by the learned counsel for the petitioners.

⁸ (2013) 7 SCC 1

⁹ (2014) 4 SCC 156.

¹⁰ (2008) 14 SCC 1

¹¹ (2007) 12 SCC 503

¹² (1992) Suppl. 1 SCC 335

¹³ (2010) 1 SCC 322

¹⁴ 1982 Cr.L.J. 1025 (Bom.)

Motilal Chakrawarty v. The King¹⁵, Hira Lal Hari Lal Bhagwati v. C.B.I¹⁶, Alpica Finance Limited v. Sadasivan and another¹⁷, Hridaya Ranjan Prasad v. State of Bihar¹⁸, ARCI v. Nimra Creglass Pvt. Ltd¹⁹, V.P. Srivastava v. Indian Explosives Limited²⁰, Ajay Mitra v. State of M.P²¹, Bhagwan Swarup v. State of Maharashtra²², C.B.I v. K. Narayana Rao²³.

On the aspect of taking cognizance of the matter, learned counsel for the petitioners relied on the following judgments:

GHCL Employees Stock Option Trust v. India Infoline Limited²⁴, Sarath Mathew v. IOCVD²⁵, S.R. Kumar v. S. Sunaad Raghuram²⁶

With regard to vicarious liability, learned counsel for the petitioners relied on the following judgments:

Maksud Saiyed v. State of Gujarat²⁷, S.K. Alagah v. State of U.P²⁸, Keki Hormosuji Gharda v. Mehervan Rustom Irani²⁹, Maharashtra State Electricity Distribution Company Limited v. Datar Switchgear Limited³⁰, Sunil Bharathi Mittal v. C.B.I³¹, N. Srinivasan v. C.B.I³².

Learned counsel for the petitioners submitted oral arguments for longer period and also filed written submissions. The argument submitted by him is totally in consonance with the

15 AIR 1949 Cal 586
16 (2003) 5 SCC 257
17 (2001) 3 SCC 513
18 (2000) 4 SCC 168
19 (2016) 1 SCC 348
20 2010 SCC (10) 361
21 (2003) 3 SCC 11
22 AIR 1965 SC 682
23 (2012) 9 SCC 912
24 (2013) 4 SCC 505
25 (2014) 2 SCC 62
26 (2015) 9 SCC 609
27 (2008) 5 SCC 668
28 (2008) 5 SCC 662
29 2009 (6) 475
30 (2010) 10 SCC 479
31 2015 (4) SCC 609
32 (2017) 1 ALT (Cri) 457 (A.P)

grounds urged in the petition. But, to avoid prolix judgment, the arguments advanced by the learned counsel for the petitioners during hearing and the specific submissions made in the written submissions will be referred at appropriate stage.

Whereas, Sri P. Surender, learned Special Public Prosecutor for C.B.I contended that the modus operandi of the petitioners in investing huge amount in various companies floated by A-1, who is the son of the then Chief Minister of Dr. Y.S. Rajasekhara Reddy and granting prospective mining leases, transfer of various lands without following necessary procedure for resumption of the land under the provisions of Act 9 of 1977 would constitute offences punishable under Sections 420 & 120-B I.P.C and in the absence of any criminal conspiracy, the question of granting prospective license for mining and allotment of land for utilities without following necessary procedure for resumption of the land from various assignees and payment of amount to various assignees by these petitioners directly establishes prima facie that these lands were taken away forcibly and they were fit for cultivation by the date of allotment of the property to these petitioners. In addition to that, the committee of Ministers resolved to allot land taking steps under the Land Acquisition Act. Instead of following such procedure, a shortcut method of taking possession of the property from various beneficiaries of the assignment as landless poor and payment of certain amount to them and also allegedly paid amount to the Government @ Rs.50,000/- per acre. If, really, the property is worthless, question of payment of Rs.50,000/- per acre to the Government and Rs.22,000/- to Rs.60,000/- to various other beneficiaries of the assignment does not arise. Therefore, the

petitioners conspired with the officials including the then Chief Minister Dr. Y.S. Rajasekhara Reddy and his son Y.S. Jagan Mohan Reddy, invested huge amount immediately after obtaining allotment of site and prospective mining license, transfer of mining lease and regularization of the building plan, extending certain benefits by the then Chief Minister Dr. Y.S. Rajasekhara Reddy without processing the file through the concerned departments and Ministers and investment immediately after such allotments etc, itself is suffice to accept the contention of C.B.I.

It is also contended that, there is clear case of ***Quid Pro Quo*** which is nothing but reciprocation by investing amount for the undue official favour received by the petitioners. But, that itself is not an offence and it is a term used to constitute offences punishable under Sections 420 & 120-B I.P.C and not to constitute any other offence under Indian Penal Code or any other law. Therefore, the voluminous material available on record, directly pointing out the complicity of these petitioners and when *prima facie* material is available against these petitioners, the proceedings against these petitioners cannot be quashed, as a matter of course and more particularly, when a serious economic fraud is lodged against these petitioners, the Court cannot quash the proceedings as a matter of routine.

Learned Special Public Prosecutor for C.B.I placed reliance on the judgments of the Supreme Court in **Amit Kapoor v. Ramesh Chander³³, State of Karnataka v. M. Devendrappa and another³⁴, State of Himachal Pradesh v. Krishan Lal Pardhan**

³³ (2012) 9 Supreme Court Cases 460

³⁴ (2002) 3 Supreme Court Cases 89

and others³⁵ and Iridium India Telecom Limited v. Motorola Incorporated and others³⁶ and on the strength of the principles laid down in the above judgments, the learned Special Public Prosecutor for C.B.I requested to dismiss both the criminal petitions, as the allegations made in the charge sheet would constitute offences punishable under the provisions of Indian Penal Code. That apart, taking cognizance against the petitioners is not an illegality, since the Court is expected to take cognizance against the petitioners based on the *prima facie* material. But, at the time of framing charges, the Court is bound to frame charges *prima facie* examining the entire material produced along with the charge sheet. Further, taking cognizance for the offence punishable under Section 120-B and 420 of I.P.C is not a ground to quash the proceedings against these petitioners and at this stage, this Court cannot express any opinion as to what offences the allegations would attract, since the proceedings are at threshold, they cannot be quashed and requested to dismiss the criminal petitions.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

- 1) Whether there is any material to constitute offences punishable under Sections 120-B & 420 I.P.C, to proceed against these petitioners/ Accused Nos.3,4,7,8 & 9?**
- 2) Whether Sri P. Prathap Reddy – Accused No.3 is liable for the acts done by Accused Nos.4,7,8 & 9, by attaching vicarious liability to A-3, being the Chairman & promoter of the companies. If, not, whether the**

³⁵ 1987 CRI.L.J 709

³⁶ (2011) 1 Supreme Court Cases 74

proceedings against Accused Nos.4,7,8 & 9 are liable to be quashed for the offences punishable under Section 120-B and 120-B read with 420 of I.P.C?

P O I N T Nos.1 and 2:

The prime allegations made against these petitioners are narrated in the earlier paragraphs. The allegations are under fourfold count.

- i) alienation of Government Land;***
- ii) grant of prospecting license for limestone;***
- iii) grant of first renewal of mining lease for limestone;***
and
- iv) permission for hotel construction and relaxations of certain norms***

Based on the allegations and material collected during investigation, charge sheet against these petitioners is filed. The petitioners in both the criminal petitions raised several contentions and explained as to how the allegations levelled against them do not constitute any of the offences with reference to the provisions of The Mineral Concession Rules, 1960 and the evidence of each witness in the petition itself is touching four allegations.

Before advertng to the allegations made in the charge sheet and the contentions of the petitioners in the main petition, it is apposite to advert to Section 482 Cr.P.C.

While deciding a petition under Section 482 Cr.P.C, the Court has to look into the allegations made in the complaint and the material, if any annexed to the complaint to find out whether the complainant made out any *prima facie* case to constitute an offence under the provisions of any penal law and this Court

cannot appreciate the evidence but evaluate the material on record, in view of the limited scope and jurisdiction conferred under Section 482 Cr.P.C.

Moreover, the power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C; 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 Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In **State of Haryana v. Bhajan Lal** (referred supra) the Apex Court considered in detail the provisions of 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.
- (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 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.

When the allegations made in the charge sheet *prima facie* disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

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 justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar³⁷”***

In **Umesh Kumar v. State of Andhra Pradesh³⁸**, the Supreme Court held that law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the Court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. Thus, the judgment of the Apex Court is clear that even if a petition for discharge is filed and pending, the High Court cannot reject the petition filed under Section 482 Cr.P.C. While discussing the facts of the above judgment, the Supreme Court held in paragraph 12 that, Once criminal law is put in motion and after investigation the charge sheet is filed, it requires scrutiny in the court of law. However, before the charges could be framed, Umesh Kumar, appellant, approached the High Court under Section 482 Cr.P.C. for quashing of the charge sheet. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High

³⁷ AIR 1990 SC 494

³⁸ AIR 2014 SC 1106

Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

In “**M/s. Medchl Chemicals and Pharma Private Limited v. M/s. Biological E. Limited**³⁹” the Apex Court held that the power under Section 482 Cr.P.C; has to be exercised with care and sparingly, High Court has only to see whether allegations in complaint make out *prima facie* case. It has no power to examine

³⁹ AIR 2000 SC 1869

truth and correctness of allegations. Exercise of jurisdiction under the inherent power as envisaged in Section 482 Cr.P.C to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. To exercise powers under Section 482 of Cr.P.C. the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same, but the offence ought to appear ex facie on the complaint.

In view of the law declared by the Apex Court in various judgments referred supra, the Court can exercise its power in rarest of rare cases, and 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 would constitute offence punishable under the penal provisions of any Act.

Learned counsel for the petitioners, while highlighting the scope of Section 482 Cr.P.C, drawn attention of this Court to various judgments in **Smt. Nagawwa v. Veeranna Shivalingappa**⁴⁰, **Madhavrao Jiwajirao Scindia and others v. Sambhajirao Chandroji Rao Angre and others**⁴¹, **Ch. Bhajan Lal v. State of Haryana** (referred supra), **Pepsi Foods v. Special Judicial Magistrate**⁴², **Inder Mohan Goswami v. State of**

⁴⁰ (1976) 3 SCC 736

⁴¹ 1988 CriLJ 853

⁴² 1998 (5) SCC 749

Uttaranchal⁴³, Chandran Ratnaswami and others v. Palanisamy and others⁴⁴, Rishpal Singh v. State of Uttar Pradesh⁴⁵, Mahmood UI Rehman v. Khazir Mohammad⁴⁶, Vineet Kumar v. State of U.P⁴⁷ and Mahendra Singh Dhoni v. Yerraguntla Shyamsundar and others⁴⁸.

Though the principle laid in all the above judgments is one and the same, the gist of the principles laid down is that, unless the allegations made in the charge sheet constitutes any offence, 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. The principle laid down in the above judgments is nothing but reiteration of the law laid down by the Apex Court in **Ch. Bhajan Lal v. State of Haryana** (referred supra).

Sri P. Surender, learned Special Public Prosecutor for C.B.I mainly contended that, while deciding an application under Section 482 Cr.P.C, the Court has to verify the material and if, the Court concludes that there is prima facie material to proceed against these petitioners, the Court can quash the proceedings by exercising power under Section 482 Cr.P.C and in support of his contentions, placed reliance on the judgments of the Supreme Court in **Amit Kapoor v. Ramesh Chander** (referred supra), **State of Karnataka v. M. Devendrappa and another** (referred supra), **State of Himachal Pradesh v. Krishan Lal Pardhan and others** (referred supra) **and Iridium India Telecom Limited v. Motorola**

⁴³ (2007) 12 SCC 1

⁴⁴ (2013) 6 SCC 740

⁴⁵ (2014) 7 SCC 215

⁴⁶ (2015) 12 SCC 420

⁴⁷ 2017 (2) ALT (Cri) 302 (SC)

⁴⁸ (2017) 7 SCC 760

Incorporated and others (referred supra), where the Court has drawn distinction between 'consideration of material while deciding a petition filed for discharge under Section 239 Cr.P.C and to quash the proceedings under Section 482 Cr.P.C.

The specific allegation, in brief, made against these petitioners is that, Sri P. Pratap Reddy (A-3) is the Chairman & Managing Director of M/s Penna Cement Industries Limited and has major stake in other group of companies, holding the position of either Director or Chairman or holding major stake. During the period from 2006 to 2009, he invested an amount of Rs.68 crores into group of companies floated by Sri Y.S. Jagan Mohan Reddy (A-1), as quid-pro-quo for the undue official favours received from the Government of Andhra Pradesh in the form of (i) alienation of Government Land; (ii) grant of prospecting license for limestone; (iii) grant of first renewal of mining lease for limestone; and (iv) permission for hotel construction and relaxations of certain norms. The details of investments made by M/s Penna Cement Industries Limited in the companies owned by Sri Y.S. Jagan Mohan Reddy (accused No.1) are shown in the table at page No.3 of this judgment.

The allegation with regard to alienation of government land and investment by Sri P. Prathap Reddy (A-3) and its holding companies, where Sri P. Prathap Reddy (A-3) is major stake holder is very specific in the charge sheet, that valuation report dated 12.07.2007 which was prepared by Sri J. Prabhakar of M/s Jagadisan & Company, Chartered Accountant, showed the business value of M/s Jagati Publications Pvt. Ltd as Rs.3,450/-. Sri V. Vijaya Sai Reddy (A-2) had approached Sri J. Prabhakar of

M/s Jagadisan & Company to carry out valuation of M/s Carmel Asia Holdings Pvt. Ltd and in the process, Sri V. Vijaya Sai Reddy had provided inputs regarding business strategy, project cost, projected balance sheets and future cash flows. Sri J. Prabhakar had prepared the business valuation of M/s Jagati Publications Pvt. Ltd and M/s Janani Infrastructure Pvt. Ltd., which are subsidiaries of M/s Carmel Asia Holding Pvt. Ltd. The details are shown in the table at page No.4 of this Judgment.

The share values of the companies floated by Sri Y.S. Jagan Mohan Reddy (A-1) were inflated by Sri P. Prathap Reddy (A-3) with the help of Sri Vijay Sai Reddy (A-2) and Sri J. Prabhakar, Chartered Accountant of M/s Jagadisan & Company and projected the valuation as Rs.3,400/- as against Rs.136 to Rs.140 crores. Thus, the shares were issued to private parties at Rs.350/- per share at the inflated rate.

Sri P. Prathap Reddy – Accused No.3 being the Chairman & Managing Director of M/s Penna Cement Industries Limited intended to establish a factory at Yadiki Mandal of Anantapur District and in that process, Sri C.J. Reddy, General Manager of M/s Penna Cement Industries Limited submitted representation dated 22.04.2006 to the District Collector, Anantapur, requesting for alienation of Government Land on payment of market value for setting up of cement plant in Yadiki Mandal of Anantapur District. On the basis of application, the District Revenue Officer, Anantapur district holding the position of Incharge Joint Collector, forwarded the request of M/s Penna Cement Industries Limited to the Revenue Divisional Officer (R.D.O), Anantapur on 02.06.2006 for identifying the Government Lands having road area and to take

further action on the representation. Again M/s Penna Cement Industries Limited submitted a representation on 25.08.2006 to the District Collector, Anantapur wherein, it was stated that M/s Penna Cement Industries Limited has purchased patta lands enclosing Government lands and also sought the extent of Ac.144.13 cents in Kundanakota Village and Ac.96.83 cents in Gudipadu Village of Government Land for setting up of the said cement plant. Subsequently, on 18.09.2006, M/s Penna Cement Industries Limited requested for alienation of land to the extent of Ac.30.71 in Kamalapadu Village and Ac.1.25 cents in Kundanakota Village. The Mandal Revenue Officer (MRO), Yadiki Mandal instead of submitting the detailed report immediately to the District Collector regarding the status of lands, shared the information of assigned lands with the company officials and thereby facilitated the company in persuading the assignees to relinquish their assigned lands. It is stated that the company officials pressurised the assignees by way of inducement and lured them with money, as a result, the assigned lands were relinquished voluntarily and the assignees relinquished the assigned land due to the facilitation by M.R.O, Yadiki Mandal, without following necessary procedure by cancelling the assignments in favour of the beneficiaries who are the landless poor, as they received compensation amount, ranging from Rs.20,000/- to Rs.60,000/- from M/s Penna Cement Industries Limited. Therefore, the land was allotted by the Government to M/s Penna Cement Industries Limited and in return as a quid-pro-quo, A-3 invested huge amount in M/s Jagati Publications Private Limited and Carmel Asia Holdings Private Limited on different

dates shown in the table. Therefore, the contention of the learned Special Public Prosecutor for C.B.I is that, the alleged investment is in reciprocation of the official favour for allotment of lands to accused No.3.

The contention of Sri P. Prathap Reddy - Accused No.3 before this Court is that, the alienation of government land over an extent of Ac.231.09 cents does not amount to official favour and investment of amount in the companies referred above is not a matter of quid-pro-quo and the Sri P. Prathap Reddy - Accused No.3, being a businessman, having sufficient money, invested the amount in the companies expecting profits. Therefore, that would not constitute any offence, muchless, an offence punishable under Sections 120-B & 420 I.P.C.

Learned counsel for the petitioners would draw attention of this Court to the statement of witnesses Malla Prabhakar Reddy (L.W-2), Adavalalli Ravinder Reddy (L.W-4), Dachan Sanjeeva Reddy (L.W-5), Avaluru Venkata Shiva Prasad (L.W-6), Alaganru Venkata Rama Prasad (L.W-7), Deepak Kumar Panwar (L.W-8), Samineni Nagabhushana Rao (L.W-9), Chintala Vishnu Mohan Reddy (L.W-10), Chiranjeevulu (L.W-11), Nadimatla Sridhar (L.W-12), Shaik Khadar Vali (L.W-13), Chagari Janardhan Reddy (L.W-14), Marapa Reddy Dayakar Reddy (L.W-15) and the statements of other listed witnesses. He contended that, none of the witnesses did state anything against the petitioners and filing of an application for allotment of land to Sri P. Prathap Reddy - Accused No.3 is not in contravention of the provisions of the Act. Therefore, the material on record filed along with the report under Section 173 Cr.P.C did not disclose *prima facie* material to proceed

against these petitioners for the offences referred supra and consequently, the proceedings against these petitioners are liable to be quashed and requested to quash the proceedings.

In view of the specific allegations made against the petitioners, the undisputed fact is that, land of an extent of Ac.231.09 cents was allotted to Sri P.Prathap Reddy - Accused No.3 for establishing M/s Penna Cement Industries Limited at Yadiki Mandal of Anantapur District and investment of land on various dates referred above is also not disputed by the petitioners. Therefore, in view of the undisputed facts, it is to be examined whether the material on record is sufficient to proceed against these petitioners for the offences punishable under Sections 120-B and 420 of I.P.C.

It is an admitted fact that the land of an extent of Ac.231.09 cents originally belongs to the government and it was assigned to the landless poor persons in different extents. Sri P.Prathap Reddy - Accused No.3 being the Chairman & Managing Director of M/s Penna Cement Industries Limited intended to establish a Cement factory at Yadiki Mandal of Anantapur District and applied for alienation of Ac.231.09 cents to the District Collector, Anantapur on 22.04.2006. On the basis of application, the District Revenue Officer, Anantapur District forwarded the request to the Revenue Divisional Officer (R.D.O), Anantapur on 02.06.2006 for identifying the Government Lands having road access and to take further action on the representation. Again M/s Penna Cement Industries Limited submitted a representation on 25.08.2006 to the District Collector, Anantapur wherein, it was stated that M/s Penna Cement Industries Limited has purchased patta lands enclosing

Government lands and also sought allotment of an extent of Ac.144.13 cents in Kundanakota Village and Ac.96.83 cents in Gudipadu Village, Government Land for setting up of the said cement plant. Subsequently, on 18.09.2006, M/s Penna Cement Industries Limited requested for alienation of land to the extent of Ac.30.71 in Kamalapadu Village and Ac.1.25 cents in Kundanakota Village. The petitioner's/A-3 request, in the two letters or representations is specific that, a request was made for allotment of land in particular survey numbers and thereafter, process has been initiated for allotment of land. But, more curiously, during consideration of two applications, the beneficiaries under the assignment granted in their favour or in favour of predecessors in title, who came up with representation that their right in the assigned land in survey numbers is being relinquished by various farmers, whose lands were acquired by A-3 for setting up a cement plant. It is a known fact that, land assigned to the landless poor is not alienable, but heritable, in view of the terms and conditions of the assignment, vide B.S.O.No.15 and in view of the bar under Section 3 of A.P.Act 9 of 1977, the Revenue Authorities shall resume the assigned land in the event of contravention of Section 3(1) by following the procedure prescribed under Section 4 of The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. When there is an absolute bar, the beneficiaries under the assignments cannot alienate, such alienation is *void ab initio*. Even if, Sri P. Prathap Reddy - accused No.3 purchased the assigned property from the landless poor, such purchase would not confer any valid title on him. Therefore, Sri P.Prathap Reddy-Accused No.3 and his employees by

circumventing the law, invented a different story of relinquishing rights by the beneficiaries over the assigned lands by submitting their stereo-typed applications for surrender of the lands assigned to them. Therefore, the petitioner/accused No.3, by hatching a plan in collusion with the pattedars and the beneficiaries in the assignment, made specific mention of various survey numbers in the request made to the Government. But, the Government instead of resuming the land by following B.S.O.No.33 of A.P. Revenue Board Standing Orders and even without accepting such relinquishment of the land, started proceedings for alienation of the property by following certain business rules of the Secretariat.

It is more curious to note that the procedure adopted by the Sri P. Prathap Reddy - Accused No.3, is supported by statement of Sri Shaik Khader Vali (L.W-13), Chief Manager, State Bank of India, Tadipatri Branch, Anantapur District (Vide Document No.18 to 132) Statements of L.Ws-16 to 34 testified about the forcible submission of letters to the Government relinquishing /surrendering their lands. Few applications are placed on record for perusal of the Court, each and every word in the applications submitted by the beneficiaries under the assignment is one and the same. Some of them were in written form and the others were typed. Based on similar statements contained in all the applications submitted by the alleged beneficiaries, it would clearly show that the Sri P. Prathap Reddy - Accused No.3 adopted a procedure unknown to law, somehow to overcome the difficulty in acquiring the land by purchase from the beneficiaries of the assigned lands, because of his close acquaintance with the then Chief Minister Dr. Y.S. Rajasekhara Reddy.

The information filed along with these criminal petitions (document Nos.1 to 168) that the Sri P. Prathap Reddy - Accused No.3 paid huge amount to the beneficiaries, coupled with the statement of Sri Valle Mugendra Mahindhar (L.W-72) and also the allegations made in paragraphs 9 & 10 of the criminal petitions are sufficient to conclude that the Sri P. Prathap Reddy - Accused No.3 to overcome the difficulties in acquiring the land with absolute rights from the beneficiaries under the assignments. Sri P. Prathap Reddy - accused No.3 adopted the procedure which is unknown to law, by paying an amount of Rs.1,15,54,500/- to the Government by M/s Penna Cement Industries Limited and also alleged payment of an amount of Rs.52,02,325/- to various beneficiaries (occupants), whereas the Government value of the land was Rs.46,21,800/- Therefore, payment of Rs.52,02,325/- by Sri P. Prathap Reddy - Accused No.3, to the beneficiaries (occupants) under the assignment itself is suffice to conclude *prima facie* that, Sri P. Prathap Reddy - Accused No.3, to circumvent the law i.e. A.P.Act 9 of 1977, adopted this procedure to acquire huge extent of land of Ac.231.09 cents.

Sri Deepak Kumar Panwar, IAS (Retd) (L.W-8) in his statement, stated that, in case of proposal of alienation for Ac.231.09 cents of land, the market value was recommended by the Empowered Committee duly taking into consideration the recommendation of the Collector as well as sale Statistics of similar lands within the vicinity of the land, proposed for alienation, as per rules. The land of i.e., Ac.2.44 cents which has the potentiality of providing road accessibility, was not comparable to the land covered under the sale proposal i.e. Ac.231.09 cents because the

latter did not have the same distinct locational advantage of its being used for providing road accessibility/railway line connectivity to the proposed cement plant. Therefore, the Empowered Committee did not consider the earlier recommended market value of the land Ac.2-44 cents as relevant and representative of real market value of land i.e Ac.231-09 cents which was recommended by the Empowered Committee to be Rs.50,000/- per acre as against the recommendation at the rate of Rs.20,000/- per acre by the Collector.

This statement of L.W-8 is helpful to Sri P. Prathap Reddy - Accused No.3. But, payment of amount in view of surrender or relinquishment of right by the beneficiaries of assignment is a matter of serious concern.

Sri Shaik Khader Vali (L.W-13) who is the Chief Manager, State Bank of India, Tadipatri Branch, Anantapur District, stated before the Investigating Agency that, 112 cheques were issued in favour of different persons shown in the table, drawn on Current Account No.1109001800, since, the account pertains to M/s Penna Cement Industries Limited and on the request of Sri L. Ganapathi Rao, Authorized signatory of M/s Penna Cement Industries Limited and Sri C.J. Reddy, General Manager (works), cheques were drawn on different dates between 01.11.2006 to 24.01.2008 in the names of different persons and the details in the table are suffice to conclude that the cheques were issued to various beneficiaries under the assignment in lieu of surrendering or relinquishing their right in the land, which was assigned to them. Similarly, they also issued seven cheques in the names of G.Obulesu, G.Venkatesu, G.Erra Peddaiah, drawn on A/c

No.11092999603. Issue of those cheques by M/s Penna Cement Industries Limited to the beneficiaries under the assignment itself is suffice to conclude *prima facie* that the lands were not surrendered by the beneficiaries, but they virtually sold the lands to the Sri P.Prathap Reddy - accused No.3, for establishing cement factory and for its utilities, to overcome the difficulties in view of the bar under Sections 3 and 4 of The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. Sri P. Prathap Reddy - Accused No.3 conveniently approached the Government and the Government even without taking possession of the property on surrender or relinquishment of rights of the beneficiaries to the assignment, in utmost haste issued proceedings, allotting huge extent of state largesse for a song depriving the real beneficiaries.

The Statement of Sri Chagari Janardhan Reddy (L.W-14) is also relevant to establish about payment of amount by A-3 to various beneficiaries *prima facie*. He was also clear that the farmers approached and came forward with registered documents having registered their assigned lands and subsequently got the same registered at Registration Office, Yadiki in the name of A-3. This part of purchase of lands in an extent of Ac.4-94 cents, Ac.2-99 cents, Ac.4-46 cents, Ac.4-79 cents & Ac.4-05 cents from assignees, namely K.L. Narayana Reddy, Polamanda Obulesu, Gujjala Peddaiah and Patra Naganna is nothing but contravention of Section 7 of Act 9 of 1977.

Apart from that, the statement of Sri Narsapuram Venkatesu (L.W-16), Sri Kottamboya Ganganna (L.W-17), Sri Chukkaluru Sree Ramulu and Chukkaluru Ranganna (L.W-18), Sri Kottam Ramachandra (L.W-19), Smt. Venkata Lakshmamma (L.W-20), Sri

Chukkaluru Veeraiah (L.W-21), Sri Kuttamboya Gurrappa (L.W-22), Sri Padamala Chinna Kothanna (L.W-23), Sri Chukkaluru Venkata Ramudu (L.W-24), Sri Gujjala Pedda Peddaiah (L.W-25), Sri Gujjala Erra Peddaiah (L.W-26), Sri Velaboyina Bhima Rao (L.W-27), Sri Gujjala Peddaiah (L.W-28), Sri Gujjala Obulesu (L.W-29), Sri Gujjala Venkatesu (L.W-30), Sri Boyatalari Venkatesu (L.W-31), Sri Kottam Peddayya (L.W-32), Sri Varadhi Peddanna (L.W-33), Smt. Juturu Ranganna (L.W-34), were also recorded. L.W.16 specifically stated when his statement was recorded under Section 161 Cr.P.C, before the Investigating Agency that M/s Penna Cement Industries Limited and its employees lured the landless poor farmers to surrender them land and further stated that, if the farmers do not surrender their land, they would not get passage to their land, as surrounding lands were acquired by the company and thereby, the assignees were forced to surrender the assigned land to the company for a sale consideration of Rs.20,000/- per acre. It is also stated that, the assignees were depending upon farming, lost their livelihood by surrendering their lands to the company, as they were cultivating crops like Jowar, Cotton and Korra. Since, their neighbouring farmers were also in the fray, he had no option, except to surrender the land to M/s Penna Cement Industries Limited for a consideration of Rs.60,000/- as on the date of surrender.

But, there is a little variation in the statements of other witnesses. L.W-17 stated that, the officials of M/s Penna Cement Industries Limited, namely Sri Sanjeeva Reddy and Shiva Rama Reddy have approached him and asked to sell the land, for which they offered Rs.20,000/- per acre. He gave his consent as the other

neighbouring farmers also giving away their land to the cement company and he went to the Registration Office at Yadiki for registration, where the company officials obtained his thumb impression on a paper. The other listed witnesses also stated on the same lines, but with little variation, which is on record. The statements of L.W-17 to L.W-34 are consistent that the officials of M/s Penna Cement Industries Limited made the assignees to surrender the land on payment of Rs.20,000/- per acre, by obtaining their signatures and thumb impressions at the Registration Office of Yadiki. Therefore, the material on record *prima facie* would go to show that the alienation was virtually by way of sale of land by the beneficiaries under the assignment who are landless poor. By circumventing the procedure, the Government fixed the land rate at Rs.50,000/- per acre and collected huge amount from accused No.3, i.e. Rs.1,15,54,500/-, whereas, the beneficiaries were paid minimum amounts of Rs.20,000/- per acre and ultimately the beneficiaries are the losers of land under the assignment.

Sri Diddekunta Pulla Reddy (L.W-35) stated before the Investigating Agency when his statement recorded under Section 161 Cr.P.C to the effect that, on the directions of Tahsildar, Yadiki, he handed over original documents as per Receipt/Memo dated 27.02.2012 and handed over original documents as per the Receipt/memo dated 03.03.2012 and furnished the details of beneficiaries under the assignment of land pertaining to Kundanakota Village, Kamalapadu Village and 23/2 Nittoor Village, and after verifying the original records of Adangal/Pahani/Fasli, clarified since how long the assignees were

in possession and name of the crops that were raised. L.W-35 also spoke about registration of Document Nos.662, 663, 1864, 2146 & 2153/2006 dated 07.06.2006, 07.06.2006, 27.1.2006, 24.11.2006 & 25.11.2006 respectively. This part of land in Kundanakota Village was sold by beneficiaries by executing documents. Thus, from the material collected during investigation by the Investigating Agency, it is *prima facie* clear that, instead of purchasing the property from the beneficiaries under the assignment, issued under B.S.O.No.15 being the landless poor persons, in view of the bar under Sections 3 & 4 of A.P.Act 9 of 1977, Sri P. Prathap Reddy - Accused No.3 adopted a different procedure due to his political influence, being the General Secretary of Congress Party by then and also having acquaintance with the then Chief Minister Dr. Y.S. Rajasekhara Reddy.

The main endeavour of the learned counsel for the petitioner is that, the petitioner parted with huge amount due to payment of value of the property @ Rs.50,000/- as fixed by the Government, though the value of the property was Rs.20,000/- as per the material on record and drawn attention of this Court to the statements of Samineni Nagabhushana Rao (L.W-9), Chintala Vishnu Mohan Reddy (L.W-10), Chiranjeevulu (L.W-11), Nadimatla Sridhar (L.W-12), Shaik Khadar Vali (L.W-13), Chagari Janardhan Reddy (L.W-14), Marapa Reddy Dayakar Reddy (L.W-15), Sri Narsapuram Venkatesu (L.W-16), Sri Kottamboya Ganganna (L.W-17), Sri Chukkaluru Sree Ramulu and Chukkaluru Ranganna (L.W-18), Sri Kottam Ramachandra (L.W-19), Smt. Venkata Lakshamma (L.W-20), Sri Chukkaluru Veeraiah (L.W-21), Sri Kuttamboya Gurrappa (L.W-22), Sri Padamala Chinna

Kothanna (L.W-23), Sri Chukkaluru Venkata Ramudu (L.W-24),, Sri Gujjala Pedda Peddaiah (L.W-25), Sri Gujjala Erra Peddaiah (L.W-26), Sri Velaboyina Bhima Rao (L.W-27), Sri Gujjala Peddaiah (L.W-28), Sri Gujjala Obulesu (L.W-29), Sri Gujjala Venkatesu (L.W-30), Sri Boyatalari Venkatesu (L.W-31), Sri Kottam Peddayya (L.W-32), Sri Varadhi Peddanna (L.W-33), Smt. Juturu Ranganna (L.W-34). The statements given by these witnesses, at best, would show that the land value was less than Rs.50,000/-. But, the petitioner/ A-3 paid huge amount as value of the land, as fixed by the Government.

Yet, another contention raised before this Court is that, when the beneficiaries relinquished their right, the procedure contemplated under Section 4(1) need not be insisted and when the beneficiaries themselves voluntarily surrendered the land, automatically it vests on the government and thereby, the Government can alienate the property treating the same as the Government land. To substantiate this contention, learned counsel for the petitioners would draw attention of this Court to the statement of Sri Chintala Vishnu Mohan Reddy (L.W-10) who gave his opinion as to question regarding surrender of assignment, and stated thus:

“Therefore, in case of surrender whether it is by inducement or voluntarily, provisions of the POT Act are not attracted. If action is taken under Section 3 for violation of conditions of assignment contained in ‘D’ Form Patta, POT Act is attracted and unless a notification is issued by the Government deserving the land for a public purpose under Section 4 as amended by Act No.8 of 2007, the land has to be given back to the original assignees or to the landless poor persons.”

He has been shown the attested copy of letter No.600/08, Opinion No.85 of 2008 dated 18.07.2008 addressed to the Principal Secretary to Government, Revenue Department, A.P. Secretariat, Hyderabad, regarding alienation of lands which were surrendered by the assignees and L.W-10 was of the clear opinion that, the restraint order would be applicable to resumed assigned lands and the order of the High Court would not be applicable to the relinquished assigned lands.

Sri Gaddam Ramakrishna Reddy (L.W-37), Mandal Revenue Officer, Tadipatri gave statement and the same was recorded under Section 161 Cr.P.C. by the Investigating Agency. According to him, Tahsildar is empowered to accept relinquishments, provided the relinquished lands are situated within the jurisdiction, as per B.S.O.No.24, 33 & 35. He also stated that, one Bojja Venkataswamy and eight others have submitted representations on 02.11.2006 stating that they voluntarily relinquished their assigned lands and those representations were forwarded to Mandal Revenue Inspector for enquiry and report. The Mandal Revenue Inspector and Village Revenue Officer enquired the farmers of Venkatampalli Village and recorded their statements and submitted report recommending for acceptance of the relinquishment of Ac.12.85 cents on 12.02.2007. During the enquiry of Mandal Revenue Inspector, the farmers have stated that the lands under their possession are lying waste and due to family problems, they were not able to cultivate the land and they came forward voluntarily to relinquish the lands to the Government and the respective farmers have also confirmed the same.

Basing on the statement of L.W-37, learned counsel for the petitioners contended that the procedure stated by L.W-37 was adhered to strictly while taking possession of the assigned lands by the Mandal Revenue Officer. When the property became part of common pool of Government, the Government is entitled to alienate the property.

This Court while dealing with criminal petitions filed under Section 482 of Cr.P.C cannot decide such questions. At best, it would amount to violation of procedure, even if the respondent/C.B.I contention is accepted. Whether procedural violation leads to criminal prosecution is a question to be decided, such violation of procedure not with any criminal intent, such violation would not constitute any offence. Still, if such violations are done with a criminal intention, it would constitute an offence punishable under the provisions of various penal laws, including, Indian Penal Code and A.P.Act 9 of 1977.

If the statement of L.W-37, which is relied on by the learned counsel for the petitioners is accepted, there is absolutely no material to accept that the relinquishment was accepted by following due procedure, as stated by him. Moreover, there were absolutely no proceedings accepting relinquishment of land assigned to various landless poor persons, farmers and there was no evidence that the Government had taken possession of the land and included in common pool of Government land and entered into the revenue records, immediately after relinquishment or surrender. Therefore, all these facts cumulatively point out the criminal intention on the part of officials of the Government in

conspiracy with the peititioner/A-3 and officials of M/s Penna Cement Industries Limited, *prima facie*.

One of the contentions raised by the C.B.I is that, instead of following the procedure under B.S.O.Nos.24 & 33, relinquishment of lands was accepted. On the other hand, third parties filed W.P.No.9760 of 2007 questioning the procedure to be followed under B.S.O.No.33 and the said writ petition was dismissed for default. It appears that the petitioners are conscious about the procedure under B.S.O.No.33 itself to be followed.

In **M.P. Oil Extraction v. State of M.P with K.N. Oil Industries v State of M.P⁴⁹**, the Supreme Court held that, although to ensure fair play and transparency in the State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible.

In **Netai Bag and others v. State of West Bengal⁵⁰**, the Supreme Court held that, though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action, initial burden of showing the *prima facie* existence of violation of the mandate of the Constitution lies upon the person approaching the Court. We have found in this case, that the appellants have miserably failed to place on record or to point out to any alleged constitutional vice or illegality. Neither the High Court nor this Court would have ventured to make a rowing inquiry particularly in a writ petition filed at the instance of the erstwhile owners of the land, whose main object appeared to get the land back by any

⁴⁹ (1997) 7 Supreme Court Cases 592

⁵⁰ (2000) 8 Supreme Court cases 262

means as, admittedly, with the passage of time and development of the area, the value of the land had appreciated manifold. In the same judgment, the Supreme Court made it clear that, in the absence of specific allegations of the malafides attributed to any of the respondents, it cannot be said that mere violation of some alleged statutory provisions or safeguards as spelt out by this Court, would render the State action to be arbitrary in all cases.

If, this principle is applied to the present facts of the case, violation of B.S.O.No.33, that by itself would not be sufficient to enrope these petitioners with any offence, though, it is mere violation of statutory provision which is insufficient to proceed against Sri P. Prathap Reddy - Accused No.3. When such violation of statutory provision is coupled with malafides, the Court can proceed to decide such issues while deciding such questions.

In **Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh**⁵¹, while dealing with the power of the Court in writ petition to interfere with the actions of the State, the Supreme Court held that, what needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non- discriminatory and non-

⁵¹ (2011) 5 Supreme Court Cases 29

arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State. There cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

The Apex Court dealt with the concept of 'State' and observed that, the concept of 'State' has changed in recent years. In all democratic dispensations the State has assumed the role of a regulator and provider of different kinds of services and benefits to the people like jobs, contracts, licences, plots of land, mineral rights and social security benefits. In his work "The Modern State" MacIver (1964 Paperback Edition) advocated that the State should be viewed mainly as a service corporation. He highlighted

difference in perception about the theory of State in the following words:

"To some people State is essentially a class-structure, "an organization of one class dominating over the other classes"; others regard it as an organisation that transcends all classes and stands for the whole community. They regard it as a power- system. Some view it entirely as a legal structure, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community "organised for action under legal rules". Some regard it as no more than a mutual insurance society, others as the very texture of all our life. Some calls the State as a great "corporation" and others consider it as indistinguishable from society itself."

The Apex Court further held that, "For achieving the goals of Justice and Equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and State Legislatures bestow upon them powers for effective implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good. In principle, no exception can be taken to the use of discretion by the political functionaries and officers of the State and/or its agencies/instrumentalities provided that this is done in a rational and judicious manner without any discrimination against anyone. In our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the

Doctrine of Equality enshrined in the Constitution and is an antithesis to the concept of rule of law”.

Thus, the Apex Court had laid down the procedure to be followed for allotment of Government largesse in the planning area, allocation of areas or zones of land for residential, industrial, commercial or agricultural purpose; open spaces, parks and gardens, green-belts, zoological gardens and playgrounds; public institutions and offices and other special purposes as the Competent Authority may deem it fit and failure to follow the guidelines in the absence of any statutory procedure for allotment of State largesse to the individuals, the act done by the political group of the State is seen as giving a way to misuse or abuse their power, inviting huge amounts as investments in the companies floated by A-1. If, that is the case, the whole actions taken by A-1 and his father, the then Chief Minister Dr. Y.S. Rajasekhara Reddy, if taken, coupled with making applications and relinquishing the land, these acts were done with a malafide intention to allot property to the individual/A-3 and his industries without following necessary procedure contemplated under the Act *prima facie*. Even, the Empowered Committee (E.C) made the same recommendation to follow certain procedure contemplated under Section 4(1) of A.P.Act.9 of 1977 when the file was processed further. But, taking advantage of the opinion of the Advocate General for the State, the petitioners, though they are conscious about the procedure to be followed, in view of the statement of L.W-37, have violated every procedure including B.S.O No.13. Such allotment with a malafide intention to confer undue official

favour on accused No.3 and his group of industries would constitute *prima facie* an offence.

The Apex Court in **Centre for Public Litigation and others v. Union of India**⁵², popularly known as '2G Spectrum case' held that, when a policy decision to alienate/allocate natural resources is not backed by a social or welfare purpose, and precious and scarce resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are held arbitrary to face wrath of Article 14 of the Constitution of India. The Supreme Court further held that, disposal of State largesse/natural resources by rightful and prudent choice of action pro-assure maximisation of revenue. When natural resources are made available by State to private persons for commercial exploitation, exclusively for their individual gain, State's endeavour must be towards revenue maximisation. Validity of a trading agreement executed by State has to be judged by the test that entire benefit arising therefrom ensures to State, and is not used as a cloak for conferring private benefits to a limited class of persons.

In **Provash Chandra Dalui v. Biswanath Banerjee**⁵³, the Supreme Court has drawn distinction between 'extension' and 'renewal' and observed that, chiefly in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word 'extension' when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Finally, the Apex Court arrived at a

⁵² (2012) 3 SCC 1

⁵³ 1989 SCR (2) 401

conclusion that, mining leases cannot be granted as a matter of routine.

The Government is the custodian of the public property and the Government cannot allot the property to whomsoever they like on account of political affiliation or patronage, since, it would cause substantial loss to the public at large i.e. State. The Constitutional Bench of the Supreme Court in ***Re:Special Reference No.1 of 2012***⁵⁴ referred the Doctrine of Public Trust.

At the same time, The Apex Court in ***Centre for Public Litigation and others v. Union of India*** (referred supra), while dealing with allocation of natural resources and distribution of State largesse/Government contracts held that, First-Come-First-Serve (FCFS) is based on sheer chance and is therefore per se unfair. It is also susceptible to manipulation, favouritism and misuse by unscrupulous persons and wherever a contract is to be awarded or a license is to be given, public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc., it is burden of State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest. A duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden. While transferring or alienating natural

⁵⁴ (2012) 10 SCC 1

resources, State is duty-bound to adopt method of auction by giving wide publicity so that all eligible persons can participate in the process.

In **Manohar Lal Sharma v. Principal Secretary and others**⁵⁵ mining of coal and all allocations of coal blocks by Central Government was challenged before the Court by Mr. Manohar Lal Sharma. The Apex Court by invoking Doctrine of Public Trust, cancelled the allotment of Coal Blocks.

The ancient Roman Empire developed this legal theory i.e. Doctrine of the Public Trust. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

Public trust doctrine serves two purposes: it mandates affirmative state action for effective management of resources and empowers citizens to question ineffective management of natural resources. It is a common law concept, defined and addressed by academics in the United States and the United Kingdom. Various common properties; including rivers, the seashore, and the air, are held by the government in trusteeship for the uninterrupted use of the public. The sovereign could not, therefore, transfer public trust properties to a private party if the grant would interfere with the

⁵⁵ (2014) 9 Supreme Court Cases 614

public interest. The public trust has been widely used and scrutinized in the United States, but its scope is still uncertain. Various Courts have been made to apply this doctrine to protect navigable and non-navigable waters, public land sand parks, and to apply it to both public and private lands and ecological resources. The Supreme Court of California has broadened the definition of public trust by including ecological and aesthetic considerations. Although the public trusts doctrine is not without its fair share of criticism it is being increasingly related to sustainable development, the precautionary principle and biodiversity protection. The doctrine combines the guarantee of public access to public trust resources with a requirement of public accountability in respect of decision-making regarding such resources. Moreover, not only can it be used to protect the public from poor application of planning law or environmental impact assessment, it also has an intergenerational dimension.

In **M.C. Mehta v. Kamal Nath and others**⁵⁶, the Supreme Court while referring to various judgments viz., **Vellore Citizens' Welfare Forum v. Union of India**⁵⁷, **Indian Council for Enviro-Legal Action v. Union of India**⁵⁸, **Sacco v. Development of Public Works**⁵⁹, **Gould v. Greylock Reservation Commission**⁶⁰, **State v. Public Service Commission**⁶¹, **United Plainsmen v. N.D. State Water Cons. Commission**⁶², **Robbins v. Department of Public Works**⁶³, **Illinois Central Railroad Co. v. People of the**

⁵⁶ (1997) 1 Supreme Court Cases 388

⁵⁷ (1996) 7 SC 375

⁵⁸ (1996) 3 SCC 212

⁵⁹ 532 Mass 670

⁶⁰ 350 Mass 410 (1996)

⁶¹ 275 Wis 112

⁶² 247 NW 2d 457 (ND 1976)

⁶³ 244 NE 2d 577

**State of Illinois⁶⁴, City of Milwaukee v. State⁶⁵, Crawford
County Lever and Drainage Distt. No.1⁶⁶, etc, held as follows:**

“Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open land sin their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. The esthetic use and the prestime glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded

⁶⁴ 36 L Ed 1018 (1892)

⁶⁵ 193 Wis 423

⁶⁶ 182 Wis 404

for private, commercial or any other use unless the courts find it necessary, in good faith, for the public goods and in public interest to encroach upon the said resources.”

In **Ram and Shyam Company v. State of Haryana and others**⁶⁷, the Supreme Court clearly demarcated approach that distinguishes the use and disposal of private property and socialist property and held that, owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy.

⁶⁷ (1965) 3 Supreme Court Cases 267

An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State.

The judgment of **Ram and Shyam Company v. State of Haryana and others** (referred supra) was referred in **Ramana Dayaram Shetty v. International Airports Authority of India and others**⁶⁸.

In both the judgments, the Supreme Court succinctly held that, when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This

⁶⁸ AIR 1979 SC 1628

proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. Thus, the Government must act in Public Trust and it cannot act arbitrarily. If, it does so, it is liable to be invalidated.

In **Kasturi Lal Lakshmi Reddy, Represented by its Partner Kasturi Lal, Jammu and Ors. v. State of Jammu and Kashmir and Ors**⁶⁹, the Supreme Court observed that, where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must

⁶⁹ AIR 1980 SC 1992

follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost, of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. On the aspect of discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted, the Supreme Court observed that, that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure.

If, these principles are applied to the present facts of the case, it is clear that the Sri P.Prathap Reddy - accused No.3, and other petitioners herein, approached the beneficiaries of assignment and lured them to part with huge property, which was assigned to them, being landless poor persons. But, in view of the provision of A.P.Act.9 of 1977, such assigned land cannot be transferred, despite it, A-3 could obtain sale deeds from the four beneficiaries referred supra in the earlier paragraphs. Such act would attract penalty under Section 7 of A.P Act. 9 of 1977. When the property was assigned to a landless poor, alienation of the said land is prohibited in terms of Section 3 of the Act.

Section 3 of the Act deals with Prohibition of transfer of assigned lands and it reads as follows:

- 1. Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred, and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.**
- 2. No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.**
- 3. Any transfer or acquisition made in contravention of the provision of sub-section (1) of sub-section (2) shall be deemed to be null and void.**
- 4. The Provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a Civil Court or of any award or order of any other authority.**
- 5. Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement.**

In view of the bar, the transaction entered into by Sri P.Prathap Reddy - accused No.3, with four persons and obtaining registered deeds is hit by sub-sections (2), (3) of Section 3 of Act 9 of 1977. It also attracts penalties under Section 7 of the Act.

Even assuming for a moment that the Government accepted surrender or relinquishment of assigned land to the Government, the Government has to follow the procedure prescribed in B.S.O.33, in the absence of strict adherence to such procedure, the question of divesting of title from beneficiaries under the assignment, on the Government does not arise. Therefore,

alienation of Ac.231.09 cents of land to Sri P. Prathap Reddy - Accused No.3 on payment of Rs.50,000/- per acre is against the Doctrine of Public Trust.

In **Association for Environment Protection v. State of Kerala and others**⁷⁰, the Supreme Court while relying on the judgments of **M.I. Builders (P.) Ltd. v. Radhey Shyam Sahu**⁷¹, **Fomento Resorts and Hotels Ltd v. Minguel Martins**⁷², held as follows:

“We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. Are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.”

Similarly, in **M.C. Mehta v. Kamal Nath and others** (referred supra), the Apex Court highlighted and discussed the importance of Doctrine of Public Trust which primarily rests on our principal resources like air, sea, water and forests and other lands.

Turning to the facts of the present case, it is evident that, A-3 made representation for allotment of different extents of land on different dates in specified survey numbers. Even before A-3 made an application, sale transactions were completed, alienating

⁷⁰ (2013) 7 Supreme Court Cases 226

⁷¹ (1999) 6 SCC 464

⁷² (2009) 3 SCC 571

the property of the beneficiaries in favour of A-3 in his personal capacity. Apart from that, the file was processed with utmost haste without following the procedure contemplated under B.S.O.33 and alienated the property without looking at the public interest, though the property was originally Government property and it was assigned and on account of alleged relinquishment, which deprived the landless poor from enjoying the land, which is a constitutional goal.

Immediately after allotment, the Sri P. Prathap Reddy - Accused No.3, and his companies invested huge amount of money in the companies floated by A-1, who is the son of the then Chief Minister - Dr. Y.S. Rajasekhara Reddy. The procedure adopted by the Government authorities, including the then Chief Minister - Dr. Y.S. Rajasekhara Reddy in allotting the property to A-3 and its company for construction of cement factory is only to make A-3 to invest huge amount in the companies floated by A-1, as *quid-pro-quo*, i.e. in reciprocation of allotment of land. Therefore, when such alienation is tainted by malafides, certainly that act would attract penal consequences.

The other allegation made against these petitioners is grant of prospective license over an extent of 304.70 hectares for three years in Kurnool district vide G.O.Ms.No.91, Industries &Commerce (M.I) Department dated 29.03.2008. The reason for making such serious allegation against Sri P.Prathap Reddy - Accused No.3, is that, M/s Ultra Tech Cement Limited submitted Mining Lease application dated 05.10.2005 over an extent of Ac. 1032.31 in various survey numbers of Kowlapalli, hamlet of Burugula Village, Peapully Mandal, Kurnool District, for a period of

20 years. One P. Lakshminarayana has also submitted Mining Lease application dated 09.03.2007 for an extent of Ac.47.53 at the nearby vicinity. On 04.06.2007, M/s Penna Cement Industries Limited submitted an application for Prospecting License for an extent of Ac.800, overlapping the extents applied for Mining Lease by M/s Ultra Tech Cement Limited and Sri P. Lakshminarayana after obtaining 'No Objection Certificate (NOC)' from the concerned authorities for the applied extent, the Assistant Director, Mines & Geology (ADM & G), got the survey conducted and forwarded to Director, Mines & Geology recommending for grant of Prospecting License (PL) in favour of M/s Penna Cement Industries Limited to the extent of 304.740 hectares for a period of three years. The Assistant Director, Mines & Geology (ADM & G) while forwarding the proposal of M/s Penna Cement Industries Limited has recommended for rejection of Mining Lease application of M/s Ultra Tech Cement Limited under Section 5(2) of the Mines and Minerals (Development and Regulation) Act, 1957.

It is alleged that, while the proposal of M/s Penna Cement Industries Limited was pending with Director, Mines & Geology, an amount of Rs.20 crores was invested by A-3 through his company M/s Pioneer Infrastructure Holding Limited in M/s Jagati Publications Pvt. Limited on 03.12.2007 and subsequently, the Director, Mines & Geology, under the influence of the then Chief Minister late Dr. Y.S. Rajasekhara Reddy facilitated in processing the file with utmost haste and recommended for grant of Prospecting License to M/s Penna Cement Industries Limited without obtaining proper withdrawal letter from M/s Ultra Tech Cement Limited. But, the Director, Mines & Geology relied on the

oral request of the company representative of M/s Ultra Tech Cement Limited, forwarded the proposal to Industries & Commerce Department for further action.

M/s Ultra Tech Cement Limited did not withdraw their application by the time the recommendation was made by the Secretary, Industries & Commerce Department, for grant of Prospective License for mining to the petitioners. After the assent by the Minister, Industries & Commerce Department issued a memo to Director, Mines & Geology seeking withdrawal letter of M/s Ultra Tech Cement Limited stated to be submitted by the company. The said company submitted a letter addressed to the Secretary, Industries & Commerce Department expressing its readiness to withdraw the Mining Lease (ML) application, subject to transfer of Mining Lease held by M/s Dakshin Cements. Therefore, the letter of M/S Ultra Tech Cement Limited is not a withdrawal but expressed willingness subject to the conditions and the withdrawal of application by M/s Ultra Tech Cement Limited was not absolute and in the absence of accepting transfer of mining lease held by M/s Dakshin Cements Limited in favour of M/s Ultra Tech Cement Limited, withdrawal of their application is not valid. But, ignoring this qualified withdrawal of Mining Lease application of M/s Ultra Tech Cement Limited, the Secretary, Industries & Commerce facilitated to issue G.O granting Prospective Licence in favour of M/s. PCIL over an extent of 304.40 hectares vide G.O.Ms.No.91, Industries & Commerce (M.I) Department dated 29.03.2008 without obtaining prior approval of the Minister for Mines & Geology.

Without rejecting the conditional withdrawal, the Government totally relied on such application of qualified withdrawal of their application for Prospective License. Thus, the malafides on the part of the departmental authorities and investment of money in M/s Jagati Publications Private Limited on 03.12.2007, issuance of G.O.Ms.No.91, Industries & Commerce (M.I) Department dated 29.03.2008, *prima facie* discloses the culpability of A-3 and other accused, since the Prospective License was granted in utter disregard of Section 5(2) of MMDR Act and Rule 26(1) of The Mineral Concession Rules, 1960.

Learned counsel for the petitioners contended that, the material available on record to substantiate the second allegation is virtually nil and based on the material collected during investigation, proceedings against these petitioners cannot be continued.

Learned counsel for the petitioners drawn attention of this Court to the statement of Sri M.Satyanarayana Murthy (L.W-39), Section Officer, General Administration Department, A.P. Secretariat dated 07.02.2012. The statement disclosed that the representative of M/s Ultra Tech Cement Limited informed that they have withdrawn their application and furnished letter to Assistant Director, Mines & Geology (ADM & G) for which they promised to supply a copy of the same in two days. It was also stated that Note File 47 may be considered and there was no need to obtain relaxation since it is a Prospective License and the earlier lease held by the company was Mining Lease. It is also stated that the maximum limit for Prospective License is 25 Sq.Kms, thereby, it is within the limits.

This statement at best disclosed that the representative of M/s Ultra Tech Cement Limited informed that they have withdrawn their application and furnished the said letter to Assistant Director, Mines & Geology and there was no need to obtain relaxation, since it is a Prospective License, but not Mining License and the maximum limit for Prospective License is 25 sq.kms. But, this statement is of no assistance as it is clear that Sri P. Prathap Reddy - accused No.3, is liable to be proceeded for the offence holding that there is no *prima facie* material.

Learned counsel for the petitioners also drawn attention of this Court to the statements of following listed witnesses:

1. Sri B. Niranjana Kumar (L.W-40), Retd. Deputy Secretary dated 07.01.2012 & 08.02.2012;
2. Sri Andem Dayakar Reddy (L.W-41), Joint Secretary to Government, Planning Department dated 14.03.2012;
3. Dr. Goti Madhukar (L.W-44), Joint Director, Department of Mines & Geology dated 16.02.2012;
4. Sri Gudipati Ramatheerdha (L.W-45), Retd. Joint Director of Mines & Geology;
5. Sri Rafi Ahmad (L.W-46), Joint Director, Directorate of Mines & Geology and other witnesses who spoke about withdrawing applications by M/s Ultra Tech Cement Limited for Prospective License.

But, the statement of any of the above mentioned witnesses is not having any support to the case of the petitioners.

Learned counsel for the petitioners also drawn the attention of this Court to Memo No.1698/M1(1)/07 dated 10.03.2008 directing the Director, Mines & Geology to furnish a copy of the withdrawal letter from M/s Ultra Tech Cement Limited. In response, letter vide Ref.UTCL/MLAAppln/Area3/2008/001 dated 11.03.2008 from Unit Head & Jt. Executive President of M/s Ultra Cement Limited was addressed to the Secretary to Government, Industries & Commerce Department, for withdrawal of Mining

License. Learned counsel for the petitioners also referred to several circular notes. But, at this stage, the statements of these witnesses referred supra and the documents cannot be gone into minutely to come to a conclusion that the petitioners did commit no offence *prima facie*.

Rule 9 of the Mineral Concession Rules deals with application for Prospecting License and its renewal. Clause (g) of Rule 9 stipulates that, a statement in writing that the applicant, where the land is not owned by him, has obtained surface rights over the area or has obtained the consent of the owner for staving prospecting license, provided that no such statement is necessary where the land is owned by Government.

M/s Penna Cement Industries Limited owned the land under Mining lease admeasuring 1032-31 hcts and submitted an application for setting up cement factory, for which M/s Ultra Tech Cement Limited applied for. But, these questions cannot be gone into at this stage and even the affidavit allegedly submitted by M/s Ultra Tech Cement Limited is not a notarized affidavit, as required under the rules and withdrawal is not absolute and it is a qualified withdrawal. Therefore, the alleged withdrawal of application for Mining Lease by M/s Ultra Tech Cement Limited is not in accordance with law. But, still, with an intent to confer undue official favour/benefit on these petitioners on account of investment of Rs.20 crores by Sri P. Prathap Reddy (A-3) through its company M/s Pioneer Holdings Infrastructure Private Limited in M/s Jagati Publications, which is floated by A-1, who is the present opposition leader in Legislative Assembly in the State of Andhra Pradesh and also the son of the then Chief Minister late

Dr. Y.S. Rajasekhara Reddy. Therefore, it is explicit from the material collected during investigation that granting of Prospecting License and investment in the company floated by accused No.1, which is at the formative stage on the date of such investment *prima facie* establishes that the investment was made in reciprocation of grant of Prospecting License in deviation of the rules and provisions of MMDR Act and Mineral Concession Rules, 1960. Though the Government is entitled to grant such Prospecting License for mining, it must follow the fair procedure, since, it is not the whim and fancy of the Government to confer undue official favour on any of its confederates or political partners, due to their political patronage with such person, ignoring the duty that is cast upon the government to protect the property of the public by applying the Doctrine of Public Trust, being the custodian of entire property, such mining lease shall be granted only in accordance with prescribed procedure. Granting Prospecting License in utter deviation of the rules and provisions referred above, is suffice to conclude that, there was an agreement between Sri P.Prathap Reddy - Accused No.3, and his companies with accused-1 *prima facie*, who allegedly prevailed upon his father, the then Chief Minister late Dr. Y.S. Rajasekhar Reddy and Sri P. Prathap Reddy - Accused No.3, and his companies investing huge amount in the companies floated by A-1. In the absence of any agreement of contemporaneous acts of making recommendation and investment immediately to the tune of Rs.20 crores and thereafter, completing the entire process is *prima facie* suffice to conclude that there was an agreement to confer undue official favour on these petitioners by the Government through A-1

and such investment is a reciprocation for granting Prospecting License.

Section 5 of NMDR Act, 1957 deals with Restrictions on the grant of Prospecting Licences or Mining Leases. According to subsection (2) of Section 5, no mining lease shall be granted by the State Government unless it is satisfied that:-

- (a) there is evidence to show the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government;*
- (b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned;*

Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.

In the present facts of the case, the said G.O was passed by the State Government, subject to submitting mining plan and environmental clearance. When mining plan was submitted by the petitioners, granting of Prospecting License or Mining lease is with ulterior motive. Such relaxation of everything for grant of Prospecting License or Mining License in favour of Sri P. Prathap Reddy - Accused No.3, and its companies is *prima facie* sufficient, to proceed against the petitioners herein.

Learned Special Public Prosecutor for C.B.I submitted that, Rule 9 of Mineral Concession Rules, 1960, deals with application for Prospecting License and its renewal. Clause (g) of Rule 9 stipulates that, a statement in writing that the applicant, where

the land is not owned by him, has obtained surface rights over the area or has obtained the consent of the owner for starting prospecting license, provided that no such statement is necessary where the land is owned by Government. Provided further that no further consent would be required in the case of renewal where consent has already been obtained during grant of the licence.

Highlighting Rule 9(g) of the Mineral Concession Rules, learned Special Public Prosecutor for C.B.I contended that Sri P. Prathap Reddy - Accused No.3, and its companies made an application for Prospecting License adhering to the requirement under Rule 9 of the Mineral Concession Rules. But, mere submitting an application in the proforma as required under Rule 9 by itself is not sufficient to exonerate Sri P. Prathap Reddy - Accused No.3, from criminal liability and the Court has to take into consideration the entire material and if the material directly points out the complicity of Sri P. Prathap Reddy - accused No.3 *prima facie*, about his involvement in criminal conspiracy and fraud, the proceedings against Sri P. Prathap Reddy - accused No.3 cannot be quashed on the ground that he made an application for grant of Prospecting License or renewal of license, as required under Rule 9 of Mineral Concession Rules. This compliance is only a statutory requirement. But, that does not disclose the criminal conspiracy behind the grant of Prospecting License, ignoring the applications made by the others i.e. M/s Ultra Tech Cement Limited and P. Lakshminarayana for the same area without withdrawal. But, the alleged withdrawal is a conditional one, since the withdrawal is subject to transfer of mining leases which is already granted in favour of M/s Dakshin Cements Private Limited. This conditional

withdrawal was neither accepted nor acted upon by the Government, transferring mining lease in favour of M/s Ultra Tech Cement Limited granted in favour of M/s Dakshin Cements. When the withdrawal is conditional one, in the absence of withdrawal granting Prospecting License to Sri P. Prathap Reddy (A-3) without considering the earlier application made by M/s Ultra Tech Cement Limited itself indicates the guilty mind of the officials of the Government and Sri P. Prathap Reddy (A-3), including the agreement between the parties to do a legal act by illegal means or an illegal act by illegal means.

Apart from that, investment of Rs.20 crores immediately after granting Prospecting License is another strong circumstance to conclude *prima facie* that the Sri P. Prathap Reddy - Accused No.3 committed an offence punishable under Section 120-B I.P.C along with A-1 and other officials of the Government, who dealt with the subject of granting Prospecting License.

Learned Special Public Prosecutor for C.B.I. contended that the statement of L.W-39 is relevant for deciding the question of allotment of land in conspiracy in granting Prospecting License in favour of Sri P. Prathap Reddy - Accused No.3. L.W-39 stated that, he circulated the file bearing No.15436/M.I(2)/07 to the competent authority and a Memorandum No. 15436/M.I(2)/07 dated 17.04.2008 was issued calling for Approved Mining Plan for renewal of mining lease for limestone over a reduced extent of Ac.837-24 cents in various survey numbers of Sangam Maktha Village, Tandur Mandal, Ranga Reddy District in favour of Walchand Tandur Cement Company Limited for a period of 20 years, subject to obtaining consent of the pattadars under Rule

22(3)(h) of the Mineral and Concession Rules 1960. L.W-39 also spoke about the movement of the file that he processed in his statement dated 08.10.2011 recorded under Section 161 Cr.P.C by the Investigating Agency. He stated that, on perusal of the noting dated 21.02.2009 it is seen at paragraph 83 there is some addition in the noting that ***“within a period of (3) months from the date of issue of this order”*** in pencil and then written in black ink pen. On being asked whether this addition was made by him or by anyone, he stated that his immediate officer Sri K.V. Rao has made this addition in pencil and he has overwritten on the same lines in black ink. When enquired as to whether Approved Mining Plan, Environmental Clearance and Consent from the A.P. Pollution Board for mining operations and consent from the pattadars required before issue of G.O for grant of Mining Lease, L.W-39 stated that, as per the Mineral Concession Rules, 1960 and MMDR Act, it is mandatory. But, the Director, Mines & Geology has recommended for grant of RML pending submission of required documents vide Director, Mines & Geology note dated 21.02.2009 and the said G.O was issued as per the recommendation of Director, Mines & Geology.

The contents of the statement of L.W-39 would clearly show the criminal conspiracy between the parties to the transaction and this Court while deciding an application is not under obligation to minutely examine and record its findings. At best, the Court may consider the material produced before it and analyze. If, the Court concludes that the material *prima facie* is sufficient to proceed against Sri P. Prathap Reddy - Accused No.3 for the offences, accepting the allegations made in the material produced along with

the charge-sheet, the Court can exercise its jurisdiction under Section 482 Cr.P.C to quash the proceedings.

Similarly, in the statement of L.W-39 – M. Satyanarayana Murthy dated 07.02.2012, it is stated that M/s Ultra Tech Cement Limited vide letter dated 11.03.2008 informed that, it would like to withdraw the Mining Lease application dated 30.09.2005 for quarrying limestone over an extent of Ac.1032.31 in Burugula Village, Peapully Mandal, Kurnool District, subject to transfer of M/s Dakshina Cement Mining Lease of Ac.976.41 in Guruvanipali Village in favour of M/s Ultra Tech Cement Limited, in view of requirement of limestone for its existing plant. On receipt of the above letter from M/s Ultra Tech Cement Limited, a note was prepared by L.W-39 through Director, Mines & Geology and submitted on 17.03.2008. The Assistant Secretary has given his remarks for obtaining notarized withdrawal affidavit from M/s Ultra Tech Cement Limited through Director, Mines & Geology. The noting remarks of Director, Mines & Geology are as follows:

“We may accept the withdrawal of the company since it is a reputed company and they cannot go back by their letter. Normally we insist for notarized affidavit to avoid ignorance claim of the applicant in future. In this case, they have informed their intention in person also and the letter was handed over by a responsible official of the company. Hence, we may accept their withdrawal letter to avoid further delay.”

Based on the recommendation of Director, Mines & Geology dated 17.03.2008 and the orders in circulation to the Minister, L.W-39 put up the noting and sought for orders whether Prospecting License for Limestone over an extent of 304-70 hectares in various survey numbers of Kowlapalli Village, Peapully

Mandal, Kurnool District for a period of 3 years may be granted in favour of M/s Penna Cement Industries Limited along with draft order for the same. On the basis of the note made by the Secretary referred above, it was accepted even though the Secretary is conscious about the requirement under the rules i.e., notarized affidavit of the applicant to withdraw such application for grant of Mining Lease or Prospecting License. This creates any amount of suspicion as to the agreement between the petitioners and A-1 to grant Prospecting License.

Sri Koduru Venkateswar Rao (L.W-42), Retired Assistant Secretary to Government of A.P, Industries & Commerce Department, on verification of the file of G.O.Ms.No.76 dated 26.02.2009, stated that the photocopy of Director, Mines & Geology note file below paragraph 75, the file is not routed as per normal procedure as laid down in Secretariat Manual and the file after signature of Director, Mines & Geology dated 21.02.2009 was seen and signed by the then Secretary on 21.02.2009, thereafter, L.W-42 noticed that peshi's seal impression with No.56 dated 21.02.09 was found by the side of the Secretary's signature. He stated that, this very movement of the file shows that the file was brought directly to the then Secretary Smt. Y. Srilakshmi and dealt at her level on the same day. This is also one of the serious matter of concern pointing out the complicity of Sri P. Prathap Reddy - Accused No.3 and other accused petitioners *prima facie*.

Similarly, Dr. Goti Madhukar (L.W-44) stated in his statement recorded under Section 161 Cr.P.C that, the noting of Director, Mines & Geology office are seen from pages 15 to 25 of note file (Sheet Nos.07 to 12) of the G.O.Ms.No.91 dated

29.03.2008 file, and he perused the same. He also stated that he perused the file of Assistant Director, Mines & Geology bearing Nos. 4620/M4/2007 of M/s Penna Cement Industries Limited and File No.35663 and 6146/M4/2005. It is also stated that, having received proposal from Sri A.V. Subba Reddy, Zonal Joint Director, Mines & Geology, Kadapa, vide his recommendation dated 17.10.2007 stating as follows:

- 1) ***Though M/s Ultra Tech Cement Limited has applied for grant of Mining License for Limestone, they did not obtain 'No Objection Certificate' from the Revenue Department as well as pattadars, same is pending for the longer period amounts to block the area.***
- 2) ***M/s Penna Cement Industries Limited has applied for Prospecting License for the same area and obtained NOC from the Revenue Department and they have stated that they are going to purchase patta lands to that effect to produce undertaking, as such Penna Cement Industries Limited deserved to be considered for grant of Prospecting License for the subject area.***
- 3) ***Also recommended for grant of Prospecting License under Section 5(2)(a) and Section 11(3)(e) of MMDR Act, 1957***
- 4) ***Hence, the Mining License application of M/s Ultra Tech Cement Limited was recommended for rejection.***

This piece of statement is another important material to establish the complicity of the accused/petitioners.

Similarly, in the statement of Gudipati Ramatheerdha Rao (L.W-45) recorded under Section 161 Cr.P.C, several questions were put to him. Question No.7 and answer to it, stated by him, as follows:

Q.No.7. The status of ML application of Sri P. Lakshminarayana was completely ignored in the DM&G office under single file system while submitting the proposal. Who is responsible for this gross violation?

A. I state that as per procedure –

Whenever reported that the recommended area is not overlapping with any other applied are or existing lease area, the said recommended area will be considered exclusively when the extent was surveyed and demarcated by the department Surveyor and the Surveyed sketch counter signed by the ADM&G and as well as the prospecting applicant namely M/s Penna Cement Industries Ltd.

I also stated that the ADM&G or ZJDM&G have never reported or recorded in the file that M/s Penna Cement Industries Ltd has at any point of time requested for the extent applied for in Sy.No.174 and accepted the surveyed extent which is not covered with the area applied by Sri P. Lakshminarayana. Hence, for all practical purposes and as per the procedure, the area surveyed and demarcated was only considered for recommendation.”

The witness referred above are the competent persons to speak about the procedure for routing the file and it is apparent from the statements that the file was not processed through the concerned authorities as per the Secretariat Rules.

Sri Rafi Ahmed (L.W-46), Joint Director, Directorate of Mines & Geology, when questioned, explained as to what are Prospecting License, Mining Lease, Rules for renewal of Mining Lease and other aspects. In his statement dated 31.03.2012, he specifically stated for Question No.3 as follows:

Q.No.3 Whether conditional withdrawal letter can be accepted and recommended since M/s Ultra Tech Cement Limited requested for transfer of ML from M/s Dakshin cements to M/s Ultra Tech Cement Limited without submitting notarized affidavit? Whether it is acceptable or not as per Rules & Procedure?

A. The usual procedure, normally we follow, for withdrawal of any application is that we

accept the applications from the parties by getting a notarized affidavit to ensure that at later date the applicant shall not change his mind on the withdrawal given to the department.

In this case, as the withdrawal letter is a conditional one, the applicant, M/s Ultra Tech Cement Limited requested for transfer of ML held by M/s Dakshin Cements to them, it cannot be taken it as total withdrawal from the area.

The DM&G is the proposing authority for any application whether it is for rejection or for grant under Rule 26 of the M.C Rules, 1960. The DM&G can accept or recommend such conditional withdrawal and send it to the Government, after proper scrutiny and examination of the proposal. The Government, who is to take a decision on such proposals whether to accept or reject.

Q. It is seen from the file of ADM&G that while sending the proposal he mentioned that Sri P. Lakshminarayana, who is the second applicant for ML application dated 09.03.2007 had applied over an extent of 44.31 acres of Governmetn land and 1.75 acres patta land in Sy.No.174. This area is overlapping with the area applied by M/s Penna Cement Industries Limited and the said survey number has been deleted and separate proposal will be submitted on receipt of NOC from Tahsildar, Peapully Mandal. When the ADM&G rejected ML application of M/s Ultra Tech Cement Limited under Section 5(2) (a) of MMD&R Act, why the ADM&G would have considered ML application of Sri P. Lakshminarayana, which should also have been rejected under Section 5(2) (a) of MMD&R Act? What is your comment in this regard?

A. As per rules, for any applied area, when there is no data available on the mineralization, the Prospecting License applications require consideration to conduct exploration and estimate, reserves of mineral both in terms of quantity and quality to decide the utility of mineral for a particular industry.

On perusal of ADM&G file in the combined proposal, the ML application of Sri P. Lakshminarayana is also reflected in addition to the other two applications i.e. ML application of M/s Ultra Tech Cement Limited. As such the application of Sri P. Lakshminarayana should have been proposed for rejection under Section 5(2) (a) of MMD&R Act, 1957.

However, the proposal on the ML application of Sri P. Lakshminarayana was recommended for rejection under Section 5(2) (a) of MMD&R Act, 1957 and the Government issued show cause notice to the party during November, 2010.”

Sri Partha Sarathi Mazumdar (L.W-53), Chemical Engineer from REC Rourkela, who worked as Executive President & Unit Head, M/s Ultra Tech Cement Limited stated in his statement dated 16.02.2012 as follows:

“Today, I have been shown the receipt memo dated 21.10.2011, wherein the original G.O.Ms.No.91 dated 29.03.2008 was received from the office of Secretary to Government, Industries & Commerce Department, Government of AP and I have been asked to speak about the correspondence dealt under my signature, which is addressed to the Secretary to Govt. Industries & Commerce Department, A.P. Secretariat, via reference No.UTCL/ML Appln/Area 3/2008/001 dated 11.03.2008 at sheet no 2 & 3. I have been shown the said letter and asked to identify whether this letter was issued by me. I state that I do not recollect that such correspondence was ever made with the Government. However, I have to verify the same from my office records, and also to be discussed with the concerned official of mines department regarding the issue. I further state that the signature on the above said letter is mine.

On being asked whether I have visited the O/o DM&G, B.R.K.R. Bhawan, Hyderabad, I state

that after assuming the position of Unit Head, I visited the O/o DM&G and A.P. Secretariat, and met Sri V.D. Rajagopal & Smt. Y. Srilakshmi, IAS, as a courtesy visit sometime during December, 2007, and thereafter I never visited DM&G office. Sri Vasantha Rao, Asst. Vice President (HR), Liason Officer, Asst. Vice President (HR), Liason Officer and Sri T.V. Srinivasan, Vice President Mines used to visit Government offices for getting the works done.

On being asked I state that Ultra Tech Cement Limited, Andhra Pradesh Cement works was granted a Mining Lease at Tummalapenta Village, Kolimigundal Mandal, Kurnool District over an extent of 844 hectares in the year 1995 for the proposed Captive Cement plant set up in the year 1997 and production was commenced during 1997, to fulfil the plant requirement as well as the anticipated expansion plan, for which we have applied for 9 additional Limestone mining leases between 2005 to 2008. The details of applied mining leases are as under:

- 1. Mining lease over an extent of 29 hectares in Petnikota Village, Kolimigundla Mandal, Kurnool District.*
- 2. Mining lease over an extent of 372 hectares in Gudipadu Village, Yadiki Mandal, Anantapur District.*
- 3. Mining lease over an extent of 417 hectares in Burgulla Village, Peapully Mandal, Kurnool District.*
- 4. Mining lease over an extent of 90 hectares in Bandarpalle Village, Kolimigundla Mandal, Kurnool District.*
- 5. Mining lease over an extent of 114 hectares in Tummalapenta Village, Kolimigundla Mandal, Kurnool District.*
- 6. Mining lease over an extent of 84 hectares in Petnikota Mining Lease, Kolimigundla Mandal, Kurnool District.*
- 7. Mining lease over an extent of 230 hectares Petnikota Mining Lease Kolimigundla Mandal, Kurnool District.*

- 8. Mining lease over an extent of 252 hectares in Petnikota Mining Lease, Kolimigundla Mandal, Kurnool District.**
- 9. Mining lease over an extent of 161 hectares in Chintalayapalli Mining Lease, Kolimigundla Mandal, Kurnool District.”**

The cumulative effect of the statements recorded by the Investigating Agency *prima facie* points out the illegalities committed in granting Prospecting Mining License to accused No.3 and his companies, totality of the circumstances and conduct of the persons in violating statutory provisions and granting Prospecting Mining License is sufficient to *prima facie* conclude that there is an agreement between the parties to do an illegal act by legal means and it is based on the circumstances, the Court can draw inferences, since such agreement to commit an offence is a secret act, which cannot be proved by producing direct evidence. Therefore, the material on record is sufficient to proceed against these petitioners based on the allegations 1 & 2 referred above, for the offences punishable under Sections 420 & 120-B I.P.C.

The 3rd allegation made against these petitioners is that the Mining lease held by M/s Walchand Tandur Cement Co. Ltd., was transferred to M/s Penna Tandur Cement Co., (accused No.9) vide G.O.Ms.Nos.76 and 25.

The then Government of Andhra Pradesh headed by Late Dr.Y.S.Rajashekara Reddy, father of accused No.1 herein extended certain undue official favours to accused No.9 and accused No.3 was the Managing Director and the person, who floated accused No.9 company and those undue favours are extended only at the instance of accused No.1, who is the son of the then Chief Minister

and he is instrumental for extending such undue official favour to accused Nos.9 and 3 and his group of companies. In reciprocation of extension of such undue official favours to the petitioners for transfer of lease etc., the petitioners/accused Nos.3 and 9 invested huge amount in M/s Jagati Publications Pvt. Ltd and M/s Carmel Asia Holdings Private Limited, the details of investments are shown in the table in the earlier paragraphs.

M/s Walchand Tandur Cement Company Limited was initially holding mining lease over an extent of 1021.26 acres from 1969 to 1979, but the company could not set up cement plant and the Government of A.P. issued order cancelling the mining lease. As per the request of the company M/s Walchand Tandur Cement Company Limited, the Government of India by an order dated 05.09.1980 has set-aside the order of Government of A.P. Thereafter the company made efforts to set up the cement plant during the period 1980-87, but the company could not set up the plant and the lease was expired. Subsequently, on 29.7.1987, the company has further applied for renewal of mining lease, but the request of the company was rejected by the State Government. Further, the company filed a revision application to Government of India, who in turn has sought for written comments of the Government of A.P. The State Government after hearing the request of the company again rejected the plea of the company. In the meanwhile, the Government of Andhra Pradesh issued notification for re-grant of Mining Lease for the same area and in response to the notification, M/s Visakha Cement Industries Limited has applied for grant of mining lease for an extent of 951.26 acres, the same area which had been applied by

M/s Walchand Tandur Cement Company Limited. The Government of India, vide order dated 14.12.1993, rejected the revision application of M/s Walchand Tandur Cement Company Limited, the company aggrieved by the order, filed a writ petition before the Delhi High Court and the Delhi High Court quashed the order of Government of India on 27.04.1994 and remanded the matter to Government of India for fresh disposal. The Government of India after hearing again rejected the request of the company. Aggrieved by the same, the Company filed writ petition No.4708 of 1998 before the Delhi High Court.

While the matter was pending before the Delhi High Court, on 21.11.2006, Sri P.Pratap Reddy, Managing Director of M/s Pioneer Builders entered into Memorandum of Understanding with M/s Walchandnagar Industries Limited and acquired total shares of the company M/s Walchand Tandur Cement Company Limited for a consideration of Rs.1.21 crores. In pursuance of the criminal conspiracy, M/s Walchand Tandur Cement Company Limited after being taken over by Sri P.Pratap Reddy, Managing Director through its Director Sri V.R.Vasudevan, addressed a letter to the then Chief Minister of Andhra Pradesh Late Dr. Y.S. Rajashekara Reddy, directly requesting to advise the State Government Counsel appearing in the Delhi High Court on behalf of the A.P. Government, in the Writ Petition No.4708 of 1998, that the State Government is actively considering their company's application for renewal of Mining lease in favour of M/s. Walchand Tandur Cement Company Limited. On receipt of the request from the new management i.e. M/s Walchand Tandur Cement Company Limited, the Chief Minister's Office has forwarded the representation of the

company along with a note dated 20.09.2007 to the Secretary, Industries & Commerce Department, with a direction to examine the matter and take action.

As directed by the then C.M. Late Dr. Y.S. Rajashekara Reddy, the Industries & Commerce Department submitted a detailed note to the Government while contending that the Government cannot review its own order. However, the then Chief Minister Late Dr.Y.S.Rajashekara Reddy gave his positive assent bypassing the recommendations of Secretary and the Minister concerned, and issued orders on the lines of the request made by the Company by using his extra-ordinary powers and directed to instruct the Government Advocate to inform the Delhi High Court that the Government of Andhra Pradesh is inclined to review its earlier orders, issued against the renewal of Mining Lease application, if the matter is remanded to Government of Andhra Pradesh to review its orders. As per the orders of the then Chief Minister, a letter to Government Advocate in Delhi High Court was sent on 03.12.2007. Immediately after positive assent by the then Chief Minister Late Dr. Y.S. Rajashekara Reddy an amount of Rs.20 crores was invested by Sri P. Pratap Reddy as **Quid Pro Quo** in M/s Jagati Publications Private Limited. Thereafter, in pursuance of the letter placed on record by the Government Pleader for State of Andhra Pradesh in Delhi High Court, the order was set aside and remanded to the State Government for fresh consideration and accordingly mining lease was renewed subject to submission of approved mining plan within 06 months under Rule 22(4) of M.C. Rules, 1960 and also for obtaining prior environmental clearance as per notification, Standing Order

No.1533, dated 14.09.2006 under sub-section (2) of Section 3 of Environment (Protection) Act, 1986 and subject to satisfaction of M.C. Rules, 1960 and MMDR Act, 1957, and also subject to further amendments or guidelines if any, issued by the Government in the matter from time to time and to consider the same for establishment of Cement unit by the company within (3) years.

As per the material collected by respondent, the Secretary, Industries and Commerce Department changed the name of the company in pursuance of the letter dated 18.12.2008 from M/s Walchand Tandur Cement Company Limited to M/s. Penna Tandur Cement Company Limited vide G.O.Ms.No.25 dated 29.01.2009. It is in contravention of Rule 37 of M.C.Rules, 1960. The then Secretary, Smt.Y.Srilakshmi recommended change of name without insisting for transfer of Mining Lease as per the Rule 37 of M.C. Rules, 1960 and the Minister for Mines & Geology based on recommendation of the Secretary issued orders for change of name from M/s Walchand Tandur Cement Company Limited to M/s Penna Tandur Cement Company Limited and issued G.O.Ms.No.25 Industries and Commerce (M.III) Department dated 29.01.2009. Thus, the G.O. was issued totally in contravention of Rule 37 of M.C.Rules due to the role played by Smt.Y.Srilakshmi and the then Minister for Industries and Commerce also appears to have played a major role in issuing G.O.Ms.No.25 dated 29.01.2009.

Similarly, G.O.Ms.No.76 dated 26.02.2009 was issued subject to submission of approved mining plan and environmental clearance as per the Government Memo dated 17.04.2008. But as

per the request of the company that they intended to execute the deed for Mining Lease by submitting an affidavit that they shall furnish the approved Mining Plan and Environmental Clearance before entering into the leased lands and commence mining operations, the then DM&G V.D.Rajagopal facilitated by circulating a positive note and got issued G.O.Ms.No.76 and it is in contravention of Rule 37 of M.C.Rules. Thus, after issuance of G.O.Ms.No.76 dated 26.02.2009 and execution of mining lease by the company on 07.03.2009, an amount of Rs.10 crore was invested on 09.03.2009 by M/s Pioneer Infrastructure Holding Limited of P.Pratap Reddy as quid-pro-quo into M/s Jagati Publications Limited. Thus, the then Chief Minister of Andhra Pradesh at the instance of his son – accused No.1 herein extended official undue favours to the petitioners and invited investment in M/s Jagati Publications Limited floated by accused No.1 and the said investment is quid-pro-quo i.e., in reciprocation of grant of mining lease in contravention of rules and thus, they have committed grave offence punishable under Section 420 of I.P.C. prima facie.

This allegation was repelled by the learned counsel for the petitioners raising a specific contention that none of the allegations made in the complaint and violations in issuing G.O.Ms.Nos.25 and 76 do not constitute offence punishable under Section 420 and 120 – B of I.P.C. and relied on statement of L.W.39 – M.Satyanarayana dated 07.10.2011, 08.10.2011, 11.10.2011, 12.10.2011 and 04.11.2011 and L.W.40 – Niranjan Kumar dated 08.10.2011, 05.11.2011 and 17.03.2012 and L.W.41 Andem Dayakar Reddy, L.W.42 Koduru Venkateshwar Rao, L.W.46 Rafi

Ahmed, L.W.48 Dumpala Devender Rao, L.W.49 – Kunchitigakapu Narsimhulu, L.W.54 Bojja Jaya Raju, L.W.55 Anil Subramaniam, L.W.56 Peeyush Narayan Sharma, L.W.57 Arjun Rijn Singhani, L.W.58 Shrikant Chiman Bhagwat, L.W.59 Mohanlal Hiralal Purwat, L.W.60 Sripad Gangavati, L.W.61 Deshmukh Jaysing Laxmanrao, L.W.62 Injeti Gopinath.

Whereas, Special Public Prosecutor for C.B.I relied on statement of L.W.39 (at page No.313 – paragraph Nos.2 and 13)

Various paragraphs extracted in the petition from paragraph No.18 (a) to (f) at best would show that there was no criminal conspiracy, but the cumulative effect of entire allegations made in the complaint including the documents collected during investigation by the investigating agency have to be considered to decide whether the material on record *prima facie* disclosed commission of any offence in utter violation or deviation of rules and provisions of various enactments.

Though the allegations made in the charge sheet and the statements directly highlighting the violations of various rules and provisions for granting mining lease and renewal of mining lease etc., such violation do not constitute offence. But when an investment of Rs.20 crores and Rs.10 crores on two different dates was made by accused No.3 and his companies immediately after passing G.Os and in reciprocation of undue official favours extended to the companies of accused No.3, he invested huge amount in the company floated by accused No.1 i.e. M/s Jagati Publications Private Limited immediately after extending such benefit, *prima facie* suffice to conclude that there was an agreement to do an illegal act by illegal means deviating the rules

only to extend official favour to accused No.3 and his companies without insisting compliance of mandatory requirements. Therefore, cumulative effect of these allegations made in the charge sheet including the statements recorded by the investigating agency and the statement of L.W.39 *prima facie* disclosed commission of offence by the petitioners conspiring with accused No.1, who is the son of the then Chief Minister of Andhra Pradesh and other Government Servants of various departments shown in supplementary charge sheet.

To constitute offence punishable under Section 120-B of I.P.C., the allegations made in the charge sheet and the statements though not directly pointing out the complicity and more particularly about the agreement between the parties to commit an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as criminal conspiracy and the same can be inferred from the circumstances.

For transfer of mining lease, which is in the name of M/s Walchand Tandur Cement Company Limited to M/s Penna Tandur Cement Company Limited and issuing G.Os without insisting for compliance of Rule 37 of M.C. Rules *prima facie* show that there was an agreement between the parties to extend undue official favour to the petitioners by the then Chief Minister and other officials concerned including accused No.1 and for extending such undue benefit, invited investments in the company floated by accused No.1, son of the then Chief Minister of Andhra Pradesh.

According to Rule 37 of the Mineral Concession Rules, 1960 the lessee shall not, without the previous consent in writing of the

State Government (and in the case of mining lease in respect of any mineral specified in (Part A and Part B of) the First Schedule to the Act, without the previous approval of the Central Government) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, or enter into or make any (bona fide) arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee.

Thus, from Rule 37 of the Mineral Concession Rules, 1960, it is abundantly clear that for transfer of mining lease, either State or Central Government consent in writing is necessary, depending upon the mineral specified in Part A and Part B of the First Schedule. But in the present case, by exercise of power under Rule 62 of the Mineral Concession Rules, the authorities concerned substituted the name of M/s Penna Tandur Cement Company Limited in the place of M/s Walchand Tandur Cement Company Limited. In fact Rule 62 says that an applicant for, or the holder of a reconnaissance permit, a prospecting licence or a mining lease shall intimate to the State Government within sixty days any change that may take place in his name, nationality or other particulars mentioned in the relevant forms. If the holder of a reconnaissance permit or a prospecting licence or a mining lease fails, without sufficient cause, to furnish the information referred to in sub-rule (1), the State Government may determine the reconnaissance permit or prospecting licence or mining lease, as the case may be, provided that no such order shall be made

without giving the permit holder or the licensee or the lessee, as the case may be, a reasonable opportunity of stating the case.

It is not the case of M/s Penna Tandur Cement Company Limited that the company changed its name and it is a clear case of acquiring M/s Walchand Tandur Cement Company Limited and incorporating as a company and obtained certificate of registration from the Government of India – Ministry of Corporate Affairs on 05.03.2018. Letter dated 16.08.2008 was addressed by M/s. Penna Tandur Cement Company Limited with a request to amend the name as “Penna Tandur Cement Company Limited” instead of “Walchand Tandur Cement Company Limited” annexing copy of the certificate of incorporation. But initially lease was renewed after remand to the State Government on the letter addressed by the Government to the Counsel appearing in Delhi High Court on behalf of the State to consider renewal of lease in favour of Walchand Tandur Cement Company Limited. Accordingly, a memo was issued granting mining lease in an extent of 1021.26 acres subject to compliance of certain formalities i.e., obtaining prior environmental clearance as per notification No.S.O.1533, dated 14.09.2006 under sub-section (2) of Section 3 of Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of Environmental (Protection) Rules 1986 and subject to satisfaction of M.C.Rules, 1960 and Mines and Minerals (D&R) Act, 1957 and also subject to further amendments or guidelines, if any, issued by the Government from time to time and further directed to submit approved mining plan under M.C.Rules 1960. Mining lease was granted in favour of M/s Walchand Tandur Cement Company Limited for clearing lime stone and later issued Errata by

memo No.15436/M.I(1)/2007 dated 21.07.2008 annexing schedule showing the details of land and total land of mining lease area comes to 822.13 acres. At this stage, Penna Tandur Cement Company Limited addressed a letter to the Secretary to Government, Industries and Commerce (MI) Department, Government of Andhra Pradesh dated 18.12.2008 with a request to take on record certificate of incorporation and amend the name of company as “M/s. Penna Tandur Cement Company Limited” instead of “Walchand Tandur Cement Company Limited”. Further, a letter dated 16.08.2008 was addressed to the Secretary to Government Industries and Commerce (MI) Dept., Government of Andhra Pradesh, Hyderabad to amend the order, and later G.O.Ms.No.25 dated 29.01.2009 was issued and permission is accorded to change the name of M/s Walchand Tandur Cement Company Limited to M/s Penna Tandur Cement Company Limited under Rule 62 of Mineral Concession Rules, 1960.

Rule 62 is applicable only in case of change of name of the company or the person, who made an application for grant or renewal of lease. But in the present facts of the case, M/s Penna Tandur Cement Company Limited is having separate legal entity, registered with ROC and it is not a change of name as M/s Walchand Tandur Cement Company Limited. In such case, Rule 62 has no application *prima facie* and such transfer of lease in favour of M/s Penna Tandur Cement Company Limited is covered by Rule 37 of M.C.Rules, but by misinterpreting the Rules, Secretary, Industries and Commerce (MI) Department issued G.O.Ms.No.25 dated 29.01.2009.

It is evident from the record that accused No.3 was having a political patronage with the then Chief Minister Late Dr.Y.S.Rajashekara Reddy, being the General Secretary of Congress (I) party and on account of timely floating of companies by accused No.1 i.e. M/s.Carmel Asia Holdings Private Limited, Jagati Publications Limited, Indira Television, accused No.3 took advantage of the situation, invested huge amount in the companies floated by accused No.1, who is the son of the then Chief Minister Late Dr.Y.S.Rajashekara Reddy, immediately before or after sanctioning and transfer of mining lease. Therefore, issuance of such G.Os in contravention of the statutory rules and timely investment of huge amount in the companies floated by accused No.1 by accused No.3 *prima facie* pointing out the alleged conspiracy between the petitioners and other accused.

The specific allegation made against the petitioners herein and other accused is that the Industries and Commerce (Mines-I) Department issued G.O.Ms.No.76 dated 26.02.2009 renewed mining lease for Limestone over a reduced extent of 822.13 (same extent covered by G.O.Ms.No.25) acres for a period of 20 years in favour of M/s Penna Tandur Cement Company Limited on payment of royalty of Rs.100/- per hectare for the first two years and Rs.400/- per hectare from 3 year onwards and on condition to deposit Rs.10,000/- as prescribed under Rule 32 of the Mineral Concession Rules. Issue of G.O. extending mining lease is a fine example to show that how the power was misused by Secretary due to influence of accused No.1 through his father, the then Chief Minister of Andhra Pradesh and the investments made in M/s.Carmel Asia Holdings Private Limited and Jagati Publications

Limited by accused No.3 and his group of companies is suffice to conclude *prima facie* that the amount was invested as a *quid-pro-quo*.

Yet, another contention of the learned Special Public Prosecutor is that when G.O.Ms.No.25 dated 29.01.2009 was issued substituting the name of M/s Penna Tandur Cement Company Limited in the place of M/s Walchand Tandur Cement Company Limited, issuing G.O.Ms.No.76 within a month for renewal of lease for another 20 years is *ex facie* sufficient to conclude that there is a collusion between the then Chief Minister of Andhra Pradesh, his son – accused No.1 and the petitioners herein for conferring undue official favours on accused No.3 and his companies granting mining lease in pursuance of their implied agreement for investing amount as reciprocation to granting mining lease etc. Similarly, proceedings No.938/M/2009 dated 18.04.2009 according sanction to M/s Penna Tandur Cement Company Limited as per G.O.Ms.No.76 dated 26.02.2009 and subsequent proceedings including report of empowered committee *prima facie* pointing out the complicity of the petitioners by entering into implied agreement to do an illegal act by illegal means.

Sri T.Niranjan Reddy, learned senior counsel appearing for the petitioners pointed out that when there is no material against the petitioners to conclude that the petitioners herein entered into agreement with the other accused including officials of State Government of Andhra Pradesh, the question of proceeding against the petitioners to prosecute them for various offences more particularly for the offence punishable under Section 120-B of

I.P.C. does not arise. No doubt, the statements recorded by the investigating agency during investigation though not stated in specific terms that there was an agreement between the petitioners and other accused and the then officials of State Government of Andhra Pradesh, but by necessary implication it can be inferred that there was an agreement to do an illegal act by illegal means. Since the criminal conspiracy is a secret act, that cannot be proved by direct evidence, but based on circumstances the Court can draw the inference and arrive at a conclusion whether there was any agreement to do illegal act by illegal means or legal act by illegal means. Therefore, this contention, at this stage, cannot be upheld since this Court is not expected to express any definite opinion whether those acts complained against them would constitute any offence or not.

The 4th allegation made against the accused No.8 – company, which is floated by accused No.3, is that a Memo No.2710/MI/09 MA & UD dated 03.03.2008 was issued granting relaxation of set-back, exemption of conversion charges and impact fee etc. Thereafter, M/s PCIL group invested Rs.10 crores in Jagati Publications Limited, which is floated by accused No.1, as quid-pro-quo for the relaxation granted to the accused No.8 – company. In support of this allegation, prosecution produced document Nos.164 to 168 to establish that the accused No.8 – company, which is floated by accused No.3, committed serious fraud in collusion with the accused No.1 and other officials of the State Government of Andhra Pradesh.

M/s.Pioneer Corporation Limited was incorporated with an objective of setting up of a Four Star Hotel with 150 rooms

facilitating international standards complying with the Government Policy of promoting Tourism in the State and entered into Memorandum of Understanding (MOU) with Government of Andhra Pradesh during the Partnership summit held on 07.01.2003 for setting up of a Four Star Hotel at Banjara Hills and furnished Bank Guarantee for Rs.1,00,000/- by the company, which was valid for 6 months subject to renewal. The Director of Tourism Department addressed a letter No.4817/TP/A3/2002 dated 07.07.2005 to the Managing Director, M/s Pioneer Holiday Resorts Limited stating that M/s Pioneer Holiday Resorts Limited is registered provisionally under Tourism project for a period of two years, thereafter it was not renewed though a request was made for renewal of the project. But accused No.3 addressed a letter to the then Chief Minister late Dr.Y.S.Rajashekara Reddy, to extend all the relaxations/benefits on par with M/s Blitz Hotels (another hotel project which is also a registered tourism project situated at Banjara Hills). Swiftly acting on the request of accused No.3, it was processed and put up before the then Chief Minister late Dr.Y.S.Rajashekara Reddy, who approved the said proposal to extend all the benefits given to M/s Blitz Hotels and Resorts Private Limited, to M/s Pioneer Holiday Resorts Limited using his extraordinary powers. Accordingly, an order was issued by the then Principal Secretary, MA & UD, vide Memo No.2710/M1/2009, dated 03.03.2009 extending all the concession to M/s Pioneer Holiday Resorts Limited. Immediately, accused No.3 through his company M/s Pioneer Infrastructure Holding Limited invested Rs.10 crores on 09.03.2009 i.e. within 6 days from the date of extending benefits vide Memo No.2710/M1/2009 dated

03.03.2009 in M/s Jagati Publications Limited, floated by accused No.1. In the Minutes of Meeting of the Board of Directors of M/s Jagati Publications held on 21.05.2009, M/s Pioneer Infrastructure Holding Limited of accused No.3 was allotted 6,94,444 shares of Rs.10 each at a premium of Rs.350/- per share for a total values of about Rs.25 crores. M/s Pioneer Infrastructure Holding Limited invested Rs.10 crores each on 09.03.2009 and 23.04.2009 respectively but in the Board resolution, the company allotted shares worth Rs.25 crores against the actual investment of Rs.20 crores as on the date of Board resolution dated 21.05.2009. Whereas M/s Pioneer Infrastructure Holding Limited invested Rs.5 crores in M/s Jagati Publications only on 06.06.2009. However, the share certificate for a total value of Rs.25 crores was issued on 01.06.2009 in anticipation of investment for Rs.5 crores. Thus, extending benefits to M/s Pioneer Holiday Resorts Limited, which were extended to M/s Blitz Hotels and Resorts Private Limited and investment within 6 days thereafter and issue of share certificate for higher value than the amount actually invested, passing of resolution by the Directors of M/s Jagati Publications is serious matter to be considered to find out whether there was any agreement between the parties for such investment as quid-pro-quo to constitute criminal conspiracy.

The statements of witnesses L.W.63 – Posa Venkata Raghu Ram, L.W.64 – Devender Reddy, L.W.66 – Dr.Chavali Venkata Sivarama Krishna Sarma and document Nos.164 to 168 are relevant for the purpose of deciding the issue. Close scrutiny of the document Nos.164 to 168 filed along with the charge sheet under

Section 172 of Cr.P.C. and the statements of L.Ws.63, 64 and 66 pointing out the complicity of the petitioners.

L.W.63 is Posa Venkata Raghu Ram, Section Officer, Municipal Administration and Urban Development Department, A.P. Secretariat, who processed file, has stated in last three lines of paragraph No.3 of his statement that, Special Secretary to Chief Minister in his note has stated that Hon'ble Chief Minister desires that the representation may please be examined and the file circulated for orders. He further stated that on receipt of the note along with the representation of Pioneer Holiday Resorts Limited, he put up a note containing the applicant's request to extend the benefits given by the Government to the Blitz Hotels and permit to construct the building for a height of 49 mtrs with a prior clearance from Airport Authority of India and to permit the construction of the star hotel and relax the setbacks since they are surrendered the land about 320 square yards abutting Road No.2, Banjara Hills for road widening. Keeping in mind, the desire of the then Chief Minister, he processed the file and what special interest the then Chief Minister had in the application made by accused No.3 and his company – Pioneer Holiday Resorts Limited and relaxation of setbacks, may be due to surrender of about 320 square yards without claiming any compensation, and relaxation of other conditions at the desire of the Chief Minister is nothing but extending official favour to the applicant. The said fact is stated by L.W.64 S.Devendar Reddy, who spoke about issuance of various Government Orders, more particularly, relaxation of conditions for construction of building.

L.W.66 – Dr.Chavali Venkata Sivarama Krishna Sarma, the then District Collector of Adilabad District, who worked as Deputy Secretary (Director) of Internal Security, Ministry of Home Affairs, Government of India, Principal Secretary, Irrigation; Commissioner, Special Officer and Principal Secretary, GHMC etc., specifically stated that the representation of Pioneer Holiday Resorts Limited for relaxation of height clearance and set-backs was received with a letter from Special Secretary to the Chief Minister, Sri M.G.V.K.Bhanu enclosing representation of P.Pratap Reddy addressed to the Chief Minister for relaxation of height clearance and set backs for the hotel building in the premises bearing No.8-2-268 and other numbers in Sy.No.358, Shaikpet village, Road No.3, Banjara Hills, Hyderabad. In the letter, the Special Secretary to the Chief Minister suggested that the representation may please be examined and circulate the file to the Chief Minister for orders. Similarly, L.W.66 stated that they did not make any recommendation and also suggested that such requests were not considered in the past. The Minister, Municipal Administration Koneru Ranga Rao endorsed the view of the department and sent the file to the Chief Minister. The then Chief Minister, while using his extra-ordinary discretionary powers has endorsed his remarks on 01.03.2009, which is as follows:

“All the concessions given in the case of M/s Blitz Hotels and Resorts Pvt. Ltd., be extended to this project. Setback relaxation request be agreed to in lieu of land surrendered for road widening as per the existing policy of GHMC”

L.W.66 further stated that the building is in Airport Funnel Zone, but without obtaining permission from Airport authorities, file was processed.

Though some of the witnesses, L.Ws.66 and 67 did state something in favour of the petitioners, but when *prima facie* incriminating material is available against the petitioner – accused No.3 that due to political patronage with the then Chief Minister Dr.Y.S.Rajashekara Reddy, obtained orders for relaxation of certain rules for construction of hotel and in reciprocation, he invested Rs.20 crores on two occasions within short period from the date of issue of such permission.

It is evident from the record that it is a political official favour extended for the benefit of accused No.3 and his companies for investing huge amount in the companies floated by accused No.1, son of the then Chief Minister Late Dr.Y.S.Rajashekara Reddy. The extraordinary power vested with the Chief Minister must be exercised reasonably, but using such discretionary power totally in violation of rules for construction of buildings creates any amount of suspicion. If all the circumstances are taken into consideration, it is difficult to conclude, at this stage, that there was no *prima facie* material against the petitioner/accused No.3 and other accused No.8 to prosecute them for the offences referred supra.

As discussed above, it is the case of the prosecution that the allotment of State largesse of Ac.231.09 Cts. in Kamalapadu, Gudipadu, Kundanakota and 23/2 Nittoor Villages of Yadiki Mandal, Anantapur District in favour of M/s Penna Cement Industries Limited though the assignment was not cancelled, but

on the pretext of alleged relinquishment of assigned lands without taking possession of the land by the Government and without making an entry treating the land as Government land, is totally in utter disregard to the Board Standing Order No.33 and the Rules framed under the A.P.Act 9 of 1977. Though the Empowered Committee recommended for notifying the assigned land of an extent of Ac.231.09 Cts. in Kamalapadu, Gudipadu, Kundanakota and 23/2 Nittoor Villages of Yadiki Mandal, Anantapur District under Section 4 (1) of A.P. Act 9 of 1977, fixed the value of the land at Rs.50,000/- and conferred undue official benefit on accused No.3 and his group of companies. Investment of huge amount in Jagati Publications Limited immediately after allotment so also Carmel Asia Holdings Private Limited and Indira Television floated by accused No.1, son of the then Chief Minister of Andhra Pradesh directly amounts to criminal conspiracy and cheating, which constitute offence punishable under Section 120-B and 420 of I.P.C. besides commission of offence by the Government servant punishable under the provisions of P.C.Act.

Learned counsel for the petitioners contended that accused No.3 and his group of companies invested huge amount in the companies floated by accused No.1 as a part of their business and for economic growth as he is having lot of business besides investments in the business of his own. Therefore, such investments cannot be termed as corrupt practice for wrongful gain to get allotment of mining lease, prospecting lease and relaxation of building rules etc., that apart based on the word 'quid-pro-quo', prosecution laid foundation to this case treating the same as political fraud or political corruption without any basis.

The concept of 'quid-pro-quo' has no place in the criminal law and such reciprocal act would not constitute any offence under the provisions of penal law and mere violation of statutory provisions or rules by itself is not an offence. Hence, none of the acts done by the petitioners in the alleged conspiracy with the then Chief Minister late Dr.Y.S.Rajashekara Reddy and other accused would not attract consequences of criminal offence and requested to quash the proceedings.

Undoubtedly, there is no place for the concept of 'quid-pro-quo' in criminal law. But quid-pro-quo is nothing but to do something in reciprocation of the act done by the other. The word 'quid-pro-quo' is alien to criminal law, it is pertaining to law of contracts. Section 2 (d) of the Indian Contract Act defined the word 'consideration' and it is akin to 'quid-pro-quo' i.e. consideration for the promise or contract which includes to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise, and the same can be termed as 'quid-pro-quo'. The word 'quid-pro-quo' though not defined in criminal law, the dictionary meaning of 'quid-pro-quo' is as follows:

According to the Merriam Webster dictionary, quid-pro-quo means "**something given or received for something else**"

According to the Oxford Learner's dictionary, quid-pro-quo means "**a thing given in return for something else**"

According to the British Dictionary, quid-pro-quo means "**a reciprocal exchange or something given in compensation, especially an advantage or object given in exchange for another**".

Quid Pro Quo ("something for something" in Latin) is a Latin phrase used in English to mean an exchange of goods or services, in which one transfer is contingent upon the other; "**a favour for a favour**". Phrases with similar meanings include: "**give and take**", "**tit for tat**", and "**you scratch my back, and I'll scratch yours**" and "**one hand washes the other**".

In common law, **Quid Pro Quo** indicates that an item or a service has been traded in return for something of value, usually when the propriety or equity of the transaction is in question. A contract must involve consideration: that is, the exchange of something of value for something else of value. For example, when buying an item of clothing or a gallon of milk, a pre-determined amount of money is exchanged for the product the customer is purchasing; therefore, they have received something but have given up something of equal value in return.

Under the English Common law, **Quid Pro Quo** refers that a thing of value or an act and/or service has been given and/or performed for something of value, generally when the equity of the transaction is in question. The maxim upholds, defines the rule that a contract must involve consideration: that is, the exchange of something of value for something else of value.

In the United States, if the exchange appears excessively one sided, courts in some jurisdictions may question whether a **Quid Pro Quo** did actually exist and the contract may be held void. In cases of "**Quid Pro Quo**" business contracts, the term takes on a negative connotation because major corporations often cross ethical boundaries in order to enter into these very valuable,

mutually beneficial, agreements with other major big businesses. In these deals, large sums of money are often at play and can consequently lead to promises of exclusive partnerships indefinitely or promises of distortion of economic reports, for example.

In the U.S., lobbyists are legally entitled to support candidates that hold positions with which the donors agree, or which will benefit the donors. Such conduct becomes bribery only when there is an identifiable exchange between the contribution and official acts, previous or subsequent, and the term **Quid Pro Quo** denotes such an exchange.

In every contract there should be consideration flowing from each side for each other, the Latin maxim "**Quid Pro Quo**" signifies that part of the contract. The consideration will make both the parties oblige to do something or abstains from doing something as per the wish and/or desire of the other. According to general practice **Quid Pro Quo** means giving or passing of one valuable thing for other. Therefore the term "**Quid Pro Quo**" signifies the consideration part of contract which passes from one party to the other, of a contract thereby rendering the agreement valid and binding.

Thus, it is clear from the definition of word 'quid-pro-quo' it is alien to criminal law, if such consideration is paid for the illegal act or the act, which is legally performed by illegal means with a criminal intent to confer benefits at the cost of public at large, it would attract an offence.

In India, there was no such law which encompass the act of 'quid-pro-quo' under penal code; still the political corruption is being increased from time to time in the present society.

When a similar question came up before the U.S.Court of Appeals for the D.C. Circuit in *United States v. Ring*, No. 11-3100 (D.C. Cir. Jan. 25, 2013), the Court upheld the conviction for bribery under the public sector honest-services fraud statute, expanding the definitions of "corrupt payments" and "official action." The court, in an opinion by Justice David Tatel, held:

(1) implicit Quid Pro Quo is sufficient for a bribery conviction, and no actual agreement by the public official is necessary;

(2) there is "official action" when a lawyer in the Justice Department emails a secretary with the Immigration and Naturalization Service requesting expedited review of a visa application; and

(3) the trial court did not abuse its discretion under the First Amendment or Federal Rule of Evidence 403 in allowing the jury to draw an adverse inference from a defendant's history of lawful campaign contributions.

In the facts of the above judgment, Kevin Ring, worked as a lobbyist for Jack Abramoff. His role included fund raising for campaign contributions and developing and maintaining relationships with public officials to serve the lobbying firm's clients. Although campaign contributions were the primary means of accessing public officials, Ring treated these individuals to dinners, drinks, travel, concerts, sporting events and other forms of entertainment. A 2004, federal investigation of Abramoff ultimately led to the prosecution of Ring. At trial, he was convicted on three counts of honest-services fraud, one count of paying an

illegal gratuity, and one count of conspiracy to pay an illegal gratuity, and sentenced to 20 months in prison.

Though lobbying is an integral part of American political system, in our country lobbying services are not recognised by any laws. But lobbyists to achieve their ends, develop personal relationships with officials and politicians including highly placed bureaucrats and getting their work done for the general public or industrialists etc. by lobbying the officials including the politicians as in the case. Sometimes they are offering gifts and bribes to use them to “curry political favour”. The line dividing legal lobbying from corrupt bribery is crossed when a gift is tied to a particular act. (See *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 405-08 (1999).) In *Ring’s case (referred supra)*, the court commented that although the “distinction between legal lobbying and criminal conduct may be subtle and it spells the difference between honest politics and criminal corruption.” The matter went up to Supreme Court, the Supreme Court set the scene for *Ring* in *Skilling v. United States*, 130 S. Ct. 2896, 2907 (2010), in construing the public sector honest-services fraud statute to cover “only bribery and kickback schemes.”

If the principles laid down in *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 405-08 (1999) are applied to the present facts of the case, the allotment of largesse in favour of accused No.3 and his group of companies, extension of mining lease deviating the entire procedure, more particularly Rule 37 of M.C.Rules, 1960 and granting of mining lease though the application of M/s UltraTech Cement Limited, which was

submitted to the department more than one year prior to making application by the accused No.3 on behalf of accused No.4 and his companies is pending and granting exemption of setback and waiver of fee for conversion, in turn investment of huge amount of Rs.68 crores in the companies floated by accused No.1, son of the then Chief Minister late Dr.Y.S.Rajashekara Reddy, more particularly in M/s Carmel Asia Holdings Private Limited, M/s Jagati Publications Limited and Indira Television is nothing but abuse of political office *prima facie* by the then Chief Minister late Dr.Y.S.Rajashekara Reddy and conferring undue official benefit on accused No.3 and his companies though the share value of Jagati Publications on the date was Rs.10/- and all the companies are at formative stage, not even commenced its business, but issued shares at premium @ Rs.350/- for each share in collusion with Chartered Accountant - J.Prabhakar of M/s Jagadisan and Company, due to lobbying by accused No.2 – Vijaya Sai Reddy as narrated in the charge sheet. Allotment of largesse, grant and renewal of lease and all the acts done by the Government are kickback schemes or it may be called as political bribery to confer undue benefit on accused No.3 and his companies in clear violation of Doctrine of Public Trust since the property belongs to the public though it is under the control of Government.

While deciding what is the standard of proof required, the Courts in United States gone to the extent of holding that implicit quid-pro-quo is sufficient to convict a person. In one of the judgments i.e. Ring's case, he challenged the jury instructions underlying his bribery conviction for three flaws, stating: "(1) that an explicit **Quid Pro Quo** was required; (2) that the official must

agree to the exchange; and (3) that, at the very least, a corrupt payment must be offered.” The court rejected all three pleas.

However Ring relied on “*McCormick v. United States*, 500 U.S. 257 (1991)”, where the Court held that an explicit **Quid Pro Quo** is required. In the said judgment, the Supreme Court required an explicit **Quid Pro Quo** to criminalize campaign contributions under the Hobbs Act. Ring urged the court to extend that holding to other things of value, but the court found that, in addition to the fact that it is unclear what an explicit **Quid Pro Quo** requirement would look like in practice, campaign contributions are distinguishable from other things of value. In a world where political campaigns are privately funded, public officials must solicit contributions. Free lobster tails and Rolling Stones tickets simply do not serve the same purpose. Thus, there was far less concern about “criminalizing politically necessary activity or chilling constitutionally protected speech” and the court declined to impose an explicit **Quid Pro Quo** requirement.

Based on *Skilling*’s (referred supra) conclusion that honest-services fraud covers only bribery and kickbacks, the federal bribery statute, 18 U.S.C. §201(b), provides background for honest-services bribery. The court commented that the bribery statute “defines two separate crimes: the act of offering a bribe and the act of soliciting or accepting a bribe.” Because bribery does not require that the official accept the bribe, neither does honest-services bribery. The key to bribery is intent — the intent to affect a **Quid Pro Quo**, and the intent to influence an official act. Thus, the statute is satisfied by proof beyond a reasonable doubt of

“intent to offer or solicit an exchange of official action for personal gain.”

In Ring’s case, illegal gratuity conviction was based on him giving Washington Wizards basketball tickets to a DOJ attorney after he helped, expedite the review of a visa application at Ring’s request. The attorney called a secretary at the INS and then emailed Ring’s request with a short personal note. The secretary contacted five INS officials to make sure the request was answered, because it had come from “higher headquarters” at the DOJ. In less than a day, the INS agreed to expedite the application. Soon after, Ring emailed Abramoff that the DOJ attorney had helped with the application and wanted Wizards basketball tickets. Ring did not challenge whether Wizards tickets should be considered a “thing of value,”

The Court held that the Ring did not challenge that the tickets were given “for or because of” the attorney’s assistance, but he claimed the attorney did not take any “official action” because the attorney had no direct control over the ultimate end — the expedited review. Ring claimed that under *Valdes v. United States*, 475 F.3d 1319 (D.C. Cir. 2007) (en banc), the attorney did not exert any “inappropriate influence on decisions that the government actually makes.” In *Valdes*, the court found there was no “official action” when a police officer accepted money in exchange for conducting searches of license plate and warrant databases.

Further, the Court distinguished *Valdes* as a case in which the official was merely answering an informational inquiry. By

contrast, the DOJ attorney, in forwarding the email, “acted in his official capacity to influence the visa application process.” The secretary even testified that she felt that she had to meet the attorney’s request because of his office. Finally, the prompt result, achieved in less than a day, demonstrated the attorney’s influence on the process. This evidence provided a sufficient basis to find “official action.”

The principles laid down in the said judgment though not binding on this Court, but they have got persuasive value since the acts done by the petitioner – accused No.3 in collusion with the then Chief Minister Late Dr.Y.S.Rajashekara Reddy, *prima facie* and his son Y.S.Jaganmohan Reddy, accused No.1, including the officials influenced the political heads of the State and got undue illegal favour and in turn accused No.3 through his companies invested huge amount to acquire shares in the company floated by accused No.1 at the rate of Rs.360/- per share, which include premium of Rs.350/- per share and share value of Rs.10/-, though the company was at formative stage and did not commence its business by then. Investment in the company floated by the son of the then Chief Minister late Dr.Y.S.Rajashekara Reddy is nothing but indirect political bribe, in such case, the acts done by the petitioner – accused No.3 cannot be taken out from political quid-pro-quo to have illegal gain from the State and its missionaries by offering indirect bribe to the politicians.

The U.S.Judgment referred supra is based on the Hobbs Act. The Hobbs Act is a federal law enacted in 1964 that prohibits political robbery or extortion. The act was enacted to combat

racketeering in labour-management disputes, and is frequently used in connection with cases involving public corruption, commercial disputes, and corruption directed at members of labour unions including political campaigning corruption. But, no identical law is enacted in India, still such issues can be brought under penal law i.e. penal code.

Similarly, while dealing with the Hobbs Act Extortion based on quid-pro-quo, in *McCormick v. United States*, the Supreme Court issued its first major opinion concerning Hobbs Act extortion under colour of official right. Although the Court declined to resolve the circuit split regarding whether a federal prosecutor must prove some affirmative act of inducement by an official, it did resolve the threshold question of whether and when proof of a **Quid Pro Quo** is a required element of Hobbs Act extortion. Later in *Evans v. United States* clarified the quid-pro-quo standard within less than two weeks after it decided *McCormick*, the Supreme Court was given a proverbial “second bite at the apple.” It swiftly granted certiorari to clarify the circuit split, over, whether prosecutors must prove some affirmative act of inducement, beyond holding an official office, to be found guilty of Hobbs Act extortion—an issue it left unresolved in *McCormick*. Thus, unresolved issue in *McCormick* was decided by *Evans* case. Little elaboration of facts of the case is required for certainty of opinion.

The petitioner therein viz. John Evans was elected to the Board of Commissioners of DeKalb County, Georgia. As part of an investigation into public corruption, the FBI initiated conversations with Evans in which agents requested that he assist in the

acquisition of favourable zoning decisions. Evans accepted sum of \$7,000 in cash and \$1,000 check, payable to his campaign, from an undercover FBI agent. He reported the check in his campaign finance disclosure but failed to disclose the \$7,000 in cash. On the inducement issue, the Supreme Court sided with the majority of circuits, holding that Hobbs Act extortion under colour of official right does not require inducement by the public official; the coercive element is provided by the existence of the public office itself. In so holding, the Court both imbued Hobbs Act extortion with common law extortion and likened Hobbs Act extortion to bribery. But the Court went further than just deciding the narrow issue of inducement; the Evans decision's lack of clarity on the **Quid Pro Quo** requirement for Hobbs Act extortion would prove critical, as it provided fodder for disunity in the courts of appeals. The majority held that Hobbs Act extortion occurs when "the public official receives a payment in return for his agreement to perform specific official acts; fulfilment of the **Quid Pro Quo** is not an element of the offence." In the same paragraph, however, the Court rephrased its holding, critically omitting the adjective "specific" used earlier to describe the "official act": the Court held that "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts (vide Evans' case)"

Coming to the present facts of the case, on application by accused No.3, set-back for construction of hotel by M/s Pioneer Holiday Resorts Limited was relaxed and in turn or in reciprocation, accused No.3 and his companies invested Rs.10 crores in the companies floated by the son of the then Chief

Minister and within one month thereafter another Rs.10 crores was invested in M/s Jagati Publications for purchase of shares and the share value was only Rs.10/- by then, but issued at premium of Rs.350/- per share. Therefore, accused No.3 purchased each share at Rs.360/-, which is inclusive of premium, but such investment by the petitioner-accused No.3 though it is floated by the son of the then Chief Minister Late Dr. Y.S.Rajashekara Reddy, and the then Chief Minister interested in his son and such investment of Rs.20 crores and the allotment of few shares as it includes premium directly indicates criminal conspiracy i.e. allotment of Government largesse of Ac.231.09 Cts. in Kamalapadu, Gudipadu, Kundanakota and 23/2 Nittoor Villages of Yadiki Mandal, Anantapur District in favour of M/s Penna Cement Industries Limited is nothing but implicit quid-pro-quo and the intention behind it is to benefit the family members of the then Chief Minister late Dr.Y.S.Rajashekara Reddy. The premium on the share at Rs.350/- per share goes to the account of accused No.1 indirectly.

In *United States v. Blandford*, 33 F.3d 685 (6th Cir. 1994). The Court again considered the *McCormick and Evans*, Judge David Nelson held that “even outside the campaign contribution context, the **Quid Pro Quo** requirements can be satisfied only where the payment has been accepted in exchange for a ‘specific’ official act or a ‘specific’ requested exercise of official power.” In reaching the conclusion, Judge Nelson noted that there was “no reason to doubt that the ‘official acts’ referred to in the last sentence [of *Evans*] were the ‘specific official acts’ referred to earlier.” Thus, it was unclear from the beginning how these cases should be interpreted

and applied in various situations, which is reiterated in *United States v. Tucker*, 133 F.3d 1208, 1215 (9th Cir. 1998) holding that the Supreme Court had not decided the **Quid Pro Quo** question outside of the campaign context, and assuming without deciding that a **Quid Pro Quo** was required in all Hobbs Act extortion prosecutions. Again in *United States v. Garcia* (992 F.2d 409 (2d Cir. 1993), the Second Circuit described this view succinctly:

“Although the McCormick Court has ruled that extortion under color of official right in circumstances involving campaign contributions occurs “only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act,” Evans modified this standard in non-campaign contribution cases by requiring that the government show only “that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.”

Based on this analysis, most courts of appeals have developed standards of implicit **Quid Pro Quo** outside the campaign context known as the “stream of benefits” or “as opportunities arise” theory, this implicit standard does not require the contemplation of a specific official action at the time the agreement is made. For this reason, the stream of benefits theory has been criticized for “inviting slippage” from a **Quid Pro Quo** standard to a “one hand washes the other’ or ‘favouritism’ standard.”

The Second Circuit detailed the approach in *United States v. Ganim* (510 F.3d 134 (2nd Cir. 2007). In an opinion written by then-Judge Sotomayor, the Court upheld the conviction of the former Mayor of Bridgeport, Connecticut, who accepted payment in return for an agreement to secure the payor a government

contract. Ganim challenged the jury instruction, which provided that “the government does not have to prove an explicit promise to perform a particular act made at the time of payment.” Instead, the district court instructed that “it is sufficient if the defendant understood he was expected as a result of the payment to exercise particular kinds of influence as specific opportunities arose.” The court reiterated that such a standard is the “natural corollary of Evans’ pronouncement that the government need not prove the existence of an explicit agreement at the time a payment is received.” Indeed, the court found that the defendant’s proposed definition of “official act”—something “identified and directly linked to a benefit at the time the benefit is received”—went too far. Critically, the court understood the term “official act” to mean “an act taken under color of official authority, not necessarily as the term is used and statutorily defined in . § 201 or elsewhere.” The Fourth Circuit, in *United States v. Jefferson* (674 F.3d 332 (4th Cir. 2012)), relied on Ganim in holding that bribery, including Hobbs Act extortion, “can be accomplished through an ongoing course of conduct.” In *United States v. Abbey*, 560 F.3d 513 (6th Cir. 2009), the Sixth Circuit noted that “not all **Quid Pro Quos** are made of the same stuff” and thus, outside of the campaign contribution context, “the elements of extortion are satisfied by something short of a formalized and thoroughly articulated contractual arrangement.” The court justified this implicit **Quid Pro Quo** standard by noting that “there is no reason to impose a judicial requirement . . . that would make it lawful under the Hobbs Act to pay a public official to exert his influence in your favor, so long as it is premature for the agreement to contemplate specific acts.”

Thus, the court held that “it is sufficient if the public official understood that he or she was expected to exercise some influence on the payor’s behalf as opportunities arose.” Lastly, the Ninth Circuit has held a conviction for extortion under color of official right, whether in the campaign or non-campaign contribution context, requires that the government prove a **Quid Pro Quo**. (See *United States v. Kincaid-Chauncey*, 556 F.3d 923, 937 (9th Cir. 2009)). In the non-campaign contribution context, however, “an explicit **Quid Pro Quo** is not required; an agreement implied from the official’s words and actions is sufficient to satisfy this element.”

As previously stated, Hobbs Act extortion’s **Quid Pro Quo** requirement has been defined by the Supreme Court with reference to the term “official act,” whereas § 666 makes no mention of “official act” or of a **Quid Pro Quo** requirement more generally. Because § 201 provides a detailed statutory scheme, has had the benefit of time and several Supreme Court interpretations, and encompasses bribery just like § 666, cases interpreting § 201 are used by litigants and the courts to help understand both § 666 and Hobbs Act extortion. (See e.g., *United States v. Ganim*, 510 F.3d 134, 146 (2d Cir. 2007)). Section 201 criminalizes the receipt of bribes for those “acting for or on the behalf of the United States.” (18 U.S.C. § 201(a)(1) (2012)). Thus, unlike § 666, § 201 is not applicable to state and local officials. The statute defines “official act” as “any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity, or in such official’s place of trust or profit.” Relying on the Supreme Court’s decisions in *Evans* and

McCormick and the implicit **Quid Pro Quo** standard for Hobbs Act extortion that followed, some courts in the 1990s construed § 201 as requiring only a weak **Quid Pro Quo** that could be satisfied “so long as the evidence shows a ‘course of conduct of favours and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor.’” (United States v. Jennings, 160 F.3d 1006, 1014 (4th Cir. 1998)). The Supreme Court put this interpretation to rest in United States v. Sun-Diamond Growers of California. (526 U.S. 398 (1999)). In a decision that mentioned neither Evans nor McCormick, Sun-Diamond primarily resolved a question regarding treatment of bribery and gratuities. The lower court instructed the jury that “the government need not prove that the alleged gratuity was linked to a specific or identifiable official act or any act at all.” Writing for the majority, Justice Scalia analyzed § 201’s definition of “official act.” The Court concluded that “for bribery there must be a **Quid Pro Quo**—a specific intent to give or receive something of value in exchange for an official act.” Thus, the Court held that within the meaning of § 201, an “official act” requires “that some particular official act be identified and proved.” While potentially applicable to all antibribery statutes, the decision can also be read more narrowly to apply only to § 201. After Sun-Diamond, defendants argued with success in some circuits that a **Quid Pro Quo** requirement should apply in § 666 cases as well.

In United States v. Jennings (160 F.3d 1006 (4th Cir. 1998)) the Fourth Circuit analyzed the “corrupt intent” requirement under § 666 by referring to § 201. Invoking the Supreme Court’s differentiation between illegal bribes and illegal gratuities in Sun-Diamond, the Fourth Circuit held that a bribe under § 666

requires proof of payment made in exchange for an official act. It concluded that the “corrupt” element in § 666 requires the government to prove a “relatively specific **Quid Pro Quo**” but stated that the “**Quid Pro Quo** requirement is satisfied so long as the evidence shows a ‘course of conduct of favours and gifts flowing to a public official in exchange for a pattern of official actions favourable to the donor’” and “the intended exchange in bribery can be ‘this for these’ or ‘these for these,’ not just ‘this for that.’” (United States v. Arthur, 544 F.2d 730, 734 (4th Cir. 1976)). In Ganim, the Second Circuit similarly held that § 666 bribery requires a **Quid Pro Quo**, but found that, like Hobbs Act extortion, it “can be accomplished through an ongoing course of conduct, so long as evidence shows that the ‘favours and gifts flowing to a public official [are] in exchange for a pattern of official acts favourable to the donor.’”

Later, the Supreme Court began its analysis by noting that the theory underlying both the honest services wire fraud charge and the Hobbs Act extortion charge “was that Governor McDonnell had accepted bribes from Williams.” Critically, the Court also acknowledged that the jury instruction given for “official action” was made with reference to § 201’s definition as had been agreed upon by the parties in the early stages of the litigation. As such, the Court drove into the statutory construction of § 201. The Court stated that § 201’s “official act” requirement has two components: the government must (1) “identify a ‘question, matter, cause, suit, proceeding or controversy’ that ‘may by law be brought’ before a public official” and (2) “prove that the public official made a decision or took an action ‘on’ that question, matter, cause, suit,

proceeding, or controversy, or agreed to do so.” Applying *noscitur a sociis*, the rule against superfluity, and its decision in *Sun-Diamond*, the Court found that although “merely setting up a meeting, hosting an event, or calling another official” does not qualify as an official action, such action “could serve as evidence of an agreement to take an official act.” While the action “must be something specific and focused,” the official “need not specify the means that he will use to perform his end of the bargain,” “[n]or must [he] in fact intend to perform the ‘official act,’ so long as he agree[d] to do so.” Finally, the Court held, the action “may include using his official position to exert pressure on another official to perform an ‘official act.’” The Court bolstered its analysis by discussing three constitutional concerns weighing in favour of a more “bounded interpretation of ‘official act’”: (1) too broad a reading could improperly intrude on legitimate relationships between elected officials and their constituents, (2) a broad reading raises fair notice and due process concerns, and (3) a broad reading raises federalism concerns over the extent to which federal prosecutors should police the conduct of state and local officials.

Moreover, the prosecuted official need not specify the “means that he will use to perform” the official act, nor must he actually fulfil the official act so long as he agrees to do so. This raises the question: Does the implicit ***Quid Pro Quo*** standard of “stream of benefits” or “as opportunities arise” survive the decision?

As Justice Stevens understood when he wrote his dissenting opinion in *McCormick*, subtle forms of extortion and bribery are “just as wrongful— and probably much more common—than the

kind of express understanding” that McDonnell seems to envision. (McCormick v. United States, 500 U.S. 257, 282 (1991) (Stevens J., dissenting). This acknowledgement was repeated again a year later by Justice Kennedy, when he wrote in Evans about the inadequacy of an explicit **Quid Pro Quo** standard to root out corruption facilitated by “knowing winks and nods.” Evans, 504 U.S. at 274 (Kennedy, J., concurring).

However, the **Quid Pro Quo** concept and its application in bribery are problematic in a way that has not yet been fully appreciated. Two of the three primary elements—quids and quos—exist everywhere. Self-interested citizens and corporations spend money that benefits elected officials. Elected officials introduce and vote upon bills that benefit those benefactors. Under the bribery statutes (e.g. 18 U.S.C. § 201), this is all perfectly legal, as long as it is not done with a corrupt state of mind—an agreement that these quids and quos are made in exchange for each other (the “pro”). Often these parties are in fact connected by lobbyists, whose very reason for existence is to inform each party about the precise interests of their counterparts. Such an exchange can be made implicitly—through the “knowing winks and nods” that Justice Kennedy has described (United States v. Evans, 504 U.S. 255, 274 (1992)). In the end, the existence of **Quid Pro Quo** corruption depends on a factual finding about the state of mind of the parties (Morley 2016).

Importantly, the Supreme Court has recognized a compelling state interest in not just preventing **Quid Pro Quo** corruption, but also ensuring that contemporary politics does not appear to be so

corrupted (McCutcheon, 134 S. Ct. 1434, 1441 Buckley, 424 U.S. at 27). Appearances drive social trust, democratic legitimacy, and the constitutional stability of government (Gibson & Caldeira 2009; Ponnambalam 2013). Legitimacy also facilitates voluntary compliance with the laws made under a political regime. The question is whether it appears to be a government of oligarchy, or whether instead “[t]he people ... possess the absolute sovereignty” (New York Times v. Sullivan, 376 U.S. 274, 84 S. Ct. 710 (1964)).

The Federal law of bribery provides a sufficient condition for any case of **Quid Pro Quo** corruption. The Federal crimes of bribery require proof of an exchange of a thing of value for an official act, given with a corrupt state of mind. Through a series of cases discussed, the Supreme Court and the lower courts have refined the relevant jury instructions for this crime, in campaign finance cases in particular, with real stakes for convicted defendants, giving further substance to the **Quid Pro Quo** concept.

Arguably, the appearance of **Quid Pro Quo** standard could include more than cases of outright bribery, proven at the beyond a reasonable doubt standard.

Justice Sotomayor’s pre-Supreme Court case United States v. Ganim involved payments of money to a mayor for city contracts (510 F.3d 134, 147–49 (2nd Cir. 2007) (Sotomayor, J.)).

One way to understand bribery is to contrast the lesser offence of gratuity. As the Supreme Court has explained:

The distinguishing feature of each crime is its intent element. Bribery requires intent “to influence” an official act or “to

be influenced” in an official act, while illegal gratuity requires only that the gratuity be given or accepted “for or because of” an official act. In other words, for bribery there must be a ***Quid Pro Quo***—a specific intent to give or receive something of value in exchange for an official act. An illegal gratuity, on the other hand, may constitute merely a reward for some future act that the public official will take (and may already have determined to take), or for a past act that he has already taken (*Sun Diamond Growers v. United States*, 119 S. Ct. 1402, 143 L.Ed.2d 576 (1999); *United States v. Fernandez*, 722 F.3d 1, 23 (1st Cir. 2013)).

The lower courts sometimes embrace a causal notion of bribery, recognizing the commonsense worry that payments would distort official decisions (*U.S. v. Wright*, 665 F.3d 560, 568 (3rd Cir. 2012)). In the 2009 judicial politics case of *Caperton v. A.T. Massey Coal Co., Inc.*, the Supreme Court expressed a similar concern, even while disclaiming bribery (129 S. Ct. 2252, 2262 (2009)). There, a civil defendant lost a major case at the trial court level, and then sought to change the composition of the state supreme court before his case got there. The litigant spent millions of dollars to support a single candidate for the court, who then won a seat. The litigant’s case appeared on the docket, and the newly-robed judge refused to recuse himself. When the case reached the US Supreme Court, the question was not about bribery per se, but simply whether the judge’s failure to recuse denied due process to the civil litigant adverse to the benefactor. Still, in dicta, the Supreme Court emphasized that, “though not a bribe or criminal influence, Justice Benjamin would nevertheless feel a debt of gratitude to Blankenship for his extraordinary efforts to get him elected” (129 S. Ct. 2252, 2262 (2009); *Citizens United*, 130 S. Ct. 876, 910). Since then, the Supreme Court has emphasized that states have broader latitude, under the First Amendment, to

regulate money in judicial elections, compared to legislative or executive elections (*Williams-Yulee v The Florida Bar* 135S. Ct. 1656(2015)). The Supreme Court once flirted with the idea that, at least where campaign contributions are the alleged quid, the explicitness of the agreement could be the demarcation for bribery. In the 1991 case of *McCormick v. United States*, the Supreme Court held that a campaign contribution could be the basis for criminal extortion only if there was “an explicit promise or undertaking by the official to perform or not to perform an official act ... [so that] the official asserts that his official conduct will be controlled by the terms of the promise or undertaking” (500 U.S. 257, 271–74 (1991)). “To hold otherwise would open to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures, as they have been from the beginning of the Nation” (500 U.S. at 272).

But a year later, in *Evans v. United States*, the Court appeared to backslide (504 U.S. 255 (1992)). The sharply-divided Evans court stated that the government “need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts” (504 U.S. 268 (emphasis added)). Justice Kennedy wrote separately in *Evans*, to explain that such a broadening of the notion of bribery was required to avoid bribery via “winks and nods.” He even squared the circle, writing that “an explicit agreement [between donor and donee] may be “implied from [the official’s] words and actions”” (*Evans*, 504 U.S. 274 (Kennedy, J.,

concurring). Daniel Lowenstein (2004, p. 130) concludes that, “whether Evans actually modifies McCormick, and if so to what degree, is unclear.” To be sure, Evans “dissipated at least some of the clarity that seemed to have been obtained by the majority in McCormick,” making the **Quid Pro Quo** requirement “even more elastic” (Lowenstein 2004, p. 154).

After Evans, lower courts have accordingly allowed the jury to “infer” an agreement where “implicit.” United States v. Coyne, 4 F.3d 100, 111 (2d Cir. 1993); Kemp, 500 F.3d 257 (3d Cir. 2007)). After Evans, the **Quid Pro Quo** requirement is “not onerous” (United States v. Hairston, 46 F.3d 361, 365 (4th Cir. 1995)). As the courts have watered down the **Quid Pro Quo** requirement, it may now be “all water” (Lowenstein 2004, p. 130).

Alabama Governor Donald Siegelman went to prison on such an expansive notion of the **Quid Pro Quo** concept, and the Supreme Court declined to review his case. The Eleventh Circuit panel wrote that, “McCormick uses the word ‘explicit’ when describing the sort of agreement that is required to convict a defendant for extorting campaign contributions. Explicit, however, does not mean express. Defendants argue that only ‘proof of actual conversations by defendants,’ will do, suggesting in their brief that only express words of promise overheard by third parties or by means of electronic surveillance will do. But McCormick does not impose such a stringent standard” (United States v. Siegelman, 640 F.3d 1159, 1171 (11th Cir. 2011)).

Similarly, in United States v. Ring the Supreme Court denied a certiorari petition for the case that would have most squarely presented these questions (706 F.3d 460 (D.C. Cir. 2013)). Kevin

Ring was a lobbyist prosecuted under the honest services fraud statute, for a mixture of behavior including both campaign contributions and other benefits, like sports tickets. He was convicted, by a jury instructed that it could find a “bribe” even if the official never accepted anything of value and never agreed to do anything in return. Affirming the Ring conviction, the D.C. Circuit bemoaned that “The McCormick Court failed to clarify what it mean by ‘explicit,’ and subsequent courts have struggled to pin down the definition of an explicit **Quid Pro Quo** in various contexts” (706 F.3d at 466). Some courts have responded by trying to split the difference into some distinction between “express” and “explicit” agreements (Siegelman, 640 F.3d 1159, 1171 (11th Cir. 2011)).

Thus, the law laid down by the Foreign Courts referred above is clear that anything received for the undue official or political favour extended to any person would amount to **Quid Pro Quo** and if such act was done with a criminal intention that would attract the penal consequences under the Hobbs Act in United States. In India, it would attract penal consequences under the provisions of Prevention of Corruption Act and Indian Penal Code.

The main grievance of the learned senior counsel for the petitioners is that when the allotment was not cancelled till date though a criminal case is registered against the petitioners for various offences, it is nothing but abuse of process of the Court. No doubt, the Government did not take any action for cancellation of mining lease and allotment of Ac.231.09 Cts. in Kamalapadu, Gudipadu, Kundanakota and 23/2 Nittoor Villages of Yadiki Mandal, Anantapur District in favour of M/s Penna Cement

Industries Limited, itself is not a ground to quash the proceedings since the petitioners are able to manage any situation *prima facie* to prevent the Government from taking necessary action, since political head of the State himself at the instance of his son allegedly involved in such deep rooted intelligent fraud against the State. Therefore, failure to take action for cancellation of mining lease etc., itself is not a ground to quash the proceedings, more particularly when officials, politicians and the petitioners colluded and allotted State largesse to the petitioners in different ways in completion of implicit quid-pro-quo and such extension of undue official favours to part with the said largesse i.e. public property under the control of Government would still amount to offence punishable under Section 420 and 120-B of I.P.C.

The first and foremost ground raised before this Court is that, there was no allegation in the entire evidence collected during investigation to constitute abetment to attract offence punishable under Section 12 of P.C.Act. But, filing of charge sheet without any allegation is sufficient to quash the proceedings against Sri P. Pratap Reddy/A-3 for the offence punishable under Section 12 of P.C.Act.

During hearing, learned Senior Counsel appearing for the petitioners highlighted the statements recorded by the Investigating Agency during investigation. The offence allegedly committed by the petitioner is punishable under Section 120-B r/w Section 420 I.P.C, but not punishable under Section 12 of P.C Act. Even otherwise, Section 12 of P.C. Act deals with punishment for abetment of offences punishable under Sections 7 or 11 of P.C. Act. In the present facts of the case, the respondent/C.B.I filed

three charge sheets in total against different persons and supplementary charge sheet dated 17.08.2011 was filed against Sri Dharmana Prasada Rao, Sri Mylapalli Samuel, IAS, Sri Mukkamala Sudarshan Reddy, Smt. Matangi Yallamma, Smt. Patolla Sabita Indra Reddy, Smt. Yerra Srilakshmi and Sri Valmiki Dasari Rajagopal arraying them as Accused Nos.10 to 16 for the offences punishable under Section 120-B r/w Sections 409, 420 I.P.C & Section 13(2) r/w Section 13(1)(d) of P.C. Act, making serious allegations against those public servants, including the then Ministers for Revenue and Mine & Geology in the erstwhile State of Andhra Pradesh, All India Service Officers who processed these files, but, they committed no offence punishable either under Section 7 or 11 of P.C.Act, but allegedly committed an offence punishable under Section 13(2) r/w Section 13(1)(d) of P.C. Act. Therefore, Section 12 of P.C. Act has absolutely no application to the present facts of the case, at best, these petitioners are liable to be prosecuted for the offence punishable under Section 120-B r/w Section 420 I.P.C.

Section 120-A of I.P.C. defined Criminal Conspiracy and to establish criminal conspiracy, no direct evidence is required to be produced and the Court shall take into consideration, the conduct of the petitioner, both prior and subsequent to the alleged commission of offence to decide his complicity for the offence punishable under Section 120-B of I.P.C.

Section 120-B of I.P.C. deals with punishment for criminal conspiracy. The offence of 'criminal conspiracy' is defined under Section 120-A I.P.C., according to it, when two or more persons agree to do, or cause to be done an illegal act, or an act which is

not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Thus, the most important ingredient to constitute 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 (Vide **Kehar Singh and others v. State (Delhi Admin.)**)⁷³. 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 (Vide **Lennart Schussler and another v. Director of Enforcement and another**)⁷⁴).

The basic ingredient to constitute an offence punishable under Section 120B 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**⁷⁵, an identical issue came up for consideration before the Apex Court and the Apex Court clearly drawn distinction between Section 34, Section 109 and Section 120B I.P.C. 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

⁷³ AIR 1988 SC 1883

⁷⁴ AIR 1970 SC 549

⁷⁵ AIR 1971 SC 885

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 illegal omission. Turning to the charge under Section 120-B of 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.

In **Ram Narayan Popli v. CBI**⁷⁶, a similar question came up for consideration with regard to the offence punishable under Section 120-B IPC, wherein, the Supreme Court held in various paragraphs as follows:

“It was observed by this Court in *State of Kerala v. P. Sugathan and Anr.*, [2000] 8 SCC 203, it would be extremely difficult to find direct evidence in case of criminal conspiracy. The circumstances and surrounding factors have to be taken note of. In the instant case, the accused 1, 2 and 5 have submitted that the role of PW-5 as described is that he did not want to be directly shown in the picture. In fact, A-1 wanted that MUL did not want to involve brokers and did not want to deal with them. This itself deals of fatal blow to the stand taken by the accused that there was no prohibition of acting through brokers and the intention was that dealing would be directly with the bank and not through any broker or intermediary. Much has been made out of use of the word 'through' in the resolution. If the clear understanding of A-1 was that the deal should not be dealt with or involved any broker then the question of A-5 acting as broker does not arise. Use of the expression "through" is indicative of the fact that emphasis was on securities being not purchased in the open market, but "through" named PSU. These PSU were admittedly not brokers. They were either Banks or financial institutions. Evidence clearly shows that A-5 wanted that he will not directly come to the picture, and would not appear in the books of accounts of MUL; but would stand to gain by way of

⁷⁶ (2003) 3 SCC 641

commission and as a brokerage from the Bank. The statement of A-1 that he would look into any good proposals if A-5 does not come to the picture shows that the actual state of affairs was intended to be hidden from the MUL authorities and a totally distorted picture was sought to be given. These are factors which does not go in favour of the accused as contended, and on the contrary clearly proves conspiracy.

Much has also been submitted that repayment has been made. That itself is not an indication of lack of dishonest intention. Some times, it so happens that with a view to create confidence the repayments are made so that for the future transactions the money can be dishonestly misappropriated. This is a part of the scheme and the factum of repayment cannot be considered in isolation. The repayment as has been rightly contended by the Solicitor General can be a factor to be considered while awarding sentence, but cannot be a ground for proving innocence of the accused.

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement. or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co- conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol.11 See 23, p. 559). For an offence punishable under Section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the

agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.”

(emphasis supplied)

Section 10 of Indian Evidence Act deals with things said or done by conspirator in reference to common design. According to it, where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

The statements of one against the other are relevant when there is a reasonable belief for existence of conspiracy who committed the offence.

The concept of burden of proof always shifts depending on the facts and circumstances of the case and the same cannot be put in a water tight compartment. Moreover, a cursory look on the impugned judgment does not reflect that the Courts of facts had ever shifted the burden to prove the title on the defendants, as alleged requiring to formulate the substantial question of law on this point. (vide **Surma Valley Saw Mills (P) Ltd. v. Arati Das**⁷⁷)

Where there is a reasonable ground to believe that two or more persons conspired to commit an offence, if *prima facie* evidence of existence of a conspiracy is given and accepted, the evidence of acts and statement made by any one of conspirators is admissible against all. (vide **Jayendra Saraswati Swamigal v. State of Tamil Nadu**⁷⁸)

In the present facts of the case, the material collected during investigation directly points out the complicity of these petitioners for being co-conspirator along with other accused, the then Chief Minister Dr. Y.S. Rajasekhara Reddy, and All India Service Officer. Thus, allotment of land, grant of prospective license, renewal of lease, granting set-backs etc., for the proposed star hotel and investment of crores by A-3 and his group of companies in M/s. Jagati Publications and other companies floated by A-1 shown in the table clearly indicates that these petitioners conspired with A-1 and his father, the then Chief Minister Dr. Y.S. Rajasekhara Reddy for political corruption and invested huge amount in various companies. This is nothing but direct political corruption engaged by this petitioner who being a co-conspirator to loot the

⁷⁷ AIR 2002 SC 108 pg 113

⁷⁸ AIR 2005 SC 716

government public property and accord of such mining lease is in utter disregard to Doctrine of Public Trust. Therefore, the material on record and the evidence collected during investigation is suffice to proceed against this petitioner for the offence punishable under Section 120-B I.P.C.

From the law laid down by the Apex Court in the above judgments, it is clear that the criminal conspiracy cannot be proved in general by direct evidence, since it is a secret act. The Court is bound to draw inferences from the circumstances of the case including conduct prior to and subsequent to the commission of alleged offence.

The other offence allegedly committed by the petitioners is punishable under Section 420 I.P.C, consists of 'cheating' and 'dishonest inducement'.

Section 415 of I.P.C defined 'Cheating' and the offence of 'Cheating' is defined under Section 420 I.P.C. The word 'Cheating' is defined 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**⁷⁹ 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:

- (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
- (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.

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.

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 **Mohammed Ibrahim and others v. State of Bihar and another**⁸⁰, the Supreme Court held as follows:

13. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

⁷⁹ (2009) 3 SCC 78

⁸⁰ (2009) 8 Supreme Court Cases 751

Similarly, in **International Advanced Centre for Powder Metallurgy and New Materials (ARCI) and others v. Nimra Cerlglass Technics Private Limited and another**⁸¹, the Supreme Court held as follows:

“13. To constitute an offence of cheating, the essential ingredients to attract Section 420 Indian Penal Code are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating Under Section 420 Indian Penal Code. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

In view of the law declared by Apex Court, to constitute an offence punishable under Section 420 of I.P.C., there should not only be cheating, but as a consequence of cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person, or to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

In view of the law declared by the Apex Court in the judgment referred supra, to constitute an offence punishable under Section 420 of I.P.C., the petitioners should have an intention to cheat the officials of State Government at the very beginning.

Therefore, the petitioners along with others have committed offence punishable under Section 420 I.P.C, but did not commit

⁸¹ (2016) 1 Supreme Court Cases 348

any offence punishable under any of the provisions of Prevention of Corruption Act.

The other ground urged before this Court is that, in the absence of government servants, filing of charge sheet against A-3 under the provisions of P.C. Act is a grave illegality and the Principal Special Judge for C.B.I cases has no jurisdiction to try and dispose of C.C.No.26 of 2013. But, this contention cannot be accepted for the reason that the respondent filed a supplementary charge-sheet against Dharmana Prasada Rao and six others, including the then Ministers for Revenue and Mines & Geology. Therefore, on this ground, the proceedings against these petitioners cannot be quashed.

The third ground raised before this Court is that, the Principal Special Judge for CBI Cases at Hyderabad, did not apply his mind to the facts of the present case and took cognizance against Sri P. Pratap Reddy/A-3, for the offences punishable under Section 12 of P.C. Act, which is a serious illegality. On this ground alone, the proceedings against the petitioners are liable to be quashed for the offence punishable under Section 12 of Prevention of Corruption Act.

In fact, Section 12 of P.C. Act is applicable only to the person who abetted to conduct an offence punishable either under Section 7 or 11 of P.C. Act. Therefore, taking cognizance against Sri P. Pratap Reddy/A-3 for the offence punishable under Section 12 of P.C. Act is an illegality and the order taking cognizance against Sri P. Pratap Reddy/A-3 is liable to be set-aside. Accordingly, the cognizance order to that extent is set-aside.

The main grievance of the learned Senior Counsel appearing for the petitioners is that, Sri P. Pratap Reddy/A-3 is only Managing Director of M/s Penna Cement Industries Limited (A-7), promoter of M/s PR Energy Holding Limited (A-4), M/s Pioneer Holiday Resorts Limited (A-8), M/s. Penna Tandur Cement Company Limited (A-9). In the absence of any allegations of false inducement or representation knowingly to deprive the property or otherwise to cause undue gain for himself or any group of companies, the allegation would not constitute an offence punishable under Section 420 I.P.C. Hence, the question of attaching any vicarious liability against A-4, A-7 to A-9, the petitioners in CrI.P.No.9035 of 2015 is an illegality. But, this contention cannot be accepted for the simple reason that Sri P. Pratap Reddy/A-3 is the Chairman & Managing Director-cum-promoter of A-4, A-7 to A-9 companies. Therefore, he being not only promoter but also Managing Director, managing the affairs of the company is also equally liable for the offences if any committed by him.

Learned Senior Counsel for the petitioners while demonstrating that these petitioners are no way responsible, still, Sri P. Pratap Reddy/A-3 being the promoter and Managing Director of companies A-4, A-7 to A-9 are liable to be prosecuted, merely because there is no allegation as to the vicarious liability of the petitioners in the charge sheet, he cannot be exonerated under criminal law.

Learned Senior Counsel for the petitioners further contended that, inducement made by M/s PR Energy Holding Limited promoted by A-1 is not made by A-3 in his personal capacity and

not from his resources and thereby, the illegal gratifications of alleged quid-pro-quo is false on the face of record. But, whether the falsity of the allegations shall be tested while deciding a petition under Section 482 Cr.P.C and the duty of the Court is to find out whether there is *prima facie* material against these petitioners or not. If, the Court finds *prima facie* material against these petitioners, the Court is bound to dismiss the petition. But, so far as vicarious liability is concerned, learned Senior Counsel for the petitioners relied on the principles laid down by the Supreme Court in **Standard Chartered Bank v. Directorate of Enforcement** (referred supra) in support of his contentions.

In **Maksud Saiyed v. State of Gujarat and others**⁸² the Apex Court held as follows:

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

In **Sardar Trilok Singh and others v. Satya Deo Tripathi**⁸³ the Apex Court held as follows:

“5..... The question as to what were the terms of the settlement and whether they were duly incorporated In the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a documents is used

⁸² 2008 (5) SCC 668

⁸³ 1979 (4) SCC 396

as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on 30-7-1973 from the house of the respondent they could and did claim to have done so in exercise of their bonafide right of seizing the truck on the respondent's failure to pay the third monthly installment in time. It was therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated rated version given by the respondent that the appellants went to his house with a mob aimed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not take the matter out of the realm of civil dispute. No body on the side of the respondent was hurt. Even a scratch was not given to any body.

In **Sunil Bharti Mittal v. Central Bureau of Investigation**⁸⁴

it was held that “a corporate entity is an artificial person which acts through its Officers, Directors, Managing Director, Chairman etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the Company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is a cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.”

Based on the principles laid down in the above judgments, the Apex Court in a recent judgment rendered in **K.Sitaram and another v. CFL Capital Financial Service Ltd. & Another**⁸⁵ observed that “no doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the company that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company

⁸⁴ JT 2015 (1) SC 258

⁸⁵ JT 2017 (6) SC 52

can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated is in those cases where the statutory regime itself attracts the Doctrine of Vicarious Liability, by specifically invoking such a provision.

The judgments on vicarious liability relied on by the learned Senior Counsel are not relevant. Therefore, to avoid multiplicity, those are not discussed in detail.

In view of the law laid down by the Apex Court recently in **K.Sitaram and another v. CFL Capital Financial Service Ltd. & Another** (referred supra), this Court cannot quash the proceedings against these petitioners for various offences referred supra, on the ground that, he is not vicariously liable. However, it is evident from the record that he is the promoter and Chairman of A-4, Managing Director of A-7, Director of A-8 & A-9 and authorized signatory of companies and the acts done by the promoter and its Managing Director are binding. He acted in the capacity of Managing Director of A-7-Company and also as promoter of A-4, A-8 & A-9, thereby, he is liable for the acts done by him.

Thus, in view of the law declared by the Apex Court in **K. Sitaram and another v. CFL Capital Financial Service Ltd. & Another** (referred supra), it is difficult to accept this contention that Sri P. Pratap Reddy/A-3 is not liable for prosecution for the offences referred supra.

The other common contentions raised in the petition by the petitioners are that, the entire charge sheet does not disclose any ingredients of cheating and criminal conspiracy and no government servant is arrayed as accused in the entire charge

sheet. In the absence of arraying any accused, the allegations to constitute an offence punishable under Sections 120-B & 420 I.P.C & Section 12 of Prevention of Corruption Act and the proceedings against these petitioners cannot be continued i.e., uncontroverted allegations made in the charge sheet *prima facie* do not establish any of the offences against any of the petitioners. In support of the contentions, he relied on the judgment of **Madhavrao Jiwajirao Scindia and others v. Sambhajirao Chandroji Rao Angre and others** (referred supra). But, as discussed above, the allegations made in the charge sheet, if taken on its face value, constitute offences punishable under Sections 120-B & 420 I.P.C, as discussed in the earlier paragraphs. Therefore, by applying the principles laid down in the above judgments, I am afraid to quash the proceedings against this petitioner for the offences punishable under Sections 120-B & 420 I.P.C.

It is also contended by the learned Senior Counsel that the Investigating Agency filed charge sheet without any material, making bald allegations and those allegations do not constitute any offences referred supra, especially to take cognizance by the Special Judge for C.B.I cases and placed reliance on the judgment of the Apex Court in **M.P. Narayana Pillai v. M.P. Chacko** (referred supra).

As discussed in the earlier paragraphs, the material on record *prima facie* disclosed commission of cognizable offence. Therefore, even by applying those principles, it is difficult to quash the proceedings against these petitioners, since the material on record is *prima facie* pointing out the complicity of these petitioners about their criminal conspiracy to do a criminal act i.e.

illegal allotment of Ac.231.09 circumventing the provisions under law, so also granting prospecting mining license, renewal of license and relaxation of set-back etc, and investment of any consequences by granting undue official favours to the petitioners and its group of companies, is nothing but encouraging political corruption in the State for the benefit of A-1, who is the son of the then Chief Minister Dr. Y.S. Rajasekhara Reddy. Therefore, the contention that these allegations do not constitute any of the offences is absolutely baseless and therefore, I find no ground to quash the proceedings against this petitioner/A-3.

Learned Senior Counsel for the petitioners further contended that, granting of prospecting license, renewal of license and relaxation of set-back etc, are based on state policies and such acts would not constitute any of the offences referred supra and relied on the judgments of Apex Court in **Arun Kumar Agarwal v. Union of India** (referred supra) and **Pathan Mohammed Suleman Rehamat Khan v. State of Gujarat** (referred supra).

No doubt, a policy decision taken by the State Government does not constitute an offence, in view of the law laid down in the above judgment. But, when the act done by the petitioners i.e. extending undue official favour to the petitioners by their acts or omission with a malafide intention or intention to receive certain amount by way of investment in the companies floated by the son of the then Chief Minister Dr. Y.S. Rajasekhara Reddy, is nothing but corrupt practice *prima facie* and such political corruption lead to this situation. In the guise of policy decisions, the accused cannot escape from criminal liability; as such act would dent the economy of the State, which seriously affects the financial sources

of the State. Therefore, in the guise of policy decision, the petitioner or any other accused cannot escape from their criminal liability.

Learned Special Public Prosecutor for C.B.I contended that, there is a lot of difference between quashing proceedings and framing charges against the accused. The jurisdiction of this Court under Section 482 Cr.P.C is limited. Whereas, to frame charge, the Court has to apply its mind and frame appropriate charges and if the Courts finds no material the Court may discharge the accused. He placed reliance on the judgments of the Apex Court in **Amit Kapoor v. Ramesh Chander, State of Karnataka v. M. Devendrappa and another, State of Himachal Pradesh v. Krishan Lal Pardhan and others and Iridium India Telecom Limited v. Motorola Incorporated and others** (judgments referred supra), wherein the Supreme Court in “**Iridium India Telecom Ltd. v. Motorola Inc.**” (referred supra), in 19 Corpus Juris Secundum, para 1363 observed as follows:

“A corporation may be criminally liable for crimes which involve a specific element of intent as well for those which do not, and, although some crimes require such a personal, malicious intent, that a corporation is considered incapable of committing them, nevertheless, under the proper circumstances the criminal intent of its agent may be imputed to it so as to render it liable, the requisites of such imputation being essentially the same as those required to impute malice to corporations in civil actions.”

Therefore, the Courts emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the Doctrine of Attribution and Imputation. In other words, the criminal intent of the "alter ego" of the company/body corporate, i.e., the person or

group of person that guide the business of the company, would be imputed to the corporation.

One of the ground urged before this Court is that the concept of quid-pro-quo has no place in the criminal law and on the basis of alleged quid-pro-quo, the petitioner cannot be prosecuted and requested to quash the proceedings.

But, as discussed in the earlier paragraphs, it is difficult to accept this contention, since political corruption on his investment of amount in companies floated by A-1 due to allotment granting of prospecting license, renewal of license and relaxation of set-back for construction of star hotel in violation of the procedure and exercising extraordinary power of the then Chief Minister is nothing but violation of the rules and procedures, which would clearly point out the benefit done by the son of then Chief Minister who received amounts by way of investments at the cost of depriving public at large, more particularly, the landless poor persons to whom land was assigned. Granting mining lease and extending prospective license is against the principles of Doctrine of Public Trust. Therefore, on the basis of these contentions, it is difficult to quash the proceedings against the petitioner/A-3, more particularly, in view of judgment of Constitutional Bench of Apex Court in ***Re:Special Reference No.1 of 2012***.

The last ground urged before this Court by the learned Senior Counsel for the petitioner is that, the respondent/C.B.I filed memo before the Trial Court reporting that there is no material against A-1 at the time of granting bail. When there is no material against A-1, the question of proceeding against these petitioners is nothing but abuse of process of law.

The learned Special Public Prosecutor for C.B.I brought to the notice of this Court that, a Special Investigating Team is constituted to take action against the officials who filed the memo reporting that there is no material against A-1 and is pending for investigation. Even if a memo is filed before the Trial Court, the Court cannot rely on such memo and quash the proceedings against these petitioners until the prosecution is withdrawn with the leave of the Court. Merely because a memo is filed, this Court cannot base its findings on the memo to quash the proceedings against these petitioners. Hence, I find that it is not a substantial ground to quash the proceedings against these petitioners.

On overall consideration of the material on record and discussion referred above, the material on record *prima facie* disclosed commission of an offence punishable under Sections 120-B & 420 I.P.C.

By applying the principles laid down by the Apex Court in the judgments referred supra, in view of my foregoing discussion, I find no ground to quash the proceedings at this stage, except taking cognizance against A-3 for the offence punishable under Section 12 of P.C. Act, in view of the reasons stated above.

In view of the law declared by the Supreme Court consistently, there is a lot of distinction between framing of charges and quashing of the proceedings. But, the Court can exercise power to quash the proceedings if the material collected during investigation, accepting the allegations in the charge sheet on its face value as true, makes out no cognizable offence, the Court can straight-away quash the proceedings. But, for framing charges on the other hand, the Court has to verify the entire

material and find out whether the material on record is sufficient to proceed against these petitioners by applying the standard of *prima facie*. However, what is *prima facie* case, remains as a question while dealing with a petition filed under Section 239 Cr.P.C.

The Apex Court in **Mauvin Godinho v. State of Goa**⁸⁶, highlighted the scope of Section 228 Cr.P.C, with the approval of law declared in **Sajjan Kumar v. CBI**⁸⁷ **State v. A. Arun Kumar**⁸⁸, **State v. S. Selvi**⁸⁹ was of the view that, a Court while framing charges under Section 227 of the Code of Criminal Procedure should apply the “*prima facie*” standard. Although the application of this standard depends on facts and circumstance in each case, a *prima facie* case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

How to determine a *prima facie* case is not highlighted in the judgment. However, the general principle laid down as to the *prima facie* case in civil cases cannot be applied in criminal cases, and in view of the material collected which constitute an offence is

⁸⁶ AIR 2018 SC 749

⁸⁷ (2010) 9 SCC 368

⁸⁸ (2015) 2 SCC 417

⁸⁹ (2018) 4 SCC 641

sufficient to conclude that there is a *prima facie* case to proceed against this petitioner by framing charges.

But, the present criminal petitions are not for discharge of the accused, but only for quashing the proceedings. However, the material on record directly points out the complicity of the petitioners for the offences punishable under Sections 120-B & 420 I.P.C. Hence, by applying the principles laid down in the above judgment, it is difficult to quash the proceedings at this stage.

The petitioner did not question the order of taking cognizance for various offences against this petitioner, except raising one of the grounds in a petition filed under Section 482 Cr.P.C. But, to the extent of taking cognizance against Sri P. Pratap Reddy/accused No.3, for the offence punishable under Section 12 of P.C Act is already quashed. However, it is left open to the Special Judge for C.B.I cases to frame appropriate charges, if the Court finds *prima facie* material to proceed against Sri P. Pratap Reddy/accused No.3 for framing charges.

As discussed above, the petitioner/A-3 and his group of companies, represented by authorized signatory having received huge benefit of undue official favours on account of his political patronage with the then Chief Minister of united State of Andhra Pradesh at the instance of his son A-1 is nothing but a deep rooted economic fraud against the State and neither of the parties are the victims, but the State at large and the people of the State of Andhra Pradesh are the ultimate sufferers in view of personal gain to both the parties to the fraud. When such serious economic offences are allegedly committed which caused substantial loss to

the State and undue gain to the petitioner and the family of the then Chief Minister and the total loss involved in Calendar Case is Rs.1028 crores and these petitioners are responsible for part of the loss and whereas, the other accused are responsible prima facie to a tune of Rs.68 crores approximately and the report of Secretary, Ministry Corporate Affairs is sufficient to conclude prima facie that this petitioner and other accused for the responsible for the loss caused to the State which indirectly is a loss to the general public. In such circumstances, the act of the petitioners can be described as a serious economic fraud against the State and the proceedings against such accused cannot be quashed at the threshold on any technical grounds.

If, totality of the circumstances of the case is taken into consideration, the act of the petitioners is a serious economic offence and in such case, the petitioners are not entitled to claim even a regular bail as held by the Apex Court in **Nimmagadda Prasad v. Central Bureau of Investigation**⁹⁰.

Following the judgment of the Apex Court in **State of Gujarat v. Mohanlal Jitamalji Porwal and another**⁹¹, the Supreme Court arrived at a conclusion in **Nimmagadda Prasad**⁸ case. In **Mohanlal Jitamalji Porwal**⁹ case, the Apex Court made a serious observation for considering bail for a serious economic offence and held in paragraph 5 as follows:

“.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the

⁹⁰ AIR 2013 SC 2821

⁹¹ (1987) 2 SCC 364

consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.”

In the same C.C.No.26 of 2013 when the first accused approached this Court by filing bail application, this Court declined to grant bail in. **Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation**⁹².

In “**State v. R. Vasanthi Stanley**⁹³”, 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 question before the Court in the above judgment in “**State v. R. Vasanthi Stanley**” (referred supra) is that the proceedings cannot be quashed when serious economic offence is committed by any accused which affects the State or institutional economic condition.

⁹² (2013) 7 SCC 439

⁹³ AIR 2015 SC 3691

Recently, the Supreme Court in **Rohit Tandon v. Directorate of Enforcement**⁹⁴ observed that, accused is alleged to have been found involved in a white collar crime. The alleged offence was committed by accused in conspiracy with other co-accused persons in a well planned and thoughtful manner. It has been observed in a catena of decisions by Hon'ble Superior Courts 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 need 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.

In view of my foregoing discussion, I find no substance in the contentions of the learned senior counsel appearing for the petitioners.

In the result, CrI.P.No.9034 of 2015 is allowed in part, quashing the proceedings against the petitioner/A-3 for the offence punishable under Section 12 of Prevention of Corruption Act only, while directing the Principal Special Judge for C.B.I, Hyderabad to proceed against the petitioner/A-3 for the offences punishable under Section 120-B & Section 420 I.P.C.

CrI.P.No.9035 of 2015 is dismissed, directing the Principal Special Judge for C.B.I, Hyderabad to proceed against petitioners/accused Nos. 4, 7, 8 and 9 for the offences punishable under Section 120-B & Section 420 I.P.C.

⁹⁴ (2015) 16 SCC 1

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

JUSTICE M. SATYANARAYANA MURTHY

28.12.2018
Ksp/sp

After pronouncing the above judgment, learned Senior Counsel for the petitioners requested to permit the petitioners to file appropriate discharge applications.

For filing discharge applications, no permission is required from this Court. However, the Principal Special Judge for C.B.I, Hyderabad is directed to dispose of such application(s), if any filed, uninfluenced by the findings/observations made in this common order.

28.12.2018
kvrn

JUSTICE M. SATYANARAYANA MURTHY

