

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE Nos.551, 552 AND 555 OF 2011

COMMON ORDER:

In all these revision cases, the petitioner is one and the same and the dispute is identical, but the complainants are different Banks. Therefore, I deem it appropriate to decide all the three revision cases by way of a common order.

2. The petitioner - G. Satyanand Rao is accused No.5 in C.C.No.4 of 2007, accused No.9 in C.C.No.19 of 2007 and accused No.3 in C.C.No.26 of 2007 pending on the file of learned Special Judge for C.B.I. Cases, Hyderabad. The respondent in all these revision cases is the State (C.B.I., Hyderabad) represented by its Special Public Prosecutor, but the complainants are different Banks.

3. The above three Calendar Cases came to be registered against the petitioner on the charge sheets filed by the respondent against the petitioner for various offences punishable under Sections 120B, 420 and 471 I.P.C. and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (C.C.No.4 of 2007), Sections 120B, 419, 420, 467 and 468 I.P.C. and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act (C.C.No.19 of 2007), Sections 120B, 419, 420, 468 and 471 I.P.C. and Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act (C.C.No.26 of 2007). All the three Calendar Cases are pending on the file of Special Judge for C.B.I. Cases, Hyderabad.

4. The petitioner is a panel valuer of the movable and immovable properties on behalf of the complainant Banks. He allegedly valued the properties mortgaged with the complainant Banks at inflated rate, thereby making the Banks to advance loans at inflated rate. When the loans were not paid by the borrowers, it came to the notice of the complainant Banks that the petitioner submitted reports valuing the properties at inflated rate in a most negligent manner. On account of lending amounts to the borrowers, solely based on valuation reports submitted by this petitioner at inflated rate, the complainant Banks sustained huge loss. Hence, they lodged complaints with the C.B.I., who, in turn, registered crimes against this petitioner and other employees of the complainant Banks. After completion of investigation, the C.B.I. filed charge sheets before the Special Judge for C.B.I. Cases, Hyderabad, for various offences referred to above against several accused, including this petitioner.

5. The petitioner in all the cases is one G. Satyanand Rao, who is a panel valuer of Syndicate Bank, Borabanda Branch and Bank of India, Saroor Nagar Branch. The allegations in all the three Calendar Cases are almost identical and the petitioner, being one of the accused in all the three cases, filed Crl.M.P.No.3616 of 2008 in C.C.No.4 of 2007, Crl.M.P.No.2593 of 2010 in C.C.No.19 of 2007 and Crl.M.P.No.2033 of 2009 in C.C.No.26 of 2007, under Section 239

Cr.P.C., to discharge him for the various offences referred to above in all the three Calendar Cases. The allegations made in the petitions filed under Section 239 Cr.P.C. are almost identical, except with regard to reference of the documents and the number of listed witnesses. In all these petitions, the main contention of the petitioner is that none of the witnesses examined by the Investigating Agency during investigation, who are the listed witnesses in the memorandum of evidence annexed to the charge sheet, did spoke anything against this petitioner and none of the documents collected during investigation and filed along with the charge sheets disclose commission of any offence by this petitioner for the offences referred to above. The statements recorded by the Investigating Agency under Section 161 (3) Cr.P.C. do not disclose any statement pointing out the complicity of this petitioner for the various offences referred to above.

6. In C.C.No.19 of 2007, the basic allegation against this petitioner to constitute the offences is that this petitioner failed to ascertain the genuineness of permit No.G/2155/98, dated 07.12.1998, which is mentioned in documents Nos.171, 200, 228, 256, 285, 314, 362, 388 and 415, while submitting the valuation reports. This petitioner, in Crl.M.P.No.2593 of 2010, filed for discharge, contended that there is no evidence even to suggest that this petitioner conspired with the employees of the complainant Bank, who are arraigned as other accused in the charge sheet, and even if

the evidence available on record is accepted as true and correct, there is no *prima facie* material to proceed against this petitioner by framing charges.

7. Whereas, in Crl.M.P.No.3616 of 2008 in C.C.No.4 of 2007, the contentions are almost identical, except failure to refer the permit numbers with reference to the documents. Similarly, in Crl.M.P.No.2033 of 2009 in C.C.No.26 of 2007, the grounds urged are similar to the grounds urged in Crl.M.P.No.3616 of 2008.

8. In all the three petitions, learned counsel for the petitioner referred to the judgment of the Honourable Apex Court in **Century Spinning and Manufacturing Company Limited and others v. State of Maharashtra**¹, wherein the Honourable Apex Court held that “the order framing the charges does substantially affect the person’s liberty and it is not possible to countenance the view that the court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution.” It is also stated that the same principle has also been reiterated by the Honourable Apex Court in **Dilawar Balu Kurane v. State of**

¹ 1972 SCC (Crl.) 495

Maharashtra². Thus, on the strength of the principles laid down in the above judgments and the grounds urged therein, the petitioner requested the Special Judge for C.B.I. Cases to discharge him for various offences referred to above by exercising the power under Section 239 Cr.P.C.

9. The respondent C.B.I. filed counters in Crl.M.P.Nos.3616 of 2008 and 2593 of 2010 raising identical grounds, while denying the material allegations made in the petitions. In the counter filed in Crl.M.P.No.2593 of 2010, it was *inter alia* contended that as per the general guidelines laid down by the Bank of India, the property has to be visited by the approved valuer himself physically for preparation of valuation report. While valuing the property, the valuer has to undertake physical measurement of the property. If any deviations/additions are noticed vis-à-vis sanctioned plan, the same has to be clearly mentioned in the report together with the cost/percentage of such deviations/additions. The valuation of the property has to be made taking into consideration the actual market value, Government value in the concerned Sub-Registrar Office, location of the property and other related matters. The assigned work has to be done by the valuer honestly and as per the guidelines of the Bank and reasonable care has to be taken while assessing the value of the property. The valuer should not inflate the value of the properties. Further, he is responsible, in case, at a later date it is

² 2002 SCC (Crl.) 310

found/observed that the valuation report is incorrect/the valuation of the property is inflated. The valuer shall be liable for the action to be taken by the Bank in any manner including the recovery of the loss suffered by the Bank, if any. Therefore, submission of valuation report in contravention of the guidelines issued by the Bank without physical inspection, without taking measurements and valuing the property at inflated rate or valuing the property, which is not in existence on ground, is a matter of serious concern. The cumulative effect of the circumstances point out that this petitioner colluded with the borrowers and the Bank officials and submitted reports, to enable the Banks to advance loans on the basis of valuation reports submitted by him and therefore, the petitioner cannot be discharged at this stage.

10. It is also contended that the petitioner submitted valuation reports for the borrowers by names, Sri Shiva Kumar - accused No.16 for flat No.105 cited as D-314; Sri Lawarance - accused No.19 for flat No.405 cited as D-362; Sri B. Krupa Rao - accused No.20 for flat No.406 cited as D-388; Sri K. Krishna - accused No.21 for flat No.106 cited as D-171; Sri K. Srinivas - accused No.22 flat No.102 cited as D-200; Sri M. Chander - accused No.23 for flat No.201 cited as D-228; Sri D. Ravinder Kumar - accused No.24 for flat No.101 cited as D-256; and Sri J. Narsimha - accused No.25 for flat No.104 cited as D-285. In the valuation reports submitted to the Bank of India, he has mentioned that the flats in K.R. Residency, Plot Nos.3,

4 and 5, Survey Nos.84 and 85, Neredmet, Malkajgiri Mandal and Municipality, Ranga Reddy District, of Sri N.S. Sanjeeva Rao and Sri P.Y. Kondal Rao are to be purchased by the accused borrowers and that on the advice of the Manager, Bank of India, Saroornagar Branch, Hyderabad, he along with the owners and representative of the borrowers, visited the property in the above premises and that the builder has obtained permission for ground and four upper floors from the Commissioner, Malkajgiri Municipality, vide permit No.G/2155/98, dated 07.12.1998, and that the flats are semi finished and hence average rate. But, the investigation revealed that the petitioner has not physically verified the properties and failed to point out the deviations between the approved plan and the one existing on the ground. During the course of investigation, the evidence collected by the Investigating Agency, including the submissions of LW.20 - G. Vallabh Reddy with regard to the original ownership of the property, LW.25 - Smt. K. Rajashree with regard to ownership of flat No.102 purchased vide Sale Deed No.309/97, dated 31.12.1996, and residing since 1996 cited as D-491 and LW.26 - Smt. Jayalakshmi Louis with regard to ownership of flat No.101 purchased vide Sale Deed No.3248/00, dated 23.06.2000, cited as D-486, clearly establish that the petitioner has not physically verified the properties and some of the flats were already sold out and the actual owners were residing in those properties. Thus, he gave a false report so as to enable the borrowers to obtain loan from

the Bank based on such false report. Similarly, it was confirmed by the municipal authorities that they have not issued any permit vide permit No.G/2155/98, dated 07.12.1998. As per their record, the said permit was issued in the name of Sri Jayaprakash for construction of stilt + ground + first and second floors, which was valid for two years i.e., from 1994 to 1996. But, the petitioner in his valuation report mentioned about the afore-said permit. Thus, the petitioner by exhibiting sheer negligence and in collusion with the borrowers and the Bank employees issued such valuation reports and thereby, caused huge loss to the complainant Bank.

11. Similarly, in Crl.M.P.No.3616 of 2008 in C.C.No.4 of 2007, the respondent contended that the petitioner, who was an approved valuer engaged by Syndicate Bank during the years 2003 and 2004, conspired with other accused and submitted false valuation reports showing inflated rates and facilitated the borrowers to draw more quantum of loan amounts from the Bank and thereby, cheated the Syndicate Bank, Borabanda Branch, and committed offences punishable under Sections 120B and 420 I.P.C. and there is sufficient material to proceed against the petitioner. It is also contended that the petitioner submitted false valuation reports, which were cited as document Nos.58, 79, 92, 107, 127 and 141 and filed along with the charge sheet. It is also contended that during investigation, inspection of the properties, for which valuation reports were given by this petitioner, was done and a report was filed along with the

charge sheet as document No.202. It is also contended that one Kamalanabha Rao, Branch Manager, Syndicate Bank, being witness to the proceedings and Y.S.R. Subramaniam on behalf of M/s. Immaneni Associates, Panel Valuer, conducted physical survey of the said properties and speak about document No.202 is suffice to conclude that the petitioner without visiting the property physically, submitted reports.

12. The respondents in Crl.M.P.No.2033 of 2009 did not file any counter, but vehemently opposed the petition contending that the petitioner has become part and parcel of conspiracy by issuing fake valuation reports.

13. But, the consistent plea of the petitioner in all the petitions is that he submitted the reports based on the details available and none of the witnesses, during investigation by the Investigating Agency, did state anything against him attributing any *mala fides*, which constitute the offences as referred to above. In the absence of any allegation in the statements of the witnesses recorded by the police during investigation, the Court cannot frame any charge against the petitioner and proceed against him for various offences and when no *prima facie* material is available against this petitioner to frame charge, the petitioner is entitled to discharge under Section 239 Cr.P.C.

14. The trial Court, upon hearing the arguments of the counsel for both the petitioner and the respondent represented by the Public Prosecutor dismissed the petitions holding that there is material to proceed against this petitioner.

15. Feeling aggrieved by the orders, dated 24.01.2011, passed in Crl.M.P.Nos.3616 of 2008, 2033 of 2009 and 2593 of 2010, these three revision cases, under Sections 397 and 401 Cr.P.C., are filed raising a specific ground that none of the allegations made against this petitioner constitute any offence punishable under Sections 120B, 419, 420, 467, 468 and 471 I.P.C. and Section 13(2) read with 13(1) (d) of Prevention of Corruption Act, but the trial Court, even without insisting any material to proceed against this petitioner, concluded *prima facie* that the material available is sufficient to proceed against this petitioner for framing charges and committed an error in dismissing the petitions.

16. It is contended by the petitioner that the orders under challenge are contrary to the accepted principles of law and when there is no material to proceed against this petitioner *prima facie*, the Court is bound to discharge the petitioner for various offences and apart from that, the Court has to go into the statements recorded by the Investigating Agency during investigation, which is the basis or foundation for filing charge sheet. It is also contended that in the absence of any allegations in the statements recorded by the

Investigating Agency during investigation, the petitioner is liable to be discharged, but the trial Court dismissed the petitions contrary to the well settled legal principles and committed an error. Finally, the petitioner, in all the revisions, requested to set aside the orders passed by the Special Judge for C.B.I. Cases, in Crl.MP.Nos.3616 of 2008, 2033 of 2009 and 2593 of 2010 and discharge the petitioner by exercising the power under Section 239 Cr.P.C.

17. Learned counsel for the petitioner during hearing contended that the panel valuer of the Bank cannot be made liable for any of the offences, since the properties were visited by the Bank Manager along with the valuer and on identification of the properties by the Bank Manager, the petitioner submitted valuation reports to the Banks referred to above and that this petitioner did not commit any offence referred to above, and that even if there is any mistake in the valuation reports, the same cannot be a ground to proceed against this petitioner for the offences referred to above. The learned counsel for the petitioner has placed reliance on three judgments in support of his contentions viz., **L.N. Rajagopalan v. State**³, unreported judgment of this Court in Crl.P.No.7900 of 2009 between **Anoop Kumar v. State of Andhra Pradesh** and the judgment of the Honourable Apex Court in **Central Bureau of Investigation, Hyderabad v. K. Narayana Rao**⁴.

³ 2009 Law Suit (Mad) 1338

⁴ (2012) 9 SCC 512

18. In **Anoop Kumar's** case (referred supra) and **K. Narayana Rao's** case (supra 4), the opinion given by an Advocate has come up for consideration and the Courts held that the criminal Court cannot proceed against an Advocate, who is a legal adviser, for any of the offences, as it depends upon the skills of an individual Advocate. Therefore, proceedings against a panel Advocate, who gave legal opinion, were quashed. In **L.N. Raja Gopalan's** case (supra 3), the valuer of the Bank was subjected to prosecution for various offences under Sections 120B read with 420, 419, 467, 478 and 147 I.P.C. and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act by the trial Court, but the High Court of Madras held that the petitioner therein is not liable to be prosecuted for various offences, since he is only an approved valuer.

19. Whereas the Special Public Prosecutor for C.B.I., Sri K. Surender, contended that the offence punishable under Section 120B I.P.C. can be inferred from the conduct prior to and subsequent to the commission of the offence and it need not be proved by adducing direct evidence. Similarly, the material collected during investigation directly point out the complicity of this petitioner for various offences and at this stage, the petitioner cannot be discharged when the offence punishable under Section 120B I.P.C. can be established and proved based on the conduct of the parties and that too, when the jurisdiction of this Court under

Sections 397 and 401 Cr.P.C. is limited, since this Court can exercise jurisdiction under Sections 397 and 401 Cr.P.C. only when the order passed by the Court below is not free from impropriety, illegality or irregularity and not otherwise. It is also contended that when the trial Court concluded that there are grounds to proceed against this petitioner *prima facie*, this Court cannot substitute such opinion and allow such petition discharging this petitioner by exercising the power under Section 239 Cr.P.C. and requested to dismiss all the three revision cases.

20. Considering rival contentions, material on record, including the impugned orders, the point that arises for consideration in all the three revision cases is:

"Whether prima facie material is available to proceed against this petitioner for the offences punishable under Sections 120B, 419, 420, 467, 468 and 471 I.P.C. and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act? If not, whether the orders passed by the Special Judge for C.B.I. Cases be reversed or set aside discharging this petitioner for the aforesaid offences."

POINT:

21. The present revisions are filed under Sections 397 and 401 Cr.P.C. Jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the

finding recorded by the Court is without any evidence or material, though Section 401 Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or lack of proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 Cr.P.C. is discretionary power and has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case? The discretion conferred on the High Court by Section 401 Cr.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

22. According to Section 239 Cr.P.C., if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 Cr.P.C. and making such examination, if any, of the accused, as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge

against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

23. The documents referred to in Section 207 Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this Section does not mean the hearing of arguments only, it includes the hearing on the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 239 Cr.P.C. is limited. Such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 Cr.P.C.

24. Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not

relevant considerations at the stage of framing of charge as held by the Honourable Apex Court in **P. Vijayan v. State of Kerala**⁵.

25. It is the contention of the petitioner that when the material on record is not sufficient and framing of charge is groundless, the Court cannot proceed, since it would amount to harassment. No doubt, summoning of an accused and framing charges in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only few witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate or Sessions Judge summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate or Sessions Judge is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate or Sessions Judge has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

⁵ AIR 2010 SC 663

26. Keeping in view, the broad guidelines for exercising power under Sections 239 and 397 read with 401 Cr.P.C., I would like to advert to the allegations made in the present Calendar Cases against this petitioner.

27. The main allegations are that the petitioner, being a panel valuer of immovable property on behalf of the complainant Banks, was asked to value the properties of the borrowers before advancing loans to them. The panel valuer has to follow the guidelines issued by the Banks for fixing value of the property and submit his report in the proforma prescribed by the guidelines issued by various Banks. The panel valuer is also expected to visit the property personally, verify the permits granted by the authorities concerned to construct the building and point out the deviations, if any, etc., and submit his valuation report in accordance with law. But, in the present cases, the petitioner did not visit the properties personally for advancing loans and submitted valuation reports in collusion with the borrowers and Bank officials. Apart from that, though the property was not in existence on ground, the petitioner fixed the value. This fact is supported by the joint inspection report of the Branch Manager of the Bank along with the other valuer. Therefore, submitting valuation report to enable the borrowers to borrow huge amounts from the Bank in collusion with the employees of the Bank, though not directly supported by any material, can be inferred

based on the conduct of the petitioner prior to and subsequent to the commission of the offence i.e., submitting a valuation report to the Bank, which made the bank to part with huge amount. Therefore, the petitioner allegedly committed various offences referred to above. In all the three cases, the common offences are under Sections 120B, 420 and 468 I.P.C. and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act.

28. Section 120B I.P.C. deals with punishment for criminal conspiracy. The definition 'criminal conspiracy' is defined under Section 120A I.P.C. and according to it, when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

29. Thus, the most important ingredient of the offence 'criminal conspiracy' is the agreement between two or more persons to do an illegal act or an act not illegal by illegal means (**Kehar Singh and others v. State (Delhi Admin.)**)⁶. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which

⁶ AIR 1988 SC 1883

case no overt act need be established (**Lennart Schussler and another v. Director of Enforcement and another**⁷).

30. The basic ingredients to constitute an offence punishable under Section 120B I.P.C. is that there must be an agreement between the parties to do an act by illegal means or to do an act, which is not illegal by illegal means. In **Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra**⁸, an identical issue came up for consideration before the Honourable Apex Court and the Honourable Apex Court clearly laid down distinction between Section 34, Section 109 and Section 120B I.P.C. and held that Section 34 I.P.C. embodies the principle of joint liability in doing a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120B I.P.C., criminal conspiracy was made a substantive offence in 1913 by the

⁷ AIR 1970 SC 549

⁸ AIR 1971 SC 885

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

31. As seen from the principle laid down by the Honourable Apex Court in the above judgment, there must be two or more persons to do an unlawful act by illegal means to constitute an offence punishable under Section 120B I.P.C. In the present case on hand, the petitioner, being a panel valuer of immovable property for advancing loans to the borrowers by the complainant Banks, allegedly conspired with the other accused, including the Bank employees and borrowers, and issued positive reports, more particularly about the value of the properties at inflated rate, so as to enable the complainant Banks to advance higher amount than the borrowers deserve and thereby, caused substantial loss to the complainant Banks. Therefore, submission of such reports by exhibiting criminal negligence in collusion with the borrowers and officials of the Banks can be inferred from the circumstances of the case, though the witnesses examined during investigation under Section 161 Cr.P.C. and their statements recorded under Section 161 Cr.P.C. do not directly point out the complicity of this petitioner for the offence punishable under Section 120B I.P.C., since it is a secret offence and it can be proved by circumstantial evidence. Taking into consideration the cumulative effect of the proved circumstances, the Court may found the petitioner guilty.

32. In **State v. R. Vasanthi Stanley**⁹, the Honourable Apex Court held that load on the criminal justice dispensation system is concerned, it has an insegregable nexus with speedy trial. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. That can never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of.

33. The question before the Court in the above judgment in **Vasanthi Stanley's** case (supra 9) is that the proceedings cannot be quashed when serious economic offence is committed by any accused, which affects the State or Institutional economic condition. Of course, the above judgment is entirely on different footing. In the present case, the petitioner being the panel valuer of the complainant Banks is responsible for lending amount by the Banks for the benefit of the borrowers with the aid of the employees of the Banks. Therefore, the valuer and other employees of the Banks, including the borrowers, are responsible for the entire episode i.e., issuing reports and making Banks to believe such reports and values

⁹ 2016 (6) SCJ 56

mentioned therein to advance amounts to the borrowers. Therefore, the act of the petitioner is attributable directly to him in collusion with the borrowers and other employees of the complainant Banks.

34. In **Mohd. Hussain Umar Kochra v. K.S. Dalipsinghji and another**¹⁰, the Honourable Apex Court formulated certain guidelines as to what constitute 'criminal conspiracy' as defined in Section 120A I.P.C. It is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement and the breach attracted to it the provisions of Section 167 (81) of the Sea Customs Act, 1878 is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. 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.

35. In **Lennart Schussler's** case (supra 7), the Honourable Apex Court held that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in

¹⁰ AIR 1970 SC 45

accord and in furtherance of the object for which they entered into the agreement.

36. On the basis of the principles laid down in **State of Maharashtra v. Som Nath Thapa**¹¹, knowledge of the accused is sufficient to constitute an offence. But, in **Lennart Schussler's** case (supra 7), the view taken by the Honourable Apex Court was conspiracy will continue as long as the members of the conspiracy remain in agreement. Therefore, in the present case, the petitioner, panel valuer of the complainant Banks, in collusion with the borrowers and the employees of the Banks allegedly conspired and completed his act by issuing valuation certificates at inflated rate without complying the mandatory requirements as per the guidelines of the Banks, but on false facts. Therefore, such conduct would *prima facie* constitute an offence punishable under Section 120B I.P.C.

37. The learned counsel for the petitioner, in support of his contention, placed reliance on the judgment of the Honourable Apex Court in **K. Narayana Rao's** case (supra 4), which pertains to the false opinion given by an Advocate. In the same judgment, the Honourable Apex Court in paragraph No.24, while dealing with the offence under Section 120B I.P.C. held that the ingredients of the offence of 'criminal conspiracy' are that there should be an

¹¹ 1996 SCC (4) 659

agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

38. Even if it is true and is applied to the present facts of the case, the respondent can prove the guilt of the petitioner by circumstantial evidence available, since conspiracy itself is a secret act and nobody is expected to witness such criminal conspiracy. Therefore, it is difficult to accept the contention of the petitioner that

there is no *prima facie* material to proceed against this petitioner at this stage to frame the charges.

39. The other offences allegedly committed by the petitioner are punishable under Sections 420, 468 and 471 I.P.C. Section 420 I.P.C. deals with punishment for cheating and dishonestly inducing a person to part with any property or valuable security etc. Therefore, Section 420 I.P.C. consists of two parts. The first part is cheating and the second part is inducing a person with dishonest intention to part with any property.

40. The word 'cheating' is defined under Section 415 I.P.C. as follows:

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

41. To constitute an offence under Section 415 I.P.C., the prosecution has to establish the following ingredients:

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

- (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he was not so deceived; and
- (iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

42. In **V.Y. Jose v. State of Gujarat**¹², the Honourable Apex

Court laid down the following ingredients to constitute cheating:

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

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

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

¹² (2009) 3 SCC 78

the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases:

- (1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;
- (2) when by reason of such deception, the complainant has got done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused."

43. At the stage of framing charges, the Court has to verify the material and from the material produced before the Court along with charge sheet under Section 173 Cr.P.C., if the Court finds that there is sufficient material to constitute the offence under Section 420 I.P.C., the Court can proceed to frame a charge against the petitioner. In the present case, the petitioner, being a panel valuer, submitted false reports without inspecting the properties personally, valuing the properties at inflated rate, so as to enable the borrowers to borrow huge amount and even without verifying the person, who is in actual possession and the documents of title. Therefore, unless the petitioner had an intention to cheat the Banks, at the beginning, he could not have issued such valuation reports fixing the value of the properties at inflated rates. This itself *prima facie* indicates the guilty mind of this petitioner. Therefore, it is difficult to accept the contention of the petitioner at this stage that he had no intention at the commencement of the transaction to value the properties at

inflated rate. Submitting valuation reports without inspecting the site and valuing the properties at inflated rate indicates culpable intention right at the beginning of submission of the reports.

44. In **Murali Lal Gupta v. Gopi Singh**¹³, the Honourable Apex Court while dealing with the similar case for the offence punishable under Sections 406 and 420 I.P.C. held as follows:

“The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the Petitioner pursuant to which the Respondent parted with the money. It is not the case of the Respondent that the Petitioner does not have the property or that the Petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the Respondent. Merely because an agreement to sell was entered into which agreement the Petitioner failed to honour, it cannot be said that the Petitioner has cheated the Respondent. No case for prosecution Under Section 420 or Section 406 Indian Penal Code is made out even *prima facie*. The complaint filed by the Respondent and that too at Madhepura against the Petitioner, who is a resident of Delhi, seems to be an attempt to pressurize the Petitioner for coming to terms with the Respondent.”

45. Keeping in mind, the law declared by the Honourable Apex Court, it is difficult to conclude at this stage that there is no *prima facie* material against the petitioner, since the cumulative effect

¹³ (2006) 2 SCC (cri) 430

of the circumstances directly point out the complicity of the petitioner for the offence under Section 420 I.P.C.

46. The other offences committed by the petitioner are punishable under Sections 468 and 471 I.P.C.

47. Section 468 I.P.C. deals with punishment for forgery for the purpose of cheating and Section 471 I.P.C. deals with using as genuine a forged document.

48. As per Section 468 I.P.C., whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment.

49. As per Section 471 I.P.C., whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record shall be punished in the same manner as if he had forged such document or electronic record.

50. The word 'forgery' is defined under Section 463 I.P.C., which means whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to

enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

51. Here, the petitioner, the panel valuer of the complainant Banks for valuation of the property proposed to be mortgaged, even without visiting the properties personally, prepared the record and submitted false reports to the Banks. This would fall within the definition of 'forgery' and the allegations made in the charge sheet, coupled with the statements recorded by the respondent - police during investigation, directly point out that the petitioner without inspecting the properties submitted reports, so as to enable the borrowers to borrow huge amounts from the Banks, thereby causing substantial pecuniary loss to the complainant Banks *prima facie*. Such an act, if proved, the petitioner is liable to be punished for the offences.

52. The petitioner also allegedly committed an offence under Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act. Section 13 (2) deals with any public servant, who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than four years but which may extend to ten years and shall also be liable to fine.

53. As per Section 13 (1) (d) of the Prevention of Corruption Act, a public servant is said to commit the offence or criminal misconduct, if he by corrupt or illegal means, obtains for himself or

for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, 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 is liable for punishment.

54. The petitioner, being a panel valuer of the Banks, is not a public servant strictly speaking as defined under Section 21 I.P.C. or as defined under Section 2 (c) of the Prevention of Corruption Act, but, he is also liable to be proceeded with the other accused, who are public servants, in view of Section (8) of the Prevention of Corruption Act. The act done by this petitioner along with public servants and the borrowers of the Banks directly point out the complicity of this petitioner for the offences referred to above, though, he is not a public servant as defined under Section 21 I.P.C. or as defined under Section 2 (c) of the Prevention of Corruption Act.

55. On verification of the statements recorded by the police under Section 161 (3) Cr.P.C. during investigation and the material documents produced along with the charge sheet in compliance of Section 173 Cr.P.C., I find *prima facie* material against this petitioner to proceed in the criminal Court after framing the charges. Therefore, the contention that there is no material against this

petitioner to proceed further is without any substance. Moreover, the learned counsel for the petitioner placed reliance on the judgment of Madras High Court in **L.N. Rajagopalan's** case (supra 3) to contend that the valuer cannot be made responsible for the offence and the Madras High Court had an occasion to decide the liability of a bank's panel valuer and while exercising the power under Section 482 Cr.P.C., the Madras High Court quashed the proceedings against the valuer. But, the judgment of the Madras High Court is not a binding precedent on this Court and it is having only persuasive value. At the same time, in **Bhagwan Dass v. State of Punjab** (CRM-M-35316 - 2015 & CRM - M- 35948-2015) the Punjab and Haryana High Court, while deciding the applications where the valuers gave valuation reports at inflated rates and part of the property was not existing, held that the panel valuers are liable for such loss. The Judgment of Punjab and Haryana High Court is also not a binding precedent. However, I am not persuaded by these judgments, in view of the conflicting opinion expressed by two single judges of two different High Courts. Further, the judgment of the Honourable Apex Court in **K. Narayana Rao's** case (supra 4) and **Anoop Kumar's** case (referred supra) are pertaining to the opinion given by an Advocate. There is a lot of distinction between the skills of an Advocate and a panel valuer of the Bank, who is an Engineer. An Engineer is expected to give his opinion on physical inspection of the property, but whereas an Advocate is expected to

give opinion based on his legal knowledge and skills in the branch of law. Therefore, opinion of a legal practitioner cannot be equated with the valuation report submitted by a panel valuer and the principles laid down in the above two judgments cannot be applied to the present facts of the case.

56. When the petitioner gave valuation reports, despite defective title or non-existence of property, in view of the conspiracy between the borrowers, the petitioner and the Bank employees, the complainant Banks parted with huge amount and sustained huge loss.

57. In **Capital Alternative Fund Services (Guernsey) Ltd. and another v. Drivers Jonas**¹⁴, the Court is of the view that on detailed analysis of the nature of the property, the Court concluded that it was particularly difficult to accurately assess the rental market. A generous margin of error of 20% was therefore adopted but, again despite the claimant's attempts to argue that the rental valuation was tantamount to investment advice and that all losses should therefore have been reasonably foreseeable and legally recoverable, the surveyor was held to be liable for the amount of overvaluation only.

58. If this principle is applied to the facts of the present case, the surveyor or the panel valuer of the property, who caused loss,

¹⁴ [2011] EWHC 2336

shall be made liable in difference of the loss. If the panel valuer exhibited conscious criminal or culpable negligence as a valuer and committed breach of his duty and caused loss, it amounts to criminal misconduct *prima facie*. Therefore, based on the material available on record, this Court cannot exercise power under Section 239 Cr.P.C. to discharge this petitioner for various offences referred *supra*.

59. When the Court finds that there is *prima facie* material to proceed against this petitioner, it cannot exercise the power under Section 397 read with 401 Cr.P.C. to set aside the orders impugned in these revisions.

60. As discussed above, in the earlier paragraphs, the jurisdiction of this Court under Section 397 read with 401 Cr.P.C. is limited. Unless the Court records a finding that the order impugned is perverse on the face of it or the Court did not exercise its jurisdiction or that there is illegality or irregularity on the face of the order impugned, this Court cannot interfere with the order passed by the Court below, while exercising power under Sections 397 and 401 Cr.P.C. I find sufficient material against the petitioner to proceed further.

61. In view of my afore-going discussion, I find no merit in the revision cases and they deserve to be dismissed.

63. In the result, the Criminal Revision Cases are dismissed.

Miscellaneous Petitions, if any, pending in these revision cases, shall stand closed.

M. SATYANARAYANA MURTHY, J

August 27th, 2018.
MD

