HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.3935 of 2016

ORDER:

This criminal petition has been filed by the petitioner/A.13-Madhu Koneru to quash the pre-charge and post cognizance proceedings pending against him in C.C.No.6 of 2012 on the file of the learned Principal Special Judge for CBI Cases, Hyderabad.

2. The brief case of the prosecution is that a Joint Venture Company by name M/s Emaar Hills Township Private Limited (EHTPL-A3) was formed in 2003 between Emaar Properties PJSC, Dubai(Emaar-A2) and M/s APIIC to develop 353 acres of land in Gachibowli in the ratio of 74:26 in profits in 2006. M/s Emaar, the partner of M/s EHPTL without the knowledge of APIIC in violation of agreement of various Government rules entered into partnership with another sister company known as M/s EMAAR MGF(A4) to develop the same piece of land in Gachibowli in the ratio of 75:25 in revenue i.e. M/s EMAAR MGF-A4 will hold 75% interest and M/s EHTPL-A3 will hold 25%. Hence accordingly, the stake of M/s APIIC in this project has changed to 6.5% of revenue as opposed to 26% in profits. By way of reduction of share of M/s APIIC to 6.5%, their partner M/s EMAAR MGF alone was allegedly benefited about Rs.2,500 crores. M/s Emaar MGF sold the plots for the villas at Rs.5,000/- per yard from 2006 onwards. It is alleged that M/s Emaar MGF collected another Rs.25,000/- per yard from the buyers at the time of selling these plots. Total land for 134 villas sold so far 1,71,559 sq. yards (36 acres approx). So far they have collected official sale proceeds of Rs.85.77 crores and unaccounted amount of 450 crores, which is alleged to have been siphoned off. However, not a single rupee has been credited to M/s APIIC so far, but only shown as equity as shares, for the amount due to M/s

APIIC. The petitioner-A13-(being son of Mr. Koneru Rajendra Prasad-Accused No.6) is carrying out his business at Dubai.

3. It is alleged that an amount of US $ 250,000 (equivalent to Rs.1.05 crores approximately) was deposited through RTGS into petitioner's bank account in Dubai on 09.08.2007 by one Mr. P.S. Parthasarthy upon instructions of one T.Ranga Rao-(A14-Approver)-who established an entity by name Stylish Homes Pvt. Ltd. at the instance of his classmate of A6) allegedly towards part sale consideration of a plot. The petitioner-A13 camouflaged said amount in his account as a loan which was refunded to said Parthasarthy as an afterthought, though its refunding does not absolve him from the criminal liability. That an amount of US$ 140,000 (equivalent to Rs.65 lakhs approximately) was deposited into the petitioner's bank account in Dubai by one Mr. Suresh Challa, a plot purchaser, towards part consideration but stated to be for investing in the real estate by the petitioner. The aforesaid acts of the petitioner establish commission of offences punishable U/s 120-B r/w 420, 109 and 409 of IPC.

4. The learned Special Judge, on 16.03.2012, on the aforesaid facts taken cognizance from the CBI final report against the petitioner-A13 for the offences punishable U/s 120-B r/w 420, 109 and 409 of IPC and impugning the same a discharge petition filed by him stated pending without disposal from a long time and he therefrom stated constrained to file the quash petition impugning the final report and the cognizance order of the Special Judge supra.

5. The grounds of the criminal petition seeking quashing of the cognizance order of the Special Judge supra are that:

a) No incriminating allegations are made against the petitioner in the charge sheets filed by the respondent-CBI.

b) Admittedly, the remittance of money by Mr. Parthasarthy is not at the instance of the petitioner. The allegations as set out therefore do not constitute any offence. Mere credit and debit entries in the statements cannot impute any knowledge, much less any complicity in any transaction which is alleged to have led to commission of an offence. Therefore, the question of criminal conspiracy by the petitioner does not arise. The above entries in the bank account are totally divorced of any incriminating evidence against the petitioner.

c) To constitute an offence under section 409 of IPC, there must be an entrustment of property, which admittedly is not even an allegation against the petitioner. Further, there is no allegation against the petitioner about his knowledge or involvement in the business of Mr. Koneru Prasad (A-6) and Mr. T. Ranga Rao (A-14).

d) To constitute an offence under section 420 IPC, there must a dishonest inducement to part with property, which once again is admittedly not even an allegation against the petitioner.

e) The essential ingredient of section 120B IPC, being meeting of minds, has not even been alleged against the petitioner with anybody. Moreover, the meeting of minds must be with respect to and towards an act or omission which comprises an offence. No such allegation has been made against the petitioner. There is no allegation of any act either direct or circumstantial in order to allege conspiracy or abetment as against the petitioner.

f) From the statement dated 23rd November, 2011 of LW-109 it is evident that the petitioner is totally ignorant regarding the sale of the Villa plots. In the said statement, LW-109 categorically stated that upon asking the petitioner for allotment of a plot, <u>the petitioner had informed</u>

him that as he was based out of Dubai, he was not involved in sale of villa plots.

g) It is the settled law that at the stage of consideration of charge, the Court has to form a presumptive opinion about the involvement of an accused on the basis of such material which could lead to an inference of "grave suspicion" and not a "mere suspicion" in relation to the acts alleged. Such prima facie material should be capable of being converted into legally admissible evidence of such sterling quality which, without being tested on the touchstone of cross examination, would lead to only a hypothesis of the guilt of an accused. No such material has even been shown to be present by the Respondent.

h) That to prove the Charge of conspiracy, an obligation is cast upon the prosecution to place on record material which could be converted into substantive evidence admissible under law. There is no gain-saying the fact that in a given case, the existence of conspiracy has to be inferred from the circumstances but an agreement and meeting of mind between two individuals is a sine qua non to prove the allegation conspiracy. The incriminating material should form a chain of events leading to an irresistible conclusion about the guilt of the accused. There is not even an allegation let alone any material sought to be relied upon by the prosecution that there was any meeting of minds towards commission of any offence.

I) That the Hon'ble Supreme Court of India in a landmark judgment of Kehar Singh Vs. State of Delhi had occasion to observe that the gist of conspiracy thus lies in not doing an act, or effecting the purpose for which the conspiracy if formed, nor in attempting to do them nor in inciting others to do them but in forming of the scheme or agreement between the parties. Agreement is essential but mere knowledge or discussion of the plan, per se, is not enough. In the present case, there is not even an allegation in any of the statements that the petitioner even had the knowledge of any alleged offence let alone being part of any design.

j) None of the ingredients of the abetment have even been alleged as against the petitioner. Thus Section 109 IPC is also inapplicable as against the petitioner. For Section 109 IPC to be attracted, the act alleged to be abetted should be committed in consequence of the abetment. No such allegation has even been made as against petitioner.

k) It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the essence of the offence of abetment under the third para of Section 107.

l) A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of the thing. Any one of these things is essential to complete abetment as a crime and neither of these has even been alleged against the petitioner.

m) Neither the prosecution nor any of the relevant prosecution witnesses in their individual statements recorded u/s 164 or 161 CrPC have alleged any direct role/involvement of Mr. Madhu Koneru nor have they even imputed knowledge to him let alone intention.

n) Assuming, but not admitting, the statements in the charge sheet and the statements under section 161 CrPC to be true, the ingredients of the offences alleged against the petitioner have not been made out and continuation of proceedings against the petitioner would be an abuse of process of law.

6. In view of the above submissions and grounds, it is clearly established that the petitioner has been wrongly arrayed as Accused No. 13 in the charge sheet filed by the respondent. The petitioner has filed a discharge petition before the Court below. However, it has been pending for a long time as the other accused have not yet commenced arguments in their discharge petitions and also due to other reasons beyond the control of the petitioner. The wrong inclusion of the name of the petitioner in the charge sheet is causing severe loss to the unconnected business of the petitioner. The perennial delay in adjudication of the discharge application is also prejudicially affecting the professional life and business opportunities of the petitioner.

7. Therefore, the petitioner sought for allowing the criminal petition by quashing the proceedings in C.C.No.6 of 2012 against him.

8. The written arguments submitted by the learned counsel for the petitioner-A13 by reiterating the above are that:

(1). The petitioner/A.13 is neither a director nor shareholder of any of the Accused companies. However, suspicion arose about his involvement in the sale of villa plots in the project because he happened to be the son of Accused No.6, who is allegedly involved directly in the commission of offence and as two plot purchasers deposited some money in his bank account directly. It is not the case of the prosecution or the prosecution witnesses that the Petitioner/Accused No.13 had asked the plot purchasers to deposit the money nor the plot purchasers in their statements said that the petitioner was aware of the money being deposited into his account. On the contrary their statements and the case of the prosecution is that allegedly the money was deposited by the

2 plot purchasers (out of many plot purchasers) on the directions of A.6 and A.14.

(2). There is no allegation in the charge sheet (@Page 173 & 174) and further no material to even remotely suggest that Petitioner-A13-Madhu Koneru participated in the sale of the villas or that he even had any knowledge whatsoever of the sale of the villa plots to Mr. Suresh Challa and Mr. P.S. Parthasarthy or to any person. There is no allegation and further no material which suggests that Petitioner-Madhu Koneru interacted with either Mr. Suresh Challa or Mr. PS Parthasarthy. Even if the claim of the prosecution and the statements of the purchasers are taken as true, no offence is made out against the Petitioner/Accused No.13. It is against the settled principles of law to charge the petitioner when there is no evidence to even suggest a prima facie case that a crime was committed and to put the accused through unnecessary humiliation and rigmaroles of criminal trial.

(3). It is pertinent to mention that, indeed, the statement of Shri Nandhyala Sri Vishnu Raju (@Page 295) expressly reveals that Mr. Madhu Koneru was not in anyway involved in the sale of Villa plots.

(4). On bare reading of the Sec. 161 CrPC statements of Suresh Challa and PS Parthasarthy, it is evident that they were asked to transfer monies to a Dubai Account belonging to Mr. Madhu Koneru. This instruction was allegedly given to them by Mr. Koneru Prasad and/or Mr. T. Ranga Rao.

(5). It is not the case of prosecution that there were any discussions or meetings between Koneru Prasad and PS Parthasarthy, on the one hand, and Madhu Koneru on the other hand, in relation to the sale of the villas and in particular to the transfer of monies to his account.

(6). He has not given any instruction to any person to deposit money into his account and there is no evidence that even remotely suggests that Madhu Koneru was told the purpose or reason for receipt of these monies by his father or Ranga Rao.

(7). The petitioner has been an NRI for over 30 years now. He was residing and carrying on his business in Dubai during the relevant period i.e., 2005-2011. Receiving the monies in his Dubai account is not an offence for he being a Dubai based resident. The offence on his part can be made out only if there is any material, which even prima facie shows that, he had knowledge of the purpose/reason for these monies being paid into his account. The mere fact that the amount was deposited in the account of Mr. Madhu Koneru, without his involvement, does not suggest that he had knowledge of the alleged crime much less a mensrea and intention. Therefore, even if the prosecution claims against Petitioner/Accused No.13 are taken to be true, no conviction can result against the Petitioner/Accused No.13.

(8). The prosecution is cherry-picking material to arraign Madhu Koneru as an Accused. This is not permissible in law. The prosecution ought to weigh the entire material before it before arraigning any person as an Accused.

(9). There is absolutely no meeting of minds between Madhu Koneru and any of the accused persons. There is no material on record which suggests that Madhu Koneru instigated any person to commit the offence of cheating/criminal breach of trust, or he engaged with any person in pursuance of a conspiracy to commit the offence of cheating/criminal breach of trust and/or that he intentionally aided the commission of the offence cheating/criminal breach of trust.

(10). Intentional aiding of an offence is one of the essential ingredients to prove the offence of abetment under Section 107 of IPC. However, in the present case there is no material at all to even remotely suggest that Madhu Koneru has intentionally aided the alleged offence.

(11). It is further submitted that Madhu Koneru had no reasonable ground to suspect that the amount deposited in his account was part of the alleged crime and there is no other material to even remotely suggest that Madhu Koneru was aware of the sale of the villas. It is pertinent to note that suspicion can never substitute proof and the suspicion in the present case will remain as suspicion only even after the trial is completed since there is no allegation or material on record to suggest or prove that the petitioner had knowledge about the alleged crime and intentionally aided the alleged commission of offence. Any offence cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence.

(12). It is also submitted that a few bits here and there on which the prosecution proposes to rely are woefully inadequate for connection the accused with the crime, howsoever skillfully one may attempt to weave those bits into a presentable whole. Further, it is an established principle of law that mere circumstantial suspicion to prove the involvement of the accused is not sufficient to meet the requirements of criminal conspiracy.

(13). It is submitted that the Petitioner is clearly not part of either general conspiracy or special/smaller conspiracy in the present case. A meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence. Merely leveling a charge of conspiracy on possible suspicion without mentioning how, where, when and which of the conspirators hatched the conspiracy is not sufficient to mulct criminal liability on the accused. The purposes or circumstances warranting an inference of existence of a conspiracy should be stated so as to bring the accused to face the trial in criminal court, in the present case there is no material to suggest the same.

(14). The case of the prosecution and the statements under Sections 161 and 164 CrPC, which the prosecution seeks to rely upon in the charge sheet, even if taken as true or proved, Petitioner/Accused No.13 cannot be held to be guilty of any of the offences alleged against him. Therefore it is prayed that the cases against the Petitioner/Accused No.13 under Sections 120 r/w 420, 109 and 409 are to be quashed.

9. The oral submissions of the learned counsel for the petitioner are by reiterating the above and further that:

9(a). With regard to the allegation of receiving an amount of US $ 250,000/- (equivalent to Rs.1.05 crores approx,) from one of the Villa plot buyers Parthasarthy, the prosecution seeks to place reliance upon the purported statement made by Parthasarthy wherein he claims that the actual value of the Villa Plots was about Rs.50,000/- per sq. yd. Out of which Rs.45,000/- per sq. yd. was in cash. According to this witness's claims, out of the total worth of Villa Plot allotted to him, an amount of US $ 250,000/- (balance component equivalent to Rs.1,05,00,000/-) was transferred allegedly to the Petitioner's account on the instructions of T. Ranga Rao. In the statement given by T.Ranga Rao he has stated that he gave the instructions to Parthasarthy at the request of Koneru Rajendra Prasad.

9(b). It is submitted that the allegations in the charge sheet do not even allege or even indicate any instigation or conspiracy of the petitioner in the commission of alleged offences by other persons alleged to have committed offences under Sections 409 and 420 IPC. Therefore, there is absolutely no basis for the respondent to presume that there could be conspiracy between the petitioner and other accused persons merely because A-6 happens to be the father of the petitioner to charge the petitioner for abetment and Conspiracy under sections 109 and 120B IPC respectively. No allegation of knowledge or intention to commit or abet any offence has been made against the petitioner. No allegation of any act being committed by the petitioner, which constitutes an offence, has been made in the charge sheet. This being the case, showing petitioner as Accused No.13 in the charge sheet is an abuse of process of law.

9(c). The petitioner submits it is an admitted fact and also clear from the statements made by Mr. Challa Suresh and Parthasarthy U/s.161 CrPC that they never met or interacted with the petitioner. Merely because they happened to deposit certain amount of money in the bank account of the petitioner at the alleged instructions of third parties, no offence can even be alleged to have been committed by the petitioner. In the statement of T. Ranga Rao U/s 161 he made it clear that he instructed Challa Suresh and Parthasarthy to deposit certain amount in the account of the petitioner. Therefore, there is not even an allegation of commission of any act by the petitioner which could be classified as an offence. There is not even an allegation in the charge sheet that it was under petitioner's instruction that the money was deposited in his account.

10. The counter filed by the respondent (CBI) vis-à-vis the oral submissions of the learned Special Public Prosecutor for CBI are that:

(1). The case vide RC: 18(A)/2011-CBI/HYD was registered against Shri B.P.Acharya, (A-1); M/s Emaar Properties PJSC, Dubai (A-2); M/s

Emaar Hills Township Pvt. Ltd.(M/s EHTPL) (A-3); M/s Emaar MGF land Ltd (A-4) represented by their Directors and others, on 17.08.2011 U/s 120-B r/w 420, 409, 420 & 477-A IPC and Sec.13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988, on the basis of the orders dated 10.08.2011 of the Hon'ble High Court of Andhra Pradesh in Writ Petition No.29358 of 2010 dated 23.11.2010 filed by Shri P.Shanker Rao, MLA. The allegations in brief are that Shri B.P.Acharya (A-1); M/s Emaar Properties PJSC, Dubai (A-2); M/s EHTPL (A-3); M/s Emaar MGF Land Ltd (A-4) represented by their Directors and others entered into a criminal conspiracy to cheat APIIC, at Hyderabad and in furtherance of the said criminal conspiracy, M/s Emaar Properties PJSC, Dubai (A-2) entered into an agency agreement with M/s Stylish Holmes Real Estates Pvt. Ltd., to sell villa plots at a pre-determined price which was less than the market value, without the knowledge and consent of M/s APIIC. Further, M/s EHTPL(A-3) assigned the rights of development to M/s Emaar MGF(A-4), without in-principle approval from M/s APIIC. In furtherance of the said criminal conspiracy Sri BP Acharya (A-1) abused his official position by corrupt and illegal means and he knowingly and intentionally did not object to the sale of villa plots at a lesser price and also did not object to the agreement between M/s EHTPL (A-3) and M/s Emaar MGF (A-4). Though M/s EHTPL (A-3) and M/s Emaar MGF (A-4), had generated revenue on account of sale of villas, plots and apartments they did not share the revenue with M/s APIIC in accordance with the shareholder's agreement and thus caused wrongful loss to M/s APIIC and corresponding wrongful gain for themselves.

(2). That the investigating agency filed a charge sheet against Sri BP Acharya(A-1); M/s Emaar Properties PJSC, Dubai(A-2) represented by its Chairman Mr. Mohammed Ali Alabbar; M/s EHTPL(A-3) represented by its Directors; M/s Emaar MGF Land Ltd.(A-4) represented by its CEO & MD; the petitioner/accused and others, U/s 120-B, 420,109, 409 & 477-A IPC and Sec.13(2) r/w 13 (1)(c & (d) and Sec.15 of PC Act, 1988, before the learned Principal Special Judge for CBI Cases, Hyderabad on 01.02.2012. Subsequently, the investigating agency filed supplementary charge sheets on 23.04.2012 and 15.09.2012. The learned Special Judge took cognizance of the offences against the accused persons and assigned CC No.6/2012.

(3). That the brief facts of the case are that the Govt. of Andhra Pradesh (GoAP) intended to develop an integrated project consisting of Convention Centre (with a 3000 seating plenary hall with 3-4 breakout rooms, and other business and convention facilities); a Hotel (of business class with 300 or ore rooms); Golf Course (A Pro-championship 18 hole Golf Course along with Golf Club, Club House and Country Club) and Multi-use development (including Villas and Commercial complex area), in Public Private Partnership (PPP) in an extent of 550 acres of land to be given on outright sale/lease basis. After inviting Expression of Interest (EoI) through M/s APIIC, the GoAP selected M/s Emaar Properties PJSC, Dubai (A-2) for executing the said integrated project at Hyderabad. The Department of Industries and Commerce, GoAP issued G.O.Ms.No.359, dt.04.09.2002, finalizing the implementation structure of the integrated project. The Golf Course was to be developed in an extent of 235 acres of leased land, while multi-use development was to be developed in an extent of 285 acres of land to be provided to the developer on free hold basis. The Convention Centre and Business Hotel were to be developed in 15 acres leased land. The Integrated Project was to be implemented by M/s Emaar Properties PJSC, Dubai(A-2) through two separate Joint Venture Companies (Special Purpose Vehicles

(SPVs)-i.e.SPV-1 & SPV-2). The Golf Course and multi-use development were to be executed through SPV-1, while Convention Centre and Business Hotel were to be developed through SPV-2. M/s APIIC and M/s Emaar Properties PJSC, Dubai(A-2) were to have equity in SPV-1 in the ratio of 26%: 74%, while in SPV-2 their equity was in the ratio of 49%:51%. All equity from M/s APIIC was on saleable land value alone. Subsequent to GO MS No.359, dt.04.09.2002, an MOU was executed between M/s APIIC and M/s Emaar Properties PJSC, Dubai on 06.11.2002, which was followed by a Collaboration Agreement dt.19.08.2003.

(4). In brief the role played by the petitioner-Shri Madhu Koneru (A-13) is as follows:

i) Shri Madhu Koneru (A-13) is the son of Shri Koneru Rajendra Prasad (A-6) and is reportedly carrying out business at Dubai.

ii) Shri Madhu Koneru (A-13) received an amount of US $ 250,000 (equivalent to Rs.1.05 crores approx.) in his account No.8900056630 maintained with the National Bank of RAS-AL-KHAIMAH on 09.08.2007 from one of the Villa Plot buyers Shri P.S.Parthasarathy.

iii) Shri P.S.Parthasarathy in his statement recorded U/s 164 CrPC stated that he purchased the Villa Plot No.B-34 at a cost of Rs.50,000/- per sq. yd. Out of this amount an amount @ Rs.5000/- per sq. yd. was to be paid through cheque and the balance amount @ Rs.45,000/- per sq. yd. in cash. The cash component for the Villa Plot allotted to Shri Parthasarthy worked out to be Rs.5,13,00,000/-(including 4% commission on cash component). Out of the said amount of Rs.5,13,00,000/-, an amount of Rs.4,08,00,000/-was paid by him to Shri T Ranga Rao and his Manager at the residence of Shri Koneru Rajendra Prasad (A-6). As per the instructions of Shri Koneru Rajendra Prasad (A-6) and Shri T Ranga Rao, Shri P.S.Parthasarathy transferred US $ 250,000 (being the balance cash component equivalent to Rs.1,05,00,000/-) through RTGS in the account to Shri Madhu Koneru (A-13).

iv) After the registration and investigation of the case by CBI, on the advise of Shri Koneru Rajendra Prasad (A-6), Shri Madhu Koneru (A-13) refunded the said amount in the account of Shri P.S.Parthasarathy maintained with SBI, NRI Branch, Hyderabad on 14-10-2011 camouflaging the said amount as a loan from Shri P.S.Parthasarathy. However, this loan theory propounded by Shri Madhu Koneru (A-13) was refuted by Shri P.S.Parthasarathy. Thus the explanation of Shri Madhu Koneru (A-13) is an afterthought and refunding the amount does not absolve him from the criminal liability.

v) Shri Madhu Koneru (A-13) also received an amount of US $ 140,000/-(equivalent to Rs.65 lakhs approx) in account No.2750064022 of him maintained with National Bank of Dubai on 12-04-2005 from Shri Challa Suresh. In this case Shri Madhu Koneru (A-13) has explained that Shri Challa Suresh paid the said money for investing in real estate. The fact remains that the said amount was paid towards part sale consideration in cash for villa plot No.A-28 allotted to Shri Challa Suresh and this fact has been confirmed by Shri Suresh and Shri Ranga Rao. The amount is still with Shri Madhu Koneru.

vi) The aforesaid acts of Shri Madhu Koneru(A-13) establishes commission of the offences punishable U/s.120-B r/w.420,109 & 409 IPC.

(5). It is submitted that the case against the petitioner-Madhu Koneru(A-13) is of large magnitude and the petitioner has impoverished the public exchequer/properties to the tune of several thousands of crores and has enriched himself through illegal means.

(6). That the above facts have clearly brought out strong prima facie evidence, documentary and oral, to prove that the petitioner

Madhu Koneru(A-13) herein has committed the offences alleged against him in the charge sheet.

(7). It is submitted that the case involves criminal conspiracy amongst 15 accused and specific role has been attributed to the petitioner-A13 herein. The transactions in question cannot be isolated and confined to the acts of the petitioner-A13 only, but the prosecution case has to be looked into in its entirety.

(8). The petitioner in his application seeking quashment of the proceedings before trial court has made a bland averment as to that there is no case made out against him. Such bland statement of the petitioner cannot be considered at this stage.

(9). It is submitted that at the stage of discharge, the Hon'ble Court may not make a roving inquiry into the allegations made against the petitioner about the truth or otherwise. At this juncture, it has to be seen whether a prima facie case is made out against the petitioner in the final report and the documents submitted by the Investigating Agency upon which the trial Court below has taken cognizance of offences charged against the petitioner.

(10). That the petitioner has failed to appreciate the evidence against him and this petition seeking invocation of inherent powers of this Court is only a premature attempt and is therefore apt for summary dismissal. It is further submitted that the learned Principal Special Judge for CBI Cases, Hyderabad has considered the material placed before him and after satisfying himself with the prima facie evidence against the petitioner herein and other accused persons has taken cognizance of offences under various sections of IPC.

(11). It is submitted that the CBI has filed charge sheet after following all procedures and guidelines and the said case was registered as per the orders of the Hon'ble High Court of A.P. and after obtaining orders of the competent authority investigated into and filed charge sheet with due process. Hence, prays that this petition is devoid of merits and is liable to be dismissed inlimini in the interest of justice.

11. The submissions of the learned special public prosecutor for CBI, while reiterating the same, are that for this Court there is nothing to interfere at this stage from prima-facie material to frame charges for no even any grounds to seek for discharge or to quash the proceedings but for to face trial by the petitioner as A13 and hence sought for dismissal of the quash petition.

12. Heard both sides and perused the material on record.

13. From the above, with no need of repetition of the facts, the main allegations from the prosecution case in so far as against the petitioner as A13 are that, though the rate of selling the villa plots was fixed by M/s Emaar Properties PJSC, Dubai with M/s Stylish Holmes Real Estates Pvt. Ltd., at Rs.5,000/- per Sq. Yd., as per the instructions of Shri Koneru Rajendra Prasad-A6, Shri T.Ranga Rao-A14 as Director of M/s Stylish Holmes, sold the villa plots by collecting excess amounts from the buyers ranging from Rs.4,000/- per Sq. Yd. to Rs.45,000/- per Sq. Yd., over & above the rate of Rs.5,000/- per Sq. Yd. and it is the criminal breach of trust and cheating and to commit the offences there was a criminal conspiracy and as part of their nefarious plan, the excess money over & above the documented price of Rs.5,000/- per Sq. Yd was collected of an amount of Rs.96,01,75,000/- by Shri T.Ranga Rao and Shri Rajendra Prasad from about 82 or so villa plot buyers in cash only; however two of such buyers viz., Shri P.S.Parthasarathy and Shri Challa Suresh, since deposited in to the account No.8900056630, US $ 250,000 and US $ 140,000 respectively towards part of excess payment in the

bank accounts of the petitioner-A13-Shri Madhu Koneru (S/o Shri Koneru Rajendra Prasad-A6) maintained at Dubai and Shri T.Ranga Rao, Shri P.S.Parthasarathy and Shri Y.V.Prasad in their respective statements U/s 164 CrPC confirmed that said amount was part of the sale consideration paid over & above Rs.5,000/- per Sq. Yd, even that was refunded by Shri Madhu Koneru on 14.10.2011 into the account of Shri P.S.Parthasarathy as if it was a return of loan amount, after registration of this case which is sought to be inferred as an attempt to give a different colour to this transaction as an after thought; leave apart the excess amount of US $ 140,000 paid by Shri Challa Suresh still remains with the petitioner-A13-Shri Madhu Koneru and these facts as per the prosecution agency establishes that the petitioner-A13-Shri Madhu Koneru has abetted the offence committed by his father Shri Koneru Rajendra Prasad-A6 by parking the money in his bank account.

14. From reading of the material supra, there is thus no offence of criminal breach of trust and cheating much less with any proof of entrustment and any deception since inception of any contract between M/s Emaar and M/s Stylish Holmes in so far as against the petitioner-A13 separately concerned, but for subject to offence of criminal conspiracy made out if any with other accused under Sections 120B & 107(2) IPC r/w. Section 10 Evidence Act to the petitioner-A13 as privy for their committing those offences alleged from any agreement or abetment/instigation from the allegations in the charge sheet that though rate of selling the villa plots was fixed by M/s Emaar at Rs.5,000/-per Sq. Yd.; as per the instructions of Shri Koneru Rajendra Prasad-A6, Shri T.Ranga Rao-A14 as Director of M/s Stylish Holmes Real Estates Pvt. Ltd., sold the villa plots by collecting excess amounts from the buyers ranging from Rs.4,000/- per Sq. Yd.

to Rs.45,000/- per Sq. Yd., over & above the rate of Rs.5,000/- per Sq. Yd. and the excess money was collected by Shri T.Ranga Rao from the buyers in cash only except from Shri P.S.Parthasarathy and Shri Challa Suresh, who deposited US $ 250,000 and US $ 140,000 respectively towards part of excess payment in the bank accounts of Shri Madhu Koneru S/o Shri Koneru Rajendra Prasad maintained at Dubai. Thus it is only to consider whether petitioner-A13 is privy to any criminal conspiracy with any other accused.

15. From the above now to consider whether the petitioner-A13 is in any way can be held privy to any criminal conspiracy punishable under Section 120B IPC with any other accused and liable to face trial for the accusation of criminal conspiracy, leave about with any other offence therefrom, from the material on record, even taken on its face value, from his allowing of any such amounts remitted in to his account without immediate refund?

15(a). The mere establishing of relationship of son and father between the petitioner-A13 and A6-Rajendraprasad is not at all enough to say that petitioner is also privy to the alleged conspiracy between M/s Emaar and M/s Stylish Holmes rep. by Ranga Rao and at the instance of Rajendraprasad even as per the Apex Court in Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd[1] in categorically holding that merely on the basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy.

15(b). No doubt, in State of Jharkhand Vs. Lalu Prasad Yadav[2] the Apex Court held that a general conspiracy must be distinguished

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[1] 2010 (10) SCC 479
[2] 2017 (8) SCC 1

from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privy with each other each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies.

15(c). Here coming to the case on hand, it is not even a case of separate conspiracy between A6 and A13, the father and son, from entire case of prosecution, for not a version that with that separate conspiracy they hatched any plan to commit another offence or part of any offence in any larger conspiracy. Even for arguments sake taken as such, it at best when shows A6-asked the two buyers to remit the excess amount into the bank account of his son- petitioner-A13-Madhu at Dubai, for none of the statements of Ranga Rao, Parthasarthy and Suresh show the remittances were made into the bank account of the petitioner-A13 at the instructions of petitioner-A13 or that it was petitioner-A13 that furnished the bank account, there is any privy of him to it? There is thus a force in the contention of the quash petitioner-A13 that there is every possibility for A6-Rajendraprasad knowing the bank account of petitioner -A13 being his son in furnishing said bank account in asking by him(A6) or through Ranga Rao the two buyers to remit the amounts into said bank account of petitioner-A13 and if so can it be said that there is any smaller criminal conspiracy even between A6&A13, in the absence of any further material from the prosecution of there were any acts prior or pursuant to any criminal conspiracy between A.6 & A.13 including from any say by any of so called witnesses even in relation to it; like A.13 furnishing his bank account and asking them to deposit into it to infer a little if at all therefrom, which is lacking. Thus the mere say of A6 was going to Dubai and visiting his son-A13 even if any, from that relation of father and son, there can be no presumption to draw on the primary facts to be made out from the prosecution case even of any privy between A6&A13, leave about with others, in the absence of any factual foundation to establish agreement and privy between persons to call as members of conspiracy, even by picking up any bits from here and there, for basically an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable material stands to scrutiny from its analysation on existence of prima-facie accusation or not.

15(d). In this regard in State of Karnataka Vs. V.L. Munniswamy[3], the Apex Court held way back that a few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime, howsoever skillfully one may attempt to weave those bits into a presentable whole.

15(e). In PKM Selvam and Others Vs. State[4], the Madras High Court by relying upon the expression of the Apex Court in Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao[5] held that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence.

15(f). In Ch. Laxminarayana Vs. The State of Telangana[6], this Court referring to catena of expressions held at Para 10 that, there has to be cogent and convincing evidence against each of the accused to

[3] (1977) 2 SCC 699
[4] MANU/TN/2746/2015
[5] 2012 (9) SCC 512
[6] MANU/AP/0303/2017

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

15(g). In the Additional Superintendent of Police v. G.B. Anbalagan[7], the Madras High Court at Para 58 held that a complaint should make out a prima facie case against the accused persons. One cannot have the construction of a fine superstructure without a foundation. Merely leveling a charge of conspiracy without mentioning how, where, when and which of the conspirators hatched the conspiracy is not sufficient to mulct criminal liability. The purpose or circumstances warranting an inference of existence of a conspiracy should be stated so as to bring the Respondents to face the trial in criminal Court.

15(h). In State Of Tamilnadu vs J.Jayalalitha[8] on the scope of charge or discharge for consideration, it was observed by the Apex Court from the facts on record placed by the prosecution that there is

[7] 2014 (4) MLJ (Crl) 279
[8] 2000(5)SCC 440

sufficient material against Smt.Jayalalitha making out the offences under Sections 120B & 409 IPC r/w. 13 of the PC Act in her insistence for the proposal and its ultimate approving the tenders to purchase and import coal for wrongful gain by causing loss to State exchequer even with no necessity that too for high price, despite the Secretary concerned of the State Govt. raised strong objection for the proposal and even Secretary, Ministry of Coal raised objection also on the poor quality by its ignorance and even by deviation of conditions of Central Government for rooting through it and the discharge by trial court held unsustainable, that too when all concerned officials were charged.

15(i). Even to place reliance on the above proposition, it is not even with any remote correlation to those facts herein, for nothing even to show there were any earlier contacts over phone even between the two buyers with the petitioner-A13, much less with Ranga Rao or with Rajendraprasad at the relevant period to infer from any circumstances, much less by any overt acts and in the absence of which even on knowing about the amounts remitted to his account and thereafter even kept quiet from any say by his father those are only subsequent acts and not acts primly related to and prior to the remittances and as such only from his retention of amounts or later return with say of loan or investment cannot prove any criminal conspiracy in sale of plots for higher price and appropriation of amounts over the fixed sums.

15(j). In Ram Narain Poply Vs. CBI[9], the three Judge Bench of the Apex Court held on Section 120B IPC that the elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused

[9] 2003 CrLJ 4801

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.

15(k). The Apex Court in State of H.P. Vs Kishan Lal Pardhan[10] held at para 8 on the scope of Section 120-B IPC and Section 10 of the Evidence Act that the offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or cause to be done an illegal act by illegal means, and the performance of an act in terms thereof. If pursuant to the conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of it.

15(l). The scope of Section 10 Evidence Act considered is by relying upon the observations of the three Judge Bench of the Apex Court in State vs. Nalini[11] that the first condition which is almost the opening lock of that provision is the existence of 'reasonable ground to believe' that the conspirators have conspired together. This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement in reference to their common intention`.

15(m). The Apex Court in V.C. Shukla v. State (Delhi Admn.)[12], held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two

[10] AIR 1987 SC 773 = 1987 CrLJ 709
[11] 1999 (5) SCC 253
[12] 1980 (3) SCR 500

or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. However, a few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

15(n). In Jayendra Saraswati Swamigal Vs. State of T.N.[13] the three Judge Bench of the Apex Court held at Para 12 as follows:

> 12. ...... Therefore, there should first be a prima facie evidence that the person was a party to the conspiracy before his acts or statements can be used against his co-conspirators. ..... The correct import of Section 10 was explained by the Judicial Committee of the Privy Council in Mirza Akbar v. King Emperor AIR 1940 PC 176 as under:
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> "The words of S.10 are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The words "common intention" signifies a common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the

[13] (2005) 2 SCC 13

> common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference."

15(o). In State (N.C.T. of Delhi) Vs. Navjot Sandhu@ Afsan Guru[14] it was totally considered the scope of criminal conspiracy from Sections 120B & 43 IPC and Section 10 of the Evidence Act by quoting with approval the expression of the Privy Council in Mirza Akbar supra having observed from para 86, referring to aims and objects in introducing in IPC by 1913 amendment, with observation of similar to the definition in Halsbury`s laws of England and American concept of criminal conspiracy, Russell on crimes, Harisngh Gour on Penal Law, some of the foreign expressions, besides that of the Apex Court earlier including from Sardar Singh Caveeshar[15], Major E.G. Barsay[16], Yash Pal Mittal[17], V.C.Shukla supra, Mohd. Usman[18], Kishan Lal Pardhan supra, Kehar Singh[19], Ajay Agarwal[20], Nalini supra, Ferozuddin[21], Mohd. Khalid[22], that few bits here and there cannot be suffice, agreement can be inferred from any sold facts and circumstances to consider therefrom act of one as act of all, it requires some kind of physical manifestation of agreement like transmission of thoughts and sharing of unlawful design by meetings and communications to commit the act, prior to the act. For that, there has to be cogent and convincing evidence against each of the

[14] 2005 SCC (Crl)1715
[15] AIR 1957 SC 747
[16] AIR 1961 SC 1762
[17] 1977 (4) SCC 540
[18] 1981 (2) SCC 443
[19] 1988 (3) SCC 609
[20] 1993 (3) SCC 609
[21] 2001 (7) SCC 596
[22] 2002 (7) SCC 334

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

15(p). The Constitution Bench expression of the Apex Court in Bhagwan Swarup Lal Bishan Lal V. State of Maharashtra[23] way back observed that the offence of conspiracy has to be established like any other offence, but for Section 10 of the Indian Evidence Act introduces the doctrine of agency subject to conditions laid therein are satisfied for act done by one is admissible against co-conspirators. But this Section will come into play only when the Court is satisfied that there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or the actionable wrong that is to say there should be a prima facie evidence that a person was party to the conspiracy before his acts can be used against his co-conspirators.

[23] AIR 1965 SC 682

15(q). In Abuthagir Vs State[24] referring to Mohd.Khalid, Devander Pal Singh and Kehar Singh supra, it was held that the elements of conspiracy to be (a). an object to be accomplished, (b). a plan or scheme embodying means to accomplish that object, (c). an agreement or understanding between two or more of the accused whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, and (d). in the jurisdiction where the statute required an overt act. The Court must enquire whether the two or persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the later does.

15(r). In Mir Nagvi Askari vs CBI[25] it was held on requirements and proof of Criminal conspiracy that it is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal, by illegal means, then even if nothing further is done, the agreement would give rise to a criminal conspiracy............Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means......... The courts, however, while

[24] 2009 CrLJ 3987
[25] 2009 15 SCC 643

drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication-[See Mohammad Usman supra].

15(s). The following passage from Russell on Crimes (12th Edn. Vol 1) cited by Jagannatha Shetty, J in Kehar Singh supra brings out the legal position succinctly:

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

15(t). Further it was noted in Kehar Singh (supra) that to establish the offence of criminal conspiracy `it is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.' In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.

This Court in Maharashtra v. Som Nath Thapa[26] supra opined that it is necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

> "24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."-[See also K.R.Purushothaman v. State of Kerala[27]. Since we have dealt with the law with respect to criminal conspiracy in detail in R. Venkatkrishnan v. Central Bureau of Investigation-(Criminal Appeal 76 of 2004 decided today) we need not deal with it here at once again."

15(u). The Apex Court in Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh and Anr. v. C.B.I. through its Director[28], after taking recourse to law governing the field noted thus:

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

[26] [(1996) 4 SCC 659]
[27] 2005 12 SCC 631
[28] 2008 (14) SCALE 240

15(v). In Ajay Agarwal vs Union Of India[29], it was held that though an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy, i<u>f the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement.</u>

15(w). Even coming to the distinction between Section 120B and Section 107((2)IPC, in Pramatha Nath Taluqdar vs Saroj Ranjan Sarkar[30], the Apex Court Constitution Bench held that: Under Section 107(2), a person abets the doing of a thing, who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and an order to the doing of that thing. Therefore, in order to constitute the offence of abetment by conspiracy, there must first be a combining together of two or more persons in the conspiracy; secondly, an act or illegal omission must take place in pursuance of that conspiracy, and in order to the doing of that thing.

15(x). It is thus worthy of note that a mere conspiracy or a combination of persons for the doing of a thing does not amount to an abetment. Something more is necessary; namely, an act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing for which the conspiracy was made. The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. <u>Where, however, the agreement is to do an</u>

[29] AIR 1993 SC 1637
[30] AIR 1962 SC 876

illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary.

15(y). In Kehar Singh supra, it was also held on the distinction between Section 120B and Section 107((2)IPC that:

> 51. A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.
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> In R. v. Griffith[31], it has been observed of the Court of Appeal in England has laid down thus:
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> "9. The practice of adding what may be called a rolled up conspiracy charge to a number of counts of substantive offences has become common. We express the very strong hope that this practice will now cease and that the courts will never again have to struggle with this type of case, where it becomes almost impossible to explain to a jury that evidence inadmissible against the accused on the substantive count may be admissible against him on the conspiracy count once he is shown to be a conspirator.
>
> It is worthy of note that a mere conspiracy or a combination of persons for the doing of a thing does not amount to an abetment. Something more is necessary; namely, an act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing for which the conspiracy was made.

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[31] 1965 (2) AER 448

15(z). As held in Pramathanath supra, once the gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means and where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary. Further, mere knowledge, or even discussion, of the plan is not, per se enough. Thus, Ex facie, there is no material to show that a conspiracy had been hatched by the Petitioner-A13.

16. In State of M.P vs Sheetla Sahai & Ors.[32], it was held from paras 44 to 59 while dismissing the appeal of the prosecution agency holding nothing to incriminate the official respondents 1-7 as held by the High Court under Section 120B IPC and Section 13 PC Act as follows:

> "44. The intra-departmental and inter-departmental correspondences and note sheets to which we have adverted to hereto before clearly go to show that the authorities incharge of construction of the dam were aware of the difficulties which were being faced by the contractors. Their apprehension was that in the event the contractors were not permitted to mine stones from Katghora Quarry and other Quarries, they may leave the job as a result whereof the entire project might come to a stand-still.
>
> 45. The representations made by the contractors for the aforementioned purpose, even if to be ignored, the intra-departmental and inter-departmental correspondences cannot be. They clearly point out a clear picture as regards necessity for explaining the possibilities of extracting stones from some other mines for being used in the construction of dam.
>
> 46. We would proceed on the basis that two divergent opinions on the construction of the contract in the light of the stand taken by the World Bank as also the earlier decision taken by the State was possible. That, however, would not mean that a fresh decision could not have been taken keeping in view the exigencies of the situation. A decision to that effect was not

[32] (2009) 8 SCC 617

taken only by one officer or one authority. Each one of the authorities was ad idem in their view in the decision making process. Even the Financial Adviser who was an independent person and who had nothing to do with the implementation of the project made recommendations in favour of the contractors stating that if not in law but in equity they were entitled to the additional amount.

47. From the materials available on record, it is crystal clear that the decision taken was a collective one. The decision was required to be taken in the exigency of the situation. It may be an error of judgment but then no material has been brought on record to show that they did so for causing any wrongful gain to themselves or to a third party or for causing wrongful loss to the State

48. Section 13 of the Act provides for criminal misconduct by a public servant. Such an offence of criminal misconduct by a public servant can be said to have been committed if in terms of Section 13(1)(d)(ii-iii) a public servant abuses its position and obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. Sub-section(2)of Section 13 provides that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

49. Criminal conspiracy has been defined in Section 120A of the Indian Penal Code, 1860 to mean:

"When two or more persons agree to do, or cause to be done,--(1) an illegal act, or (2) 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.

Explanation.--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Section 120 B of the Indian Penal Code provides for punishment for criminal conspiracy.

50. Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused.

51. A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.

Its ingredients are

(i) an agreement between two or more persons;

(ii) an agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in itself but is done by illegal means.

What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

52. While saying so, we are not oblivious of the fact that often conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence.

In Kehar Singh and Ors. v. State (Delhi Administration), [1988 (3) SCC 609 at 731], this Court has quoted the following passage from Russell on Crimes (12th Edn. Vol 1):

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

In State (NCT) of Delhi v. Navjot Sandhu @ Afsan Guru [(2005) 11 SCC 600], this Court stated the law, thus:

"101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."

We may also notice that in Ram Narayan Popli v. CBI [(2003) 3 SCC 641], it was held:

"...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..."

In Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra [(2008) 6 SCALE 469], this Court opined:

"23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

Ex facie, there is no material to show that a conspiracy had been hatched by the respondents.

53. Mr. Tulsi would suggest that the very fact that the respondent No. 1 being a Minister kept the file with him for a period of six months so as to see that the then Secretary Mr. M.S.Billore retires so as to enable him to obtain opinion of another officer would prima facie establish that he intended to cause pecuniary gain to the respondent Nos. 8, 9 and 10.

We have noticed hereinbefore that the Minister in his note dated 4.11.1991 did not make any recommendation. He merely lamented the manner in which the former Secretary Mr. M.S.Billore acted as prior thereto, the said authority himself for all intent and purport had accepted the recommendations of the authorities incharge of construction of the dam including the Chief Engineer. He constituted a committee. He obtained the opinion of the Financial Adviser. If upon consideration of the entire materials on record, independent opinion had been rendered and recommendations were made, it is difficult to comprehend as to how that by itself would constitute a criminal misconduct or leads to the conclusion of hatching any criminal conspiracy. Recommendations made by the Committee or the opinion rendered by an independent officer like Financial Adviser need not be acted upon. It was for the State to take a decision. Such a decision was required to be taken on the basis of the materials available.........................".

54. ------

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

56. It is also interesting to notice that the prosecution had proceeded against the officials in a pick and choose manner. We may notice the following statements made in the counter-

affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the government, viz., M.N. Nadkarni who worked as Chief Engineer till 24.03.1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19.06.1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision, viz., Shri J.R. Malhotra and Mr. R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.

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

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

58. There cannot be any doubt whatsoever that the tests for the purpose of framing of charge and the one for recording a judgment of conviction are different.

A distinction must be borne in mind that whereas at the time of framing of the charge, the court may take into consideration the fact as to whether the accused might have committed the offence or not; at the time of recording a judgment of conviction, the prosecution is required to prove beyond reasonable doubt that the accused has committed the offence.

<u>59. In this case, the probative value of the materials on record has not been gone into. The materials brought on</u>

record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr. Tulsi that where the entire materials collected during investigation have been placed before the court as part of the chargesheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused. The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, Sub-section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless.

The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial. {See State of Maharashtra and Others v. Som Nath Thapa and Others [(1996) 4 SCC 659]}."

Therefore, the distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this. For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for. But in the offence of criminal conspiracy the very agreement or plot is an act in itself and is the gist of the offence. - Willes, J. observed in Mulcahy v. The Queen (1).

17. From the above, when it is not a case of the Petitioner-A13 was privy to any conspiracy with M/s. Emaar properties, Public Joint Stock Company (PJSC), Dubai, from the time of their entering the MOU, much less even party to agreement between M/s. Emaar and its subsidiaries and M/s. Stylish Homes and not even privy with Ranga Rao-Director of M/s. Stylish Homes and nothing even of any material with substance to say any privy between A6-Rajendraprasad and the petitioner-A13, leave apart as discussed supra even any thing to infer between father and son of any knowledge of the son about his father was privy with others in any offence and not prevented, that no way establish any criminal conspiracy to mulct the petitioner as A13 with others of them, even taken for arguments sake of his version of the amount remitted by Parthasarthy was a loan and the amount remitted by Suresh was investment in any business are untrue, that by itself but for one of several circumstances to infer no way suffice to charge him with accusation of criminal conspiracy.

18. Thus there is nothing to implicate him with criminal conspiracy, for there is nothing to show any circumstances give rise to a conclusive or irresistible inference of an agreement between him and one or more other persons to commit an offence; leave apart a few bits here and a few bits there on which the prosecution relies if any cannot be held to be adequate for connecting him with the commission of the crime of criminal conspiracy as held by the Apex Court in the decisions supra, for nothing that can be shown even of all means adopted and illegal acts done in furtherance of the object of conspiracy hatched from any circumstances relating to the period prior in time than only one circumstance in seeking to infer conspiracy from at a later point of time a part of the amounts of two

so called buyers out of nearly hundred buyers amounts remitted to his account was not immediately returned to the two, but allowed to remain in his account as an alleged offence, which is when no way suffice to any prudence to say same was in furtherance of the alleged conspiracy to draw any inference of the alleged conspiracy. Undisputedly from the settled legal position, there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. For that the acts and conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. what is essential of the Agreement as a primary fact is proved from the prosecution material on record, for mere knowledge, or even discussion, of the plan is not, per se enough. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

19. The respondent-CBI even alleged in the charge sheet that the petitioner-A13 is also a party to the so called criminal conspiracy, but on

the evaluation of the entire subject matter, there is nothing for what is discussed supra. The learned Special Judge also did not go through and evaluate the prosecution material covered by the final report in taking cognizance for respective offences against him as A13.

20. In Ashok Chaturvedi and Others Vs. Shitul H.Chanchani and Another,[33] where the Apex Court held that merely because the accused has a right to plead before the trail court at the time of framing of charges that there is no material for framing of charges he is not debarred from invoking the inherent jurisdiction of the Court at the earliest point of time when the Magistrate has taken cognizance. Even the expression of the Apex Court in Umesh Kumar v State of A.P[34]. placed reliance by the learned special Public Prosecutor for CBI, what was held is that the High Court in exercise of the inherent powers under Section 482 CrPC can only evaluate the material on record to the prima facie satisfaction of existence of ground for framing charges and proceeding with trial or not. Same was also held at para 10 of Kishan Lal Pardhan supra and at para 55 of Mariya Anton Vijay supra, that Court in a quash proceeding under Section 482 CrPC, is required to evaluate the material on record, with a view to find out from its face value whether disclosing existence of ingredients of the offence alleged or not.

21. <u>The Inherent powers of the High Court under Section 482 CrPC are undisputedly available to evaluate the material and documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceeding against the accused or not</u>. <u>The inherent power in the very constitution of the High Court exists in it under Section 482 CrPC to do the right and</u>

[33] (1987) 7 SCC 698
[34] 2013(10)SCC 591

undo a wrong in the course of administration of justice on the principle- *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*-(when the law gives a person anything it gives him that without which it cannot exist).

22. From the decision placed reliance by both sides of the Apex Court in *Amit Kapoor V. Ramesh Chander*[35] at para No.27 it was observed that in exercising the powers under Section 482 CrPC the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not is to decide and for that the Court should apply the test and if shows the basic ingredients of the offence not satisfied the Court may interfere. It is also observed that the process of the Court cannot be permitted to be used as an oblique or ultimate/ulterior purpose. The Court where finds it would amount to abuse of process or interest of Justice favors otherwise it may quash the proceedings. The power is to be exercised *ex debito justitiae* that is to do real and substantial justice (as held in *Munniswamy supra*) for administration of which alone the Courts exercise.

23. The Apex Court in Amit Kapoor (supra) referring to State of Bihar Vs. Ramesh Singh[36], held that the presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully

[35] (2012)9 SCC 460
[36] (1977) 4 SCC 39

accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. --."

24. In Varala Bharath Kumar Vs. State of Telangana[37], it is held at Para 7 that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.------ Of course, no hard and fast rule can be laid in regard to cases in which Court will exercise its extraordinary jurisdiction of quashing proceedings at any stage.

25. In Dinesh Dutt Joshi Vs. State of Rajasthan and Another[38], the Apex Court held that Section 482 does not confer any power but only declares that the High Court possesses inherent powers for the purposes specified in the Section. The powers of the High Court under this Section 482 CrPC are very wide powers to do justice and to ensure that the process of the Court is not permitted to be abused.

26. In Janata Dal Vs. H.S. Chowdhary & Others[39], the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercise in appropriate cases *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great

[37] 2017 SAR (Cri) 975 = 2017 (9) SCC 413
[38] (2001) 8 SCC 570
[39] (1992) 4 SCC 305

caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extra ordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.

27. The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the Section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favors, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist.

28. *The principle thus laid down is before issuing a process and taking cognizance the Court has to consider from the existing material whether case falls within the exception and only if not, to say prima facie accusation on a complaint or final report to take cognizance for any criminal if makes out. It is something different of prima facie consideration at pre-cognizance stage to the post-cognizance defence available to the accused under any of the exceptions in detail to make out either from the prosecution material or from any material placed by accused to show he is not liable to be charged to face the ordeal of trial.*

29. When such is the case, so far as the quash Court under Section 482 CrPC from the accused also entitled to ask by placing any material in defence to consider from facts and circumstances, to subserve the ends of Justice, irrespective of the complaint allegations make out case for taking cognizance, where it deserves for quashing instead of continuing a lame prosecution with no purpose and by no need of inviting the accused to face the ordeal of trial.

30. Apart from several expressions on the above scope referred supra, the other expression of the Apex Court in the case of *B.S.Joshi vs. State of Haryana*[40] speaks that it would not be expedient to allow a lame prosecution to continue and the ends of justice are higher than the ends of mere law.

31. It was also way back laid down by the Apex Court in *Narshi Thakershi Vs. Pradyuman Singhji Arjun Singhji*[41] that 'it cannot be denied that justice is a virtue which transcends all barriers and the

[40] 2003 CBC 393(SC)
[41] (1971)3 SCC 844

rules of procedure or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice'.

32. In *Jawarlal Darda V. Manoharrao Ganpatrao Kapsikar*[42] in a defamation case against accurate news item published of the statement of Minister disclosing misappropriation of Government funds and the Complainant is mentioned as one of the persons involved therein, it was held by the Apex Court that: If the accused bona fide believing the version of the Minister to be true in published the report in good faith it cannot be said that they intended to harm the reputation of the complainant.

33. In *Padal Venkata Rama Reddy @ Ramu V. Kovvuri Satyanarayana Reddy*[43] referring to several expressions including *Indian Oil Corporation, Zandu Pharma, Ganesh Narayan, Bhajanlal, Madhavarao Jivajirao, L.Muniswamy, R.P.Kapoor etc.,* it was observed that exercise of inherent powers to quash the proceedings is called for in a case of which complaint does not disclose any offence or is frivolous, vexatious or oppressive and the like for exhaustive list of grounds cannot be laid down but for to decide each case on own facts.

34. In Inder Mohan Goswami V. State of Uttaranchal[44](3JB) it was observed that the inherent powers of the High Court under Section 482 CrPC are though wide that has to be exercised sparingly with great caution and to exercise *ex-debito justitiae* that is to do real and substantial justice for the administration of which the Courts exist, and for not to allow to use the prosecution is an instrument of harassment or private vendetta or with a motive to pressurize the accused to terms and

[42] (1998)4 SCC 112
[43] (2011)12 SCC 437
[44] (2007) 12 SCC 1

the powers too could not be exercised to stifle a legitimate prosecution and Court should refrain from giving prima facie decision in a case where entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issue involved are of such a magnitude that they cannot be seen in the true perspective without sufficient material, though no hard and fast rule can be laid down for exercise of the extraordinary jurisdiction. It is observed that Court should balance with personal liberty, the societical interest and a warrant for arrest of accused should not be issued without proper scrutiny of facts from complaint or F.I.R in application of judicial mind and where dispute is a pure civil in nature or from reading of F.I.R the ingredients of offence are absent, the proceedings can be quashed.

35. As held by the Apex Court in Preeti Gupta Vs. State of Jharkhand[45] inherent powers are meant to do substantial justice and to prevent abuse of process and in saying the proceedings in complaint taken at their face value do not constitute offence, no way be allowed to continue as allowing it tantamounts to abuse of process or otherwise not meant to secure ends of justice and for that even referring to the State of Karnataka Vs. L.Muniswamy[46] and also referring to the three judge expression of Apex Court in Madhu Limaye Vs. State of Maharashtra[47] that the impugned order would brings out a situation which is an abuse of process of the Court, or for the purpose of securing ends of justice; interference by the High Court is absolutely necessary, then nothing against maintainability of revision will limit or affect the exercise of the inherent power of High Court.

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[45] AIR 2010 SC 3363
[46] (1977) 2 SCC 699
[47] (1977) 4 SCC 551

36. It is also referred to the expression of Apex Court in Zandu Pharmaceutical Works Ltd Vs. Mohd. Sharaful Haque[48] and Inder Mohan Goswami Vs. State of Uttaranchal[49] in saying the authority of Courts enable for the advancement of justice. If any abuse of process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

37. In Madhu Limaye (supra)- it was pointed out that Section 482 CrPC had a different parameter to exercise the inherent power to pass necessary orders and is a provision independent of Section 397(2) CrPC to exercise revision powers; a plain reading of Section 482 CrPC follow that, nothing in the Code (which include Section 397(2) CrPC also), shall be deemed to limit or affect the inherent powers of the High Court but for to say the order brings about a situation which is an abuse of process of the Court or for the purpose of securing the ends of justice or interference by the High Court is absolutely necessary for exercise of the inherent power sparingly to say in such a situation.

38. It also observed in Madhu Limaye (supra) that the High Court alone can pass such orders *ex debito justitiae*- to do real and substantial justice in the lis. It was also observed referring to Section 151 C.P.C. and the earlier expressions of the Apex Court in Padamsen Vs. State of Uttar Pradesh[50] & Manoharlal Chopra Vs. Rai Bahadur[51] that it is well recognized that the High Court is vested with inherent power, however, said inherent power is not to be exercised contrary to any express

[48] (2005) 1 SCC 122
[49] (2007) 12 SCC 1
[50] AIR 1961 SC 218
[51] AIR 1962 SC 527

provision that being the intention of legislature in enacting the civil & criminal procedure codes vis-à-vis the law laid down by the Apex Court.

39. It was also held by the Apex Court in Popular Muthaiah Vs State rep. by Inspector of Police[52] that the inherent power is not confined to procedural or adjectival law but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts *ex debito justitiae*-to mean to do real and substantial justice in the lis for which alone the power exists inherently.

40. The Apex Court in Popular Muthaiah (supra) referred the earlier expressions in 1) Nawabganj Sugar Mills Vs. Union of India[53] holding that, though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is coextensive with the necessity and in 2) South Eastern Coal Fields Ltd. Vs State of M.P.[54] holding that act of court does not confine to act of primary court, but even appellate or revisional or other superior court as it is an act of court as a whole.

41. In Nawabganj Sugar Mills (supra) it was held that, *though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is coextensive with the necessity*.

42. In South Eastern Coal Fields (supra) it was held that the Maxim- *actus curiae neminem gravabit*- is not confined to erroneous

[52] 2006(3) SCC-245 at paras-30&31 page-260
[53] 1976-1-SCR-803
[54] 2003(8) SCC-648 at paras-27&28 page-664

act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and law.

43. In Merla Veera Venkata Satyanarayana Chowdary Vs. State of Andhra Pradesh[55] a Division Bench of this Court held that remedies are the life of rights, it is incumbent upon the Court to apply rule of law which could be derived from general principles in furtherance of justice.

44. In Jaipur Mineral Development Syndicate Vs Commissioner of Income Tax, New Delhi[56] it was held that every Court is constituted for the purpose of rendering justice according to law and must be deemed to possess necessary and inherent power that of elasticity in its very constitution in exercise of or, as may be necessary, to do a right or undo a wrong in the course of administration of justice.

45. In Popular Muthaiah (supra) it was also held that the inherent power is not confined to procedural or adjectival law but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts *ex debito justitiae*- to mean to do real and substantial justice in the lis for which alone the power exists inherently.

46. It is needless to say ends of Justice are higher than the ends of mere law, though justice has got to be administered according to laws made by the legislature. Without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be

55 AIR 1980 AP 154
56 AIR 1977 SC 1348

impossible to appreciate the width and contours of that salient jurisdiction.

47. In *Chandran Ratnaswami V. K.C.Palanisamy*[57] it was held on abuse of process and duty of the Court to quash the proceedings in such case that:

> "29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of Connelly vs. Director of Public Prosecutions, (1964) 2 All ER 401 (HL) observed: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process". "The power (which is inherent in a court's jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.
> 30. In Hui Chi-Ming vs. The Queen [(1992) 1 AC 34 (PC)], the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.
> 31. In the leading case of Bennett vs. Horseferry Road Magistrates' Court, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:
> (i) where it would be impossible to give the accused a fair trial; or

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[57] (2013)6 SCC 740

(ii) where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

32. In R. vs. Derby Crown Court ex p Brooks, (1985) 80 Cr.App.R. 164, Lord Chief Justice Ormrod stated: "It may be an abuse of process if either (a) the prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation of conduct of his defence by delay on the part of the prosecution which is unjustifiable."

33. Lord Justice Neill in R. vs. Beckford, [1996] 1 Cr.App.R. 94: [1995] R.T.R. 251 observed that: "The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities: (a) cases where the court concludes that the defendant cannot receive a fair trial; (b) cases where the court concludes that it would be unfair for the defendant to be tried." What is unfair and wrong will be for the court to determine on individual facts of each case.

34. The Apex Court three Judge Bench in State of Karnataka Vs. L. Muniswamy and Others[58] observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case (at p.703, para 7 of SCC):

"7. ....In the exercise of this wholesome power, <u>the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of</u>

[58] (1977) 2 SCC 699

the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction." This case has been followed in a large number of subsequent cases of this Court and other courts.

35. The Apex Court in State of Harayana and Others Vs. Bhajan Lal and Others[59], in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave (SCC pp. 378-79, at para 102) seven categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Apex Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised.

36. This Court in Zandu Pharmaceutical Works Ltd. and Others vs. Mohd. Sharaful Haque and Another, (2005) 1 SCC 122 observed thus: (SCC p. 128, para 8)

"8. ...It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of

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[59] 1992 Supp.(1) SCC 335

justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

37. In Indian Oil Corpn. v. NEPC India Ltd. and Others, (2006) 6 SCC 736 this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13)

"13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

38. In the case of Inder Mohan Goswami and Another vs. State of Uttaranchal and Others, (2007) 12 SCC 1, this Court after considering series of decisions observed:

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

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50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all

speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued."

In G. Sagar Suri and Another vs. State of U.P. and Others, (2000) 2 SCC 636, this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

In the case of S.N. Sharma vs. Bipen Kumar Tiwari and Others, AIR 1970 SC 786 (at p.789), this Court has stated thus:

"7. .... It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, <u>in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer malafide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers</u>. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code."

In the case of State of West Bengal and Others vs. Swapan Kumar Guha and Others, AIR 1982 SC 949 while examining the power of a police officer in the field of investigation of a cognizable offence, Chandrachud, C.J. has affirmed the view expressed by

Mathew, J. and observed as follows: (at p.958 of AIR) "22. ... There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. ..."

In the case of Uma Shankar Gopalika vs. State of Bihar and Another, (2005) 10 SCC 336, this Court has held as under:

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High

> Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

48. In *CBI v. Ravi Shankar Srivastava*[60], the Apex Court held that the High Court under Section 482 of the Code exercise its jurisdiction to quash the proceedings if it would be an abuse of the process of the court to allow any such action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, have inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the

[60] (2006) 7 SCC 188

court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

49. The Apex Court in Punjab National Bank & Others Vs. Surendra Prasad Sinha[61] held that it is salutary to note that judicial process should not be an instrument of oppression or needless harassment. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice.

50. In Madhavrao Jiwajirao Scindia & Others Vs. Sambhajirao Chandrojirao Angre & Others[62], the Apex Court (3JB) has stated that - the legal position is well settled that where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. The High Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

51. It was also held in Madhavrao Jiwajirao Scindia (supra) that, breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. Where there was no *mensrea* for the offences alleged of criminal conspiracy, breach of trust and forgery, at the most it amounted to a civil wrong.

52. The Apex Court in Union of India Vs. Prafulla Kumar Samal and Another[63] it is observed that the test to determine prima facie case

[61] [1993] Supp. (1) SCC 499
[62] [1988] 1 SCC 692
[63] AIR 1979 SC 366(1)

could naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, the Judge will be fully within his right to discharge the accused. Even where the material placed discloses a grave suspicion, which has not been properly explained the Court will be justified in framing a charge. Thus, even where there is grave suspicion if explained the same by accused the court cannot frame charge, but for discharge leave about a mere suspicion cannot be a ground to frame charge, but for discharge.

53. In L. Krishna Reddy Vs. State[64], the Apex Court held that where evidence justifying prosecution is not available, the accused has to be discharged otherwise the prosecution would be an exercise of futility.

54. The Apex Court in Common Cause Vs. Union of India[65] while interpreting the doctrine of Public Trust, explained the aspects of 'entrustment' 'domain' of property 'Trust' 'Trustee' etc., which are the essential ingredients in the alleged offences punishable u/sections 409 & 420 of IPC and Section 13 of the PC Act.

55. The Apex Court in Rishipal v. State of Uttar Pradesh[66], held that mere dereliction of duty does not attract any penal consequences and continuation of the criminal proceedings is a pure abuse of process of law and deserved to be quashed the proceedings.

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[64] (2014) 14 SCC 401
[65] (1999) 6 SCC 667
[66] 2014 (7) SCC 215

56. In State of Bihar and Others Vs. Rajmangal Ram[67] the Apex Court held that power in High Court under Section 482 CrPC to interdict the criminal proceedings against respondent public servant on ground of defects in sanction order is not available, unless the High Court reaches the conclusion of irregularity in sanction.

57. The Apex Court in Binod Kumar Vs. State of Bihar[68] held on the scope of Section 482 CrPC in quashing the proceedings as abuse of process for its continuation for the offences under Sections 405, 420 & 120-B IPC no way attracts, by saying parties are at liberty to workout the civil remedies and particularly at Para 18 held that looking from the allegations of the complaint no offence attracts for nothing to show the appellants-Assistant Professors of the College have any dishonest intention in retaining the money either to have wrongful gain to themselves or other persons or to cause wrongful loss to the complainant and mere bald allegations are not sufficient to rope with criminal liability in the absence of showing dishonest intention and mens rea in their such act or omission.

58. In Connelly v. DPP[69], Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

59. Lord Salmon in DPP v. Humphrys[70], stressed the importance of the inherent power where he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the judge has the power to intervene as the

[67] 2014 (11) SCC 388
[68] 2014 (10) SCC 663
[69] 1964 AC 1254
[70] 1977 AC 1

court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

60. Accordingly and in the result the Criminal Petition No.3935 of 2016 is allowed and the proceedings of the calendar case in C.C.No.6 of 2012 is quashed and the petitioner A13 is acquitted and his bail bonds stand cancelled, however it will not prevent the prosecution agency if during trial any evidence come across against the petitioner to seek indulgence of trial Court to invoke Section 319 CrPC.

Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.01.2018
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