

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5914 of 2016

ORDER:

The petitioner is the fifth accused in C.C.No.24 of 2013 on the file of the Principal Special Judge for Central Bureau of Investigation (C.B.I.) cases, Hyderabad. It is outcome of the cognizance order of the learned Special Judge, dated 25.09.2013, so far as the petitioner A5 concerned, under Section 120 B read with Section 420 of Indian Penal Code (IPC), among the nine accused, from the final report filed against nine accused for the offence punishable under Section 120 B read with Section 420 IPC and Sections 9, 12, 13 1(c) and 1(d) of the Prevention of Corruption Act, 1988 (for short, 'the P.C.Act') and said final report is outcome of Crime in R.C.19(A)/2011 – CBI, Hyderabad.

2. The grounds urged in the quash petition in a nut shell, impugning the said cognizance order are that the learned Special Judge erred in taking cognizance in a mechanical manner that too without valid sanction from competent authority, even there is a statutory bar thereby to take cognizance, when the entire prosecution case shows the alleged acts attributed against the petitioner while discharging his official duty in processing the file for allocation of water to the India Cements Company – A7 and when there is nexus between the official act and the offence alleged, it is mandatory for valid sanction for taking cognizance. It is also the contention that the charge sheet main allegation is

that there is no prior permission obtained from Inter State Water Resources Authority to the additional allocation and thus G.O.Ms.No.43, dated 22.04.2010 not taken into consideration by the investigating officer so also the Cabinet Minister's approval in allocation of water to M/s.India Cement Limited and said Cabinet Minister filed affidavit before the Supreme Court stating there was no any irregularities in allocation of water from river Kagna and river Krishna respectively and mere pendency of the recovery of Water Royalty from A7 then cannot be a ground for launching Criminal prosecution against the petitioner as A5 and these aspects not considered by the learned Special Judge, from the material on record, which no way makes out any *prima facie* case of alleged *quid pro quo* by so called extending benefit to any of the accused by the petitioner public servant and even if entire contents of charge sheet on face value is accepted, none of the offences under Section 120 B and Section 420 IPC is made out against the petitioner and the same was not considered by the learned Special Judge. It is also the contest that the charge sheet contains confusion on the compilation of facts and creative write up without *prima facie* and sustainable accusation to attract ingredients of any offences, much less, petitioner had any wrongful and personal gain from the alleged additional allegation and thereby the cognizance order is liable to be quashed. It is also contended that as per the charge sheet dated 10.09.2013, on 28.03.2008, the Chief Engineer, Minor Irrigation submitted to the petitioner that sufficient water was available in Krishna river and that ten lakh

gallon water may be given to India Cements and subsequent to that an observation of S.O., Technical recommending the remarks of Chief Engineer, ISWR (Inter State Water Resources) be obtained and the petitioner asked by raising query as to why matter should be referred to CE ISWR, which is a matter of record and the S.O. Technical did not even mention any procedure, rule or could not cite of any Government Order to refer to CE, ISWR, but merely mentioning that 7 lakh gallons per day are being requested from Krishna river. The petitioner thought that there was a new Tribunal in session on Krishna river and Krishna being a major inter-state river, it would be prudent to take the opinion of CE, ISWR and accordingly agreed to the suggestion of S.O. Technical; that Irrigation and C.A.D.(PW-Reforms) vide memo dated 29.04.2008, called for the remarks of Chief Engineer, ISWR, enclosing the letter of Chief Engineer, Minor Irrigation dated 28.03.2008 and the Chief Engineer, ISWR in his letter dated 23.05.2008 quoting the letter of CE, Minor Irrigation, dated 28.03.2008, enclosed in I & CAD memo dated 29.04.2008 supra stated that the quantity requested by the India Cements is relatively small, duly quoting CE Minor Irrigation and the proposal may be considered to accord permission for the above quantity against the savings from the utilization within the frame work of the Bachawat Tribunal allocations. The CE, ISWR did not contribute anything more than what was referred to him and also the same authority i.e., CE, Minor Irrigation, reported to Government in first place, became the source of information to

CE, ISWR, thereby caused delay of one month in decision making process without adding any value to the process occurred and it was entirely due to the perfunctory nature of routine reference to CE, ISWR. Later obtaining orders in circulation of file up to the Chief Minister through the Minister (M&MI), without waiting for replies of Engineer – in – Chief and Industries Department (as it was a second time allotment) the industrial unit being an old one having already been cleared for grant of water by Industry Department and since both CE Minor and CE, ISWR had cleared it and to avoid further delays, orders were issued in G.O.Ms.No.146, I & CAD (PW-Reforms), dated 22.07.2008 by the Government for allocation of additional quantity of 7 lakh gallons of water per day to M/s.India Cements with stipulated conditions and the same was in accordance with the industrial policy of the State and also with the policy of 10% water reserved for Industrial use reservoir as per Government Orders and thereby there is no criminality that can be found in issuance of the G.Os.

3. The G.O. granting drawal of water from Kagna river is concerned, it is stated in the charge sheet that the Special Officer in a routine manner observed that the remark be obtained from CE, ISWR without adverting to any rule, order or notification that made it prudent to obtain remarks of CE, ISWR. The Chief Engineer, Minor Irrigation in letter dated 07.08.2008, stated referring to recommendation of the Superintending Engineer, Minor Irrigation, that India Cements requested permission to draw 13 Mcft. of water annually from Kagna river, in addition to the

existing 13 Mcft. of water already allowed and accorded in G.O. The point of Kagna river from which proposed water was to be lifted was 0.75 Kms. Towards Chittiganpur village, Tandur Mandal, Ranga Reddy District, that the proposed 13 Mcft. utilization for the factory would neither affect LRR & URR, nor it would exceed the restriction of 6 TMC under Kagna of K6 sub Basin. There was no mention about period of permission granted to the company earlier. It was made clear from the facts regarding payment of royalty as upto date is not clear and there was no remark of ISWR. The file was submitted by the SO (Technical) with observation to seek particulars as per pt. 6 from CE, Minor and views of the CE, ISWR should be called for. The petitioner desired categorically that when it was a matter of the water allocation by Minor Irrigation, then why this should go to CE, ISWR. It was pointed out that the earlier G.O. of earlier allocation was already on file. The petitioner was constrained to note that the Section was not examining the issue on the basis of the documents available on the file or in the Section and in a routine manner the files were sent to Chief Engineers and other departments which are delaying the process and thereby the matter was directed to be examined and put up which is in tune with the industrial development policy of the Government, including single window clearance for industrial growth and development which as a Secretary to the Government is the bounden duty of the petitioner. The SO (Technical), vide his detailed note on the subject noted all the information given by the Chief Engineer, Minor Irrigation, noted that the proposal of CE,

Minor Irrigation for according permission for utilization of 13 Mcft. of water from Kagna river to M/s.India Cements Limited and also noted that as per Chief Engineer, Minor this was in addition to existing permission of 10 lakh litres per day and the period of supply was not mentioned while it is noted that the Chief Engineer, Minor Irrigation has stated that the formerly Vishakha Cements Industry Limited has merged with India Cements Limited as per High Court of Madras Order, dated 25.07.2007. The view confirmed on this point should be obtained from Industries Department. The SO, Technical, thereafter, noted that the Chief Engineer, Minor Irrigation informed that as per KWDT, the utilisation of Kagna river is restricted to 6.00 TMC and the proposed 13.00 Mcft. for the India Cements Factory will neither affect LRR or URR nor exceeds the restriction of 6 TMC. The possibility of sparing further 13 Mcft. of water has to be indicated by CE, ISWR and it was presumed that 6.00 TMC for all major and medium irrigation schemes in Kagna Sub Basin and even while giving permission to draw 13 Mcft. initially in the year 1996, the views of Chief Engineer, ISWR, were obtained and in this context suggested that the views to be obtained and also because it was Chief Engineer, ISWR, who was directed to execute an agreement with Vishaka Cements Industries Limited. The SO (Technical) offered no cogent reason nor existence of any order of the Government making consultations with the Chief Engineer, ISWR, mandatory but reiterated to refer the matter to ISWR save and except that in the year 1996 they were consulted and executed the

agreement with the then Vishaka Cements Industries. The SO, Technical offered no explanation if there was any Statutory guidelines in this regard which mandated the obtaining the opinion of ISWR in the matter nor answered the points raised in the query of under signed that whether all the papers in the file has been examined and whether there is some additional information which is being sought from Chief Engineer, ISWR, which is neither available in the file nor in the Secretariat and therefore consultation with Chief Engineer, ISWR would add value to the decision making process. The SO, Technical did not take into the account of direction given by the petitioner to examine the record available in the file and in the Section. Though it was his duty to examine the relevant rule available, if any, in the Section or in the records available on the file in the earlier G.O.244 and he failed to do inadvertently or deliberately and it gave no explanation to the observation that such routine exercised needlessly delayed the decision making process which would be precisely against the policy of the Government repeated through various SIPB decisions and APO, IDEA Act, 2002. The SO, Technical replied only in a routine manner without taking note of the petitioner into account and merely because in the past it was sent to ISWR, it does not mean that it should go to him every time until and unless it is mandated through an explicit Government order. The petitioner thereby acted entirely in the public interest and followed due process is the contention with respect to the fact supra and the note of the SO, Technical. The further contest is that the

petitioner wanted to be abundantly clear about rules and convention and therefore marked the file to advisor, technical to see the note of SO, Technical and give remarks on the suggestion made by SO, Technical vide note dated 16.12.2008 and submitted that the advisor, Technical vide his note dated 18.12.2008 advised for utilization of smaller quantity of water i.e., generally less than 0.50 TMC., the Chief Engineer, Minor is the utilization authority and Chief Engineer, ISWR deals only with Inter State Water issues and water authorized to be utilized only and not with actual water utilization. It was not understood as to why the Engineer – in - Chief, ISWR asked to execute the agreement with Vishaka Cement Industries Limited and also not known if he actually executed the agreement. The Chief Engineer, Minor reported that 6.0 TMC is available for A.P., to be utilized under Kagna Sub Basin and there may be already utilization under existing Irrigation Schemes. After taking into account of existing and contemplated utilization only, the Chief Engineer, Minor might have recommended for permission for utilization of 13.00 Mcft. of water from Kagna in addition to existing permission. It opined that the Government may consider the recommendation of Chief Engineer, Minor for permission and direct the Chief Engineer, Minor, to enter into agreement for total utilization of water with India Cements Limited. The file was thereafter sent to Minister (Major and Medium Irrigation) on 18.12.2008 and in turn sent to the Chief Minister on 28.02.2009 and the Special Secretary to the Chief Minister returned the file on 03.03.2009, to re-examine the issue in

the light of Model Code of conduct which came into force from 03.30 p.m. of 02.03.2009 due to announcement of General Elections to Lok Sabha and A.P.Legislative Assembly in 2009 and this file was sent to General Administration (Election) on 09.03.2009 to examine if it attracts the Model Code of conduct and G.A. (Election) Department opined that the matter may be taken up after elections and it is after the elections were over, the matter again circulated to the Chief Minister in the re-elected new Government sworn on 30.07.2009 through the Minister concerned and on concurrence of the Chief Minister on the file, the draft G.O., granting approval to M/s.India Cements Limited to draw 13 Mcft. water was prepared and issued on 20.08.2009. After the order was issued, the Chief Engineer, ISWR took suo motu note of the order and pointed out certain discrepancies and suggested two amendments in different lines in para - 1 that were duly incorporated and amendments were issued vide a new G.O. The discrepancies in para - 1 had come from the letter of the Chief Engineer, Minor, who had copied it verbatim from G.O. 244 of 1996, which Chief Engineer, ISWR noticed only that G.O. 94 of 2009 was issued and as such necessary corrections were issued by issuing errata through a Government Order. The Government held that the petitioner processed the file for additional drawal of water as per business rule which was duly circulated for approval to the Minister and the Chief Minister and the conclusion is drawn by Investigating Authority with respect to the issuance of GOs. are not only totally irrational and irrelevant but also not based on any

evidence and the accusation contained in the charge sheet are based on assumptions without any factual foundation and there is no any cognizable offence that discloses from the police final report to take cognizance by the learned Special Judge, as from reading of the charge sheet, the investigating agency (C.B.I.) failed to show culpability of the petitioner by any justifiable factual accusation and thereby the proceedings are liable to be quashed.

4. The petitioner – A5 in the course of hearing reiterated the same by placing reliance on several expressions on the requirements of sanction to prosecute a public servant not only for the offences punishable under Indian Penal Code, but also under the Prevention of Corruption Act and that the application respectively for sanction by the C.B.I. to the State Government for I.P.C. offences and to the Central Government for the Prevention of Corruption Act offences were later even refused saying there is no sustainable accusation to prosecute the petitioner, to accord sanction and thereby also the cognizance order of the learned Special Judge no way sustainable. It is also one of the contentions that in the entire cognizance order of the learned Special Judge, there is no any single whisper particularly, in so far as the petitioner A5 concerned of any sanction is required or not, that too even in the police final report they categorically mentioned by saying the charge sheet filed and supplemental charge sheet going to be filed under Section 173 clause 8 Cr.P.C. having applied after obtaining sanction and when such is the case thereby a cognizance by the learned Special Judge in ignoring of

such mentions in the police final report and even not stated of no any sanction required by any reasons is *per se* unsustainable and the cognizance order thereby also of, including by taking note of subsequent events is liable to be quashed.

5. It is the submission of the learned Special Public Prosecutor, Sri K.Surender, on behalf of C.B.I. that merely because C.B.I. officials filed a final report, it does not mean the Magistrate or Special Judge capable of taking cognizance cannot differ with the police opinion and law is fairly settled from the expression of the Constitution Bench of the Apex Court in ***Dharam Pal and Others v. State of Haryana and another***¹ and the same reiterated in ***Hardeep Singh v. State of Punjab and others***² but for explained only on the scope of Section 319 Cr.P.C. When the Investigating Officer thought of no any sanction required inadvertently I.O. addressed letters to the State Government for I.P.C. offences and Central Government for P.C.Act offences and mentioned the same in the charge sheet, that is not the be all and end all, much less curtails or interdicts any power of the trial Judge to take cognizance. A perusal of the material on record of no sanction is required from the charge sheet averments, particularly, in so far as the role of the petitioner, with reference to other accused 1 to 9 including him as A5 of the existence of the prior conspiracy that is also clear from the requirement of referring to the Chief Engineer, ISWR and that was bypassed by not referring the file

¹ AIR (2013) SC 3018

² (2014) 3 SCC 92

though he is duty bounded even in processing the file to the Minister concerned in turn to the Chief Minister, even for their taking decision and their subsequent taking of decision will not ratify the action, much less, any affidavit of the Minister in the Supreme Court, saying what was alleged is within the limit and there is no any violation that will not abdicate from the responsibility of the petitioner as public servant in referring to the Chief Engineer, ISWR, before forwarding the file to the Minister concerned that too the requirement is noted by one Subba Rao, SO, Technical and thereby and also for the reason that mere non-assigning of reasons for the cognizance order itself is not a ground to quash the cognizance order, even otherwise sustainable for this Court even in setting against the cognizance order from perusal of the material that substantiates the cognizance with no requirement of sanction either for the I.P.C. offences or the P.C.Act offences, leave about the cognizance taken only for the I.P.C. offences and drawn attention to the Constitution Bench expression of this Court in this regard on ***Sarah Mathew v. Institute of Cardio Vascular Diseases***³ of mere lack of reasons no ground to quash the proceedings. It is also the submission that the criminal conspiracy when resting on circumstantial evidence about the role of all the accused together, whether sanction is required or not even from the *prima facie* non requirement of sanction cognizance taken even from any contention of such sanction required is a matter during trial by left open and not for

³ 2014 (2) SCC 62

this Court while setting against the cognizance order, much less to quash.

6. Heard and perused the material on record.

7. This Court had an occasion to deal with the issue not in the case of the petitioner alone, but in respect of M/s.India Cements represented by its Chairman cum Managing Director Sri N.Srinivasan in the reported judgment in ***N.Srinivasan v. State of Telangana***⁴, where the role of the petitioner was also referred from para -1 (e) to (j) as follows:

“(e) M/s.Visaka Cement Industries Limited was given permission to draw 10 mcft of water vide G.O.Ms.No.244 dated 19.12.1996, that the Government`s order did not mention the period of permission and the rate of water royalty to be fixed by the Government. The violation of any condition mentioned in the G.O.Ms.no.244, shall entail the cancellation of the permission granted for drawl of water without any notice. M/s.Visaka Cements got amalgamated later with India Cements Limited (A-7) in the year 2007 and on 10.03.2008, India Cements Limited (A-7) filed an application with Superintending Engineer, Irrigation Circle, Hyderabad requesting for additional allocation of 13 Mcft water from River Kagna in addition to the already allocated 10 Mcft water to M/s.Visaka Cements. The Chief Engineer, Minor Irrigation forwarded the request of India Cements Limited (A-7) to the Irrigation Department for obtaining Government Orders for utilization of 13 Mcft water by India Cements Limited (A-7) in addition to the existing utilization of 10 Mcft water accorded by G.O.Ms.No.244, I & C Department, dated 19.12.1996. Sri N.Bhaskar Rao, Superintending Engineer having the knowledge about the payment of royalty, intentionally ignored and did not insist for payment of royalty by the entity before recommending

⁴ 2017 (1) ALD (Crl.) 413

for allocation of additional water and Sri B.Seetharamaiah, Chief Engineer merely forwarded the proposal received from Superintending Engineer to the Irrigation Department and on receipt of the proposal, Sri Alahari Subba Rao, the then Special Officer(Technical), Irrigation & Command Area Development (I&CAD) Department raised the following points to be ascertained:

- i. "As to the proposed enhancement regarding drawl of water(13 Mcft) will not affect Lower & Upper Riparian Rights and does not exceed the restriction of 6 TMC.
- ii. No mention is there about the period of permission granted.
- iii. Whether the former company had paid royalty charges up-to-date.
- iv. No remarks of CE, ISWR on the proposal".

(f) Sri Adithyanath Das, IAS (A-5), Secretary (AD), Irrigation Department, in furtherance of criminal conspiracy, by abusing his official position, had made observations regarding the need to refer the matter to Inter State Water Resources (ISWR), terms and conditions of drawl of water in the earlier G.O.Ms.No.244 namely period and royalty fixed. The issue was again clarified by Special Officer who reiterated to ascertain the period of supply, water royalty fixed by the Government payment of water royalty, dues pending from the firm and others. Sri Adithyanath Das (A-5) in furtherance of the criminal conspiracy, by breaching the trust reposed in him and by abuse of his official position, did not refer the matter of allocation of water from Kagna River to Inter State Water Resources even though Sri Alahari Subba Rao, special Officer (Technical) had raised various issues for protecting the interest of the State including referring the note to Inter State Water Resources, which was mandatory in allocating any water from inter-state rivers or its subsidiaries. He has also raised the issue of royalty aspect. Sri Adithyanath Das (A-5) in furtherance of criminal conspiracy, with dishonest intention, referred the file to Sri Lava Kusha Reddy, Advisor (Telangana) and got a favourable observation from him overlooking the queries raised by Special Officer (Technical). As per the Secretariat Business Rules there is no role defined for the advisers. Sri Lava Kusha Reddy, Advisor (Telangana) toed the line of the Secretary in giving a favourable

noting but the concerned processing authority who has to ensure the pre-requisites for allocation of water was Special Officer (Technical). Sri Adithyanath Das (A-5), Secretary, Irrigation Department having got fraudulently favourable noting from Adviser, overlooked the objections raised by the Special Officer (Technical), gave his assent for allocation of water to M/s. India Cements Limited (A-7). The proposal was put up to the Minister, keeping him in dark by ignoring the vital technical facts. Sri Adithyanath Das (A-5) was in the knowledge of all the intricacies relating to this issue in furtherance of criminal conspiracy got final approval of the then Chief Minister. Accordingly, G.O.Ms.No.94, I&CAD dated 12.08.2009 was issued. India Cements Limited (A-7) owed royalty to irrigation Department since May, 1997 and it has not complied one of the conditions of the earlier G.O.Ms.No.244 of 1996. A-5 was in the knowledge of the above fact raised by the Special Officer. The conditional clause No.9 of G.O.Ms.No.244 of 1996 warranted that violation of the any of the conditions mentioned in the G.O, shall entail the cancellation of the permission granted to India Cements Limited (A-7) for drawl of water without any notice. This fact was intentionally omitted by Sri Adithyanath Das (A-5) in abuse of his official position as part of the criminal conspiracy for favouring India Cements Limited (A-7). M/s. India Cements Limited (A-7) was owing water royalty since May, 1997 which was later calculated in 2011 after registration of the case by C.B.I, for an amount of Rs.17,87,864/- (without penalty) towards outstanding water cess.

(g). M/s. India Cements Limited (A-7) acquired M/s.Raasi Cement Limited in the year 1998. M/s.Raasi Cement Factory at Wazirabad was given permission to draw 3 lakh gallons of water from Krishna River subject to conditions vide G.O.Ms.No.408 dated 21.06.1979 issued by Irrigation & Power (IRR.III) Department. On 20.09.2007, Sri Y.Shekar Reddy, Executive Engineer, Irrigation & Command Area Development, Nalgonda and Sri R.Nagi Reddy, Senior Personal Manager of India Cements Limited (A-7), Wazirabad entered into Article of Agreement for permission to draw 3 lakh gallons of water per day from Krishna River for cement factory for the period from 20.09.2007 to 19.09.2008 for an amount of

Rs.1,62,000/- for 12 months. Prior to 2007, there is no record of India Cements Limited (A-7) paying any royalty and fulfilling conditions prescribed in G.O.Ms.No.408, dated 21.06.1979. The agreement was entered on 20.09.2007 for one year only, which paved the way for the company to seek permission for additional quantity of water. Based on said agreement, the Superintendent Engineer requested Chief Engineer to obtain and communicate necessary permission from the Government. The Executive Engineer, Nalgonda failed to bring to the notice regarding the issue of entering of agreement with the firm to the Superintending Engineer, as substantial period had lapsed from the date of issue of the original G.O.Ms.No.408, dated 21.06.1979 and the agreement dated 20.09.2007. In order to accommodate the request of M/s. India Cements Limited (A-7) for additional water allocation, Executive Engineer, Nalgonda and M/s. India Cements Limited created an agreement dated 20.09.2007 for a period of one year that too after a lapse of 28 years from the earlier G.O, projecting as if the conditions of earlier G.O are fulfilled. Sri P.R.K.Raju, Chief Manager of India Cements Limited (A-7) vide letter dated 10.12.2007 addressed to the Executive Engineer, Irrigation Department, Nalgonda stating that they had taken permission to draw 3 lakh gallons of water per day from Krishna River earlier from Irrigation Department vide letter No.C/1, dated 12.10.1982 and that they were expanding their plant and require additional quantity of water to an extent of 7 lakhs gallons per day. Sri Y.Shekar Reddy, Executive Engineer, Nalgonda, recommended the request of India Cements Limited (A-7) for enhancement of water to a tune of 10 lakh gallons per day vide his letter dated 23.02.2008. Sri Bhaskar Rao, Superintendent Engineer, Irrigation & Command Area Development, Irrigation Circle, Hyderabad vide letter No.DEE-I/TS-2/7152, dated 12.03.2008 addressed to the Chief Engineer, Minor Irrigation, Hyderabad requesting the Chief Engineer to obtain and communicate necessary permission from the Government. Sri B.Seetha Ramaiah, Chief Engineer, Minor Irrigation addressed a letter No.DCE(MI)/OT3-T4/India Cements/ 2008, dated 28.03.2008 to the Principal Secretary, Irrigation & CAD, Department, Hyderabad stating that permission was accorded to India Cements

Limited (A-7) formerly M/s.Raasi Cement to draw water from Krishna River, downstream of Nagarjunasagar Dam near Wazirabad village at the rate of 3 lakh gallons per day as per G.O.Ms.No.408, Irrigation & Power (Irrigation-II) Department dated 21.06.1979. The letter also stated that an agreement had been entered with the firm and royalty is being paid by the firm. The letter also contained that the firm has represented for enhancement of water drawl from 3 lakh gallons to 10 lakh gallons per day in view of their expansion of cement plant. On receipt of letter from Chief Engineer, dated 28.03.2008 by the I & CAD (PW) Department, a circulation note was put up vide C.No.10548/Reforms/2008 on 03.04.2008. In the note file Sri A.Subba Rao, Special Officer (Technical) made the following observation:

- a. That the period is not specified.
- b. The remarks of the E in C (irrigation) and the CE/ISWR on sparing of 10 lakh gallons per day to the company are to be obtained.
- c. The proposal to expand the cement plant requires confirmation from the Industries Department duly indicating the approval accorded by the department indicating the plan readiness and the expanded installed capacity and the date of commissioning.

(h). A-5, in furtherance of criminal conspiracy intentionally raised doubts on referring the file to the Chief Engineer, ISWR. Sri A.Subba Rao, Special Officer (Technical) clarified that as the drawl of water was from River Krishna at the rate of 10 lakh gallons per day and suggested for taking the views of the Chief Engineer, ISWR. A-5 issued a memo vide No.10548/Reforms/2008, dated 29.04.2008 to the Engineer-in-Chief/Chief Engineer, Inter State Water Resources to offer their remarks on sparing 10 lakh gallons of water per day to India Cements Limited (A-7) and send a report in the matter at the earliest. Dr.P.Rama Raju, Chief Engineer, Inter State Water Resources, Hyderabad, vide letter No.RCWR/DD(K)/7527/89, Vol.III, dated 23.05.2008 mentioned that as per requirement sought by the firm is relatively small, the proposal may be considered for giving permission duly accounting for the above quantity against the savings from the utilizations within the framework of the Bachawat Tribunal allocations. On

06.06.2008, Irrigation Department, sought clarifications from the Engineer-in-Chief, I & CAD Department with regard to sparing 10 lakh gallons of water per day to India Cements Limited (A-7) from Krishna River by meeting the same from the savings from utilizations within the framework of the Bachawat Tribunal and that the same will not affect upper and lower riparian rights.

(i). After the approval, the file had to be sent or circulated to Industries Department for remarks regarding the status and information about expansion of India Cements plant. But instead by abuse of official position, Sri Adityanath Das (A-5), IAS, Secretary, Irrigation Department overruled the above aspect and made an endorsement that the Chief Engineer, ISWR has agreed to the proposal of the Chief Engineer, Minor and agreed to give additional 7 lakh gallons of water per day in addition to already 3 lakh gallon (total 10 lakh gallon in all) to India Cements Limited (A-7). On 25.06.2008 the then Minister (M & MI) Sri Ponnala Lakshmaiah agreed to the proposal and finally the then Chief Minister late Sri Y.S.Rajasekhara Reddy, in furtherance of criminal conspiracy accorded his assent on 03.07.2008, in quid-pro-quo to the illegal gratification paid by India Cements Limited (A-7). The draft G.O was put up on 08.07.2008, the Special Officer (Technical) made an observation that the terms and conditions must be specified and he also observed that the period of permission to be specified as five years as there was no mention of the period in the earlier G.O.Ms.No.408, that G.O.Ms.No.146 dated 22.07.2008 was issued according permission to India Cements Limited (A-7) to draw 10 lakh gallons of total quantity of water per day including 3 lakh gallons of water already permitted from Krishna River downstream of Nagarjunasagar Dam near Wazirabad for consumptive use of their expansion unit at Nalgonda. A-5 by abusing his official position as a public servant issued G.O.Ms. No.146, dated 22.07.2008 according permission to draw 10 lakh gallons of total quantity of water per day including 3 lakh gallons of water already permitted from Krishna River unduly favouring the firm, by deceit and suppressing the facts pertaining to the terms and conditions mentioned in the earlier G.O.Ms.No.408, during the period 2007 to 2008 apart from India

Cements Limited (A-7) other companies viz., M/s.Deccan Cements Limited, Hyderabad, M/s.Madhucon Sugar and Power Industries, M/s.Maruti Ispat and Energy Private Limited had also applied for allocation of water. Their proposals from the concerned Chief Engineers were sent to Secretary, Irrigation Department and they were kept pending on the instructions of the then Chief Minister by abusing his official position made remarks on the file 'lie until further orders' whereas in case of India Cements Limited (A-7), no such remarks were made by the then Chief Minister as there was illegal gratification in the guise of investment as quid-pro-quo by India Cements Limited (A-7) into the companies of Sri Y.S.Jagan Mohan Reddy.

(j). India Cements Limited (A-7) had invested 12,50,000 of preference shares at a premium of Rs.110/- for a sum of Rs.15,00,00,000/-. Thereafter India Cements Limited (A-7) had invested a sum of Rs.80.31 crores at a premium of Rs.1440/-. There was no explanation available in the minutes of the meeting or the statements recorded from the top management of the company with regard to the necessity to increase the premium from Rs.110/- to Rs.1440/- (sudden raise of almost 12 times within a small time span of 9 to 10 months), except a simple statement that it is a "bouquet of investments". The company which is having public funds with it, never bothered to get the "due diligence on the required premium" neither from their own technical team nor from an outside agency. Thus, it is clearly construed as a quid pro quo transaction between the India Cements Limited (A-7) and Sri Y.S.Jagan Mohan Reddy (A-1). India Cements Limited (A-7) sold the shares at Rs.671/- to M/s.PARFICIM, SAS, FRANCE on 14.04.2010 on the directions of Sri Y.S.Jagan Mohan Reddy undergoing a loss of Rs.26,85,50,489/-. This clearly shows that the investment into M/s.Raghuram Cements Limited, M/s.Bharathi Cement Corporation Limited by M/s.India Cements Limited (A-7) was nothing but a quid-pro-quo investment. In April, 2010 M/s.Pani & Associates, Bangalore evaluated the share price of M/s.Raghuram Cement Corporation Private Limited and arrived at the value of share at Rs.221.17 Ps. That the Board Resolution of India Cements Limited (A-7) dated

14.04.2010 resolved to invest up to Rs.125 crores by way of Inter Corporate Loans/Advance/Investment in M/s.Bharathi Cement Group whereas on the same day India Cements Limited (A-7) had sold their stake 1803973 shares of Rs.10/-each in M/s.Bharathi Cements Corporation Limited at a total price of Rs.121.00 crores to M/s.PARFICIM, SAS, FRANCE.

2(iii). There is no averment from the above of any role of the petitioner/A3-Srinivasan to make him liable. **It is however averred in the charge sheet as if therefrom, it is clearly establishing that Sri N.Srinivasan (A-3) representing (A7) India Cements Ltd proposed to give back the entire amount received by selling shares to PARFICIM, back to Sri Y.S.Jagan Mohan Reddy (A-1) which was invested as a quid-pro-quo.**

2(iv). It is averred in the charge sheet further that during June, 2007 India Cements Limited (A-7) gave inter corporate deposits to M/s.Sandur Power Company Limited amounts aggregating to Rs.8.50 crores. During November, 2007 India Cements Limited (A-7) placed inter corporate deposit with M/s.RR Global Enterprises Private Limited amounting to Rs.13.00 crores. For above said inter corporate deposits, there was no approval of the Board of the Directors and there were no written agreements between India Cements Limited (A-7) and M/s.Sandur Power Company Limited and M/s.RR Global Enterprises Private Limited, none of these companies have any business dealing with India Cements Limited (A-7) and others. **Inter corporate deposits made by India Cements Limited represented by N.Srinivasan (A-3) without any Board Resolution clearly indicates connivance of N.Srinivasan (A-3) with Sri Y.S.Jagan Mohan Reddy (A-1).** An amount of Rs.1.35 crores were given by India Cements Limited (A-7) as a loan to Sri Y.S.Jagan Mohan Reddy (A-1), vide cheque Nos.315471, 315472 & 315473 drawn on Punjab National Bank dated 11.03.2005 which was repaid with interest clearly establishes an undue interest and connivance between them.

2(v). It is also averred in the charge sheet that M/s.Carmel Asia Holdings Private Limited (A-9) was valuated by M/s.Jagadisan & Co. represented by Sri J.Prabhakar and the valuation ranged

from Rs.294 Crores to Rs.309 crores and the valuation was based on the projections provided by Sri V.Vijaya Sai Reddy (A-2). Although the valuation report was completed by January, 2007, the report was ante-dated as 01.11.2006 at the instance of Sri V.Vijaya Sai Reddy (A-2). **The purchase of shares of M/s.Carmel Asia Holdings Private Limited (A-9) by Sri N.Srinivasan (A-3) at a value of Rs.252/- in January, 2007 is only to cover the quid pro quo amount paid to Sri Y.S.Jagan Mohan Reddy (A-1) for the undue benefits received by Sri N.Srinivasan (A-3) was based on the projections of M/s. Indira Television Private Limited, M/s.Jagati Publications Private Limited and M/s.Janani Infrastructure Private Limited which did not commence their operations at that time.**

2(vi). It is also averred in the charge sheet that this clearly establishes that the valuation report of M/s.Deloitte Touche Tohmatsu India Private Limited was ante-dated as 16.11.2007 on the directions of Sri V.Vijaya Sai Reddy (A-2) in conspiracy with Sri Y.S.Jagan Mohan Reddy (A-1) to justify the investments already solicited from India Cements Limited (A-7) at the rate of Rs.350/- per share.

3) From the above there is no specific role of petitioner/A-3 to attribute, but for if at all he represented the India Cements Limited (A-7) being its Vice Chairman cum Managing Director. It discloses that the investigation proceeded on accusing the petitioner/A-3 from his status to the India Cements Limited (A-7) being its Vice Chairman cum Managing Director and beyond that there is nothing of how personally and if not atleast by what provision or fiction of law by virtue of his status vicariously liable to charge for any of the offences. **However, it is averred that in brief the charge sheet filed by 2nd respondent reveals the role of petitioner/A-3-Sri N.Srinivasan as follows:**

4) A-3 being the Managing Director of A-7 Company conspired with A-1 by entering into share subscription agreement dated 19.05.2007, that in pursuance of such agreement, A-7 surrendered their rights in favour of M/s.Raghuram Cements Limited(A-6) represented by A-1 as a quid-pro-quo. For which A-7

got the benefit of allocation of additional quantity of water, extension of lease of land for a period of 20 years and priority in supply of cement under Indiramma Scheme. A-3 in furtherance of the conspiracy paid illegal gratification in the form of investments amounting to Rs.95.32 crores in A-6 company by purchasing shares on high premium of Rs.1440/- amounting to Rs.40.00 crores in M/s.Jagathi Publications Limited (A-8) and Rs.5.00 crores in M/s.Carmel Asia Holdings Private Limited (A-9), thereupon A-7 invested in 0% convertible preference shares and also surrendered all their rights in favour of A-6 as a preference shareholder/equity shareholder and received no dividends. The total amount paid by A-7 was to the tune of Rs.140.32 crores. A-3 being the Managing Director in furtherance of criminal conspiracy had given Inter Corporate Deposits of Rs.8.5 crores to M/s.Sandur Power Corporation Limited of A-1 and Rs.13.00 Crores to M/s.R.R.Global Enterprises Limited with whom either India Cements Limited (A-7) or Sri N.Srinivasan (A-3) had no direct business relationship. A-3 also given a personal loan of Rs.1.35 crores to A-1. **None of these transactions had any approval of Board of Directors. This clearly establishes the connivance of A-1 and A-3. By above mentioned overt and covert acts of A-3 being the Managing Director of A-7, is liable for the offences punishable under Sections 120-B r/w. 420 I.P.C. and Section 12 of the Prevention of Corruption Act.**

5) Based on the allegations, the learned Principal Special Judge for C.B.I Cases, Hyderabad taken cognizance on 25.09.2013 for the above offences. The cognizance order reads, 'Perused the record and office note. Charge-sheet is taken on file for the offences against the accused as mentioned below:

A-1 : - - - -

A-2 : - - - - -

A-3: N.Srinivasan, VC & MD., M/s.India Cements Ltd, Chennai-
Section 120-B read with 420 I.P.C and Section 12 P.C. Act.

A-4 : - - - -

A-5 : - - - - -

A-6 : - - - -

A-7: M/s.India Cements Ltd, rep. by its VC & MD N.Srinivasan -
Section 120-B read with 420 I.P.C and Section 12 P.C. Act.

A-8 : - - - -

A-9 : - - - - -

6) Aggrieved by the above, petitioner/A-3 presented the quash petition on the following grounds:

7) None of the ingredients of the offence punishable under Section 420 I.P.C have been made out against the petitioner/A-3, that petitioner/A-3 has neither made any false inducement or representation knowingly so as to deprive another of any valuable security or other things while discharging his duties as Vice Chairman and Managing Director of A-7 company, when the basic ingredients of the offence charged against the petitioner/A-3 are absent, the charge sheet is liable to be quashed, that the learned Special Judge has committed a grave error in mechanically issuing process to the petitioner/A-3 based upon the CBI/respondent's final report which does not in any way point out the personal involvement of the petitioner/A-3 for any personal benefits or obligations or in any conspiracy to bestow undue benefits on A-7, a public company which is managed by a Board of Directors, that the learned Special Judge has not given any reasons in the order dated 25.09.2013 taking cognizance for inclusion of the alleged offence under Section 12 of the Prevention of Corruption Act, 1988. The impugned order suffers from clear legal infirmity without recording reasons why the Court felt compelled to include offence under the prevention of Corruption Act against the petitioner. When there is no averment in the charge sheet of any criminal act attributed to the petitioner, the inclusion of a serious offence in the impugned order without giving reason would be illegal. The learned Special Judge for C.B.I cases has completely ignored the fundamental principle of criminal jurisprudence that the petitioner cannot be held vicariously liable even for any act or omission by A-7. The final report while making specific references to the alleged roles played by each of the accused, as far as the petitioner concerned, has repeated the same set of allegations made against A7 concerning investments made by A-7 and the alleged unlawful benefits conferred on A-7 are the only allegations made against the petitioner/A3 also in the charge sheet and therefore, the accusation against the Petitioner/A3 of having conspired to commit fraud or for that matter any other offence is absurd and unsustainable on its face for no specific allegations of

criminal conduct against the petitioner. The petitioner/A-3 has not signed or entered into any share subscription agreement with accused No.1 and that is why no such document has been supplied along with the charge sheet and the charge sheet itself is silent as to shares of which company were surrendered by Accused No.7 in favour of Accused No.6. In view thereof the allegations of quid pro quo are unsustainable, vague and incomprehensible and in any event accused No.3 had no role to play in any act of quid pro quo, that he has not paid any gratification illegal or otherwise in form of investment amounting to Rs.95.32 Crores in accused No.6 nor has he paid any amount in accused No.8 or Rs.5.00 crores in accused No.9, that the charge sheet has thereby furnished no evidence of alleged payments to accused No.6, accused No.8 and accused No.9, that the charge sheet is also silent as to how the three alleged payments to accused No.6, accused No.8, accused No.9 constitute illegal gratification, that the accused No.3 has given no inter corporate deposits of Rs.8.5 crores to M/s.Sandur Power Corporation nor Rs.13.00 crores to M/s.R.R.Global Enterprises Limited, that there is no evidence to this effect in the charge-sheet, that M/s.Sandur Power Corporation and M/s.R.R.Global Enterprises Limited are not accused entities in the charge-sheet, that there is no elaboration as to how the transaction discloses any criminal offence, that as regards the substantive offence of Section 420 I.P.C manifestly no ingredients of the offence are disclosed against Accused No.3, that the charge sheet is totally silent as to what false representation was made by accused No.3 and to whom, it is also silent on the question whether any person was induced to part with any property by virtue of any false representation on the part of accused No.3, that there is no suggestion of wrongful gain on the part of accused No.3 and having caused wrongful loss to anybody and accordingly the substantive offence of Section 420 I.P.C is totally unsubstantiated against the petitioner and as regards the offence of conspiracy to cheat, the charge sheet is totally silent as to who cheated whom. The criminal conspiracy charge can never be proved against the petitioner since each and every allegation that has been made against the petitioner in the charge sheet pertains to the business activities of the Company (A-7). There is not a

single overt act which has been attributed to the petitioner/A3 suggesting any conspiracy in the making of investments by A-7, that even assuming without admitting that the investments made by A-7 were nothing but bribe amounts, even then the role played by the petitioner has to be necessarily spelt out as a specific item of charge, that in the absence of any material whatsoever in the charge sheet against the petitioner, the petitioner need not face the ordeal of a trial and finally prayed to quash the proceedings in C.C. No.24 of 2013 against the petitioner/A-3.

8) Whereas it is the submission by the learned special public prosecutor for the CBI that the accused as Vice Chairman cum Managing Director, responsible for day to day affairs of the A7 Company and as such for every act of A7 is done by A3, he is personally liable and therefore the final report from investigation when spelt out the same and the learned special Judge having perused the record and taken cognizance, leave about reasons not mentioned even that itself is not at all a ground for quashing the cognizance order, a reading of the same clearly proves judicial application of mind and thereby there is nothing to entertain the quash petition, much less to quash the case proceedings pending against A3/petitioner, saying such a contention is meritless and any remedy is besides submission from prosecution material if no grounds to frame charge to consider later, if not to face trial and defend and thereby sought for dismissal of the quash petition. The learned counsel for C.B.I submitted gist of the points in writing in support of above contention of Petitioner/A-3 liable in the capacity of Managing Director-cum-Vice Chairman of India Cements for the following:

8(a). He has been charge sheeted in view of his role as Vice Chairman and Managing Director and not as a private individual and in his individual capacity. He was present in that capacity of India Cements in the Board meeting on 16.01.2008 to say his connection to its affairs and it is he in that status to India Cements that initiated the payment transaction of Rs.90.00 to 92.00 crores payment to Raghuram Cements (now Bharti Cements) as an agenda item No.8 in the Board meeting supra that was approved by the Board therefrom and in his capacity with India

Cements, the Company did not obtain prior approval of public financial institution in terms of Section 372-A (2) of the Companies Act, 1956 though as Managing Director responsible for the affairs of the Company, for the proviso to Section 372-A(2) exemption will not apply and he did not obtain specific approval in the said Board meeting but for general approval for the investments in Raghuram Cements, which nowhere mentions the actual loan/investment even the 0% dividend and 0% preference shares, though the Board resolution supra authorized him to finalize the terms of the said investment of Rs.90.00 Crores with Raghuram Cements and he even surrendered 0% C.P.S in the share subscription agreement dated 19.05.2007 with Raghuram Cements even he was not a signatory to it, it cannot be avoided for nothing out of his knowledge and said investment by diversion of funds of India Cements Limited to Raghuram Cements is by abusing his position in India Cements. The other contention of he played vital role in diverting money of India Cements without board approval of Rs.5.00 crores each by cheque Nos.022249, 039912 and 918273 dated 02.02.2007, 20.04.2007 and 08.05.2007 respectively before board approval dated 16.01.2008 and the Board resolution dated 16.01.2008 is also with no legal affect for violation of Sections 372-A(2) read with 9(b) of Companies Act and it is not enough of there is no loss of India Cements as the investments of quid-pro-quo for the water allocation and land lease etc, is nothing but a bribe under another device if considered the substance over the form even recorded in the books as investments for cannot be recorded as bribe, same is also in relation to payments to Sandur and R.R Global though the Board resolution was in ratification of the same subsequently, further that though money paid for the allotment of shares in 2009 shares were allotted in March, 2010 which cannot be called a strategic investment that too in preference and not equity shares and the investments are with no protective clauses and the collusion and conspiracy is to deprive the rights of listed company shareholders as held in **Ramachandra Singh V. Savitri Devi**⁵ and even the preference shares that carry dividend such rights of dividend also surrendered for the

⁵ (2003)8 SCC 319

investments in Raghuram Cements supra and the surrender of liquidity of shares in favour of A-1 is proving the factum of collusion and conspiracy and the charge sheet discloses the commission of offence by the petitioner/A-3 and there are no grounds to quash as held in ***Dr.Sharada Prasad Sinha V. State of Bihar***⁶ of allegations set out in the complaint/charge sheet only if not constitute any offence then only the proceedings can be quashed including cognizance order of the Magistrate and there are certain guidelines for quash with four illustrative guidelines laid down in ***Nagawwa V. V.S.Konjalgi***⁷ and in ***Medchal Chemicals Limited V. Biological E***⁸ it was held that the quashing is an exception of complaint/charge sheet rather than a rule as not to use to scuttle the prosecution and the complaint in its entirety shall be examined before invoking quash jurisdiction under inherent powers. It is contended thereby of there is prima facie case against the petitioner/A-3 and there are no grounds to quash the proceedings but for put him to the ordeal of trial after framing of charges for the offences charged and taken cognizance by the learned Special Judge.

8(b). The respective Counsel in support of the contentions placed reliance on some expressions and also some handout as written submissions for consideration which are being discussed contextually as per relevancy.

9) Now the points for consideration are:

- I. Whether the petitioner/A-3-Srinivasan, being the Vice Chairman and Managing Director of M/s. India Cements Limited (A-7), be made personally liable for any acts of India Cements Limited with vicarious liability for the offences punishable under Sections 120-B read with 420 I.P.C. and Section 12 of the Prevention of Corruption Act, by virtue of any statutory liability or legal fiction?

⁶ AIR 1977 SC 1754

⁷ AIR 1976 SC 1947

⁸ AIR 2000 SC 1869

- II. If not, whether petitioner/A-3-Srinivasan, other than of his status or position as Vice Chairman and Managing Director of India Cements Limited, be made personally liable for any acts and if so on what basis for the final report to accuse and for the learned special judge to take cognizance without specifying as to on vicarious liability or personnel liability?
- III. Whether the cognizance taken by the learned special judge without specifying as to on vicarious liability or personnel liability, is outcome of non-application of judicial mind and same is otherwise unsustainable for not reflecting any reasons or otherwise and is liable to be quashed?
- IV. To what result?

10) **Points I to III** : As points 1 to 3 are interrelated and to avoid repetition by separate dealing, taken up to decide together for sake of convenience.

11) From the writ petition orders directing C.B.I investigation though speak allegations showing quid-pro-quo investments made out of the benefits received by investors/beneficiaries from the decision of the State Government in various forms and M/s.Jagati Publications of the year 2008-09 shows huge unexplained cash credit and huge escalated face value of shares and it is necessary to ascertain role of individuals/firms/public servants/group of companies Sri Y.S.Jagan Mohana Reddy and the material available supports a thorough probe and investigation in all the aspects into financial misdeeds involving huge magnitude of Government largesse corporate dealings including huge investments as part of quid-pro-quo arrangement for the largesse and benefit obtained by investors -- -- --, the most appropriate agency would be the C.B.I., from C.B.I investigation covered by the charge sheet averments supra, even coming to the role of the petitioner/A-3 as the Vice Chairman and Managing Director of India Cements/A-7 from the material placed reliance in opposing the quash petition of the petitioner, by the respondent-C.B.I, through its Special Public Prosecutor, the material referred supra, in fact rests the case or accusation against the petitioner/A-3, for extending the

benefits to the India Cements/A-7 by the State Government and further for the investments made by India Cements/A-7 with some of the Companies of the A-1/Jagan Mohana Reddy, no other than the son of the then Chief Minister, either directly owned atleast majority shares by A-1 or those in which A-1 did not acquire, but for subsequently if at all. It is by saying that there is a quid-pro-quo being culled out therefrom between A-7/India Cements and A-1/Jagan Mohana Reddy. It is in saying the petitioner/A-3 as Vice Chairman and Managing Director/A-7 is liable being privy to the conspiracy for the offence of cheating and also for abetment in conferring illegal benefits which tantamounts to illegal gratification to the then Chief-Minister and his son.

12) As referred supra and at the cost of repetition neither in the two writ petitions pursuant to the direction of which the crime was registered, there is no name of A-3/Srinivasan in the writ petitions about 73 respondents named among others not named. In the crime to show as accused, but for A-7/India Cements entity if at all at best represented by its Managing Director-cum-Vice Chairman Srinivasan named A-3, there is no name of A-3 Srinivasan as accused in the crime and there is no material from the investigation directly to show his role actively to make him personally liable for the accusation as to any participation or privy for any conspiracy muchless to commit the offence or to abet the offence under Prevention of Corruption Act.

13) Undisputedly, charges are not framed so far in the above calendar case at the cognizance stage from the appearance of the accused persons including against the petitioner/A-3 or India Cements/A-7.

14) It is but for contextually to mention that the writ petition supra among the directions of registration of crime to investigate, the direction is specific to protect the genuine investors who made in the State and that might be the reason though in the F.I.R there are more than 73 accused, the final report speaks against only 9 accused persons including A-7/India Cements and the petitioner separately as A-3 being its Vice Chairman and Managing Director leave about other final reports against some others.

15) A-7/India Cements from the material on record relied by both parties in support of their respective contentions, is a private limited company incorporated and in existence since 1946 and A-3 is acting as its Vice Chairman and Managing Director from 15.09.1989 undisputedly. It is also not in dispute that A-7 entity has acquired or taken over some of the cement and other units viz., Coromandel Fertilizers, Raasi Cements etc., and the entity got more than 4000 crores turn over.

16) It is needless to say that the petitioner/A-3 by virtue of his status as Vice Chairman and Managing Director of A-7/India Cements not shown as vicariously liable either under the Prevention of Corruption Act or under the I.P.C or by any other statutory or legal expressions or other legal fiction including on the principle of altergo. The vicarious liability at best that is defined under the Indian Penal Code to be made out is under Sections 34 to 37 or 141 to 149 or 107 to 120 or 120-B I.P.C and under the Prevention of Corruption Act is with reference to Section 120-B and 107 I.P.C and under Section 12 of the Act. It is needless to say for that there must be a specific allegation or attribution either as instigator or abettor or conspirator or person sharing common intention or participant or atleast a member of the assembly formed unlawfully with some common object. Though the final report speaks the accusation under Section 120-B I.P.C for the offence under Section 420 I.P.C and under Section 12 of the Prevention of Corruption Act as referred supra of the gist of the police final report that was taken cognizance, there is nothing at the cost of repetition to say how the petitioner/A-3 being a privy by any specific overt act of any common concert or agreement to say conspirator or abettor. In the absence of showing any meeting of minds from alleged acts of conspiracy to attribute so far as petitioner/A-3, being managing director of A-7, other than by virtue of the status for same by any legal fiction no way made liable if at all any conspiracy between A-7 and A-1 with others if any including any of the officials of the State Government in toeing to A-1, no way makes the petitioner/A-3 personally liable from the settled position of the law of the land as on date undisputedly.

17) Thus, the crux here to answer the quash petition of any entitlement to quash or not concerned is how far the additional material filed in support of the respective contentions in the quash petition and in the final report taken cognizance with counter opposing the quash petition material points out any role of the petitioner/A-3 to sustain the accusation in the final report that was taken cognizance and if no material, the cognizance taken can be said by judicial non application of mind leave about reasons are required to be given or not though generally the application of mind shall reflect by reasons, even some of the expressions say mere non assigning of reasons will not entitle to quash the cognizance, once the cognizance taken reflects the judicial application of mind. It is also necessary to mention in this regard that in showing the benefits if at all said to have been conferred to A-7/India Cements by the then Government some of the officials acted in privy or there were dereliction of duties in conferring favours to A-7 entity as a quid-pro-quo for the investments made by A-7 with A-1 or any of his controlled or representing entities directly or indirectly. None of the Government Orders or proceedings of the alleged benefits were withdrawn or varied or revised by Government and in fact those were approved including by placing same of which in the Council of Ministers from the very averments in the final report referred supra.

18) Undisputedly India Cements Limited (A-7) acquired the Coromandel cement plant of Kadapa only in 1990 and the cement plant of Cement Corporation of India of Yarraguntla in Kadapa District only in the year 1998 (which are within the Andhra area) and acquired the Visakha Cement Industry of Tandur at Ranga Reddy District in the year 1997 and the Raasi Cement Limited of Nalgonda District in the year 1998 which are within the Telangana area. So far as regards the lease of lands concerned, (i) of Ac.2.60 cents at Chowdur Mandal, Kadapa District in favour of India Cements Limited (A-7) for a period of 20 years from the date on which the Company was in possession from 1983 and the Chief Commissioner Land Acquisition (CCLA) Government of Andhra Pradesh after examining said proposals of the District Collector,

issued orders vide G.O.Ms.No.53, dated 18.01.2001 awarding lease of said land in favour of India Cements Limited (A-7) for 20 years with retrospective effect from 1983 to 2003 for construction of infiltration well with pump house for supply of water to the cement plant at Chilamkur village with a condition of 10% annual lease on market value of Rs.50,000/- per annum and with provision for 20% increase for every 5 years as per the provisions of the Revenue Board sanding order-24. It is very clear that the leases were entered earlier even before India Cements Limited/A-7 acquired the Cement plants. It is only the leases renewed with retrospective effect for the period already under enjoyment without continuation concerned also in generating revenue to the Government without loss that cannot be ignored. It is for the subsequent period, India Cements Limited (A-7) submitted a requisition to the District Collector, Kadapa on 30.06.2003 after expiry of earlier lease period supra for renewal of the lease of said land as long as the operations of the cement plant continues in Chilamkur, stating that the infiltration well built in that land is the only source of water for their plant operations, on 06.02.2006 the District Collector, Kadapa through his letter No.E1/909/2000 submitted proposals to the Government through CCLA for extension of the lease of the Ac.2.60 cents in favour of India Cements Limited (A-7) with a recommendation that the period as prescribed under G.O.Ms.No.1484, dated 15.11.1977 on payment of rent at 10% of the market value of Rs.2,50,000/- per acre per annum and the CCLA forwarded said proposals by accepting the recommendation and the Revenue Department put up the latest amendment to the lease rules to Finance Department, which in turn returned the file to Revenue Department with remarks to take action as per G.O.Ms.No.1484, dated 15.11.1977 read with G.O.Ms.No.840, dated 14.10.1996. On receipt of the proposal, a circulation note was put by the then Joint Secretary Revenue Department endorsed to consider for approval and placed before the Council of Ministers in the Cabinet meeting held on 30.06.2008 and approved for five years period from 01.07.2003 and would expire on 01.07.2008 vide its resolution No.241/2008, dated 01.07.2008. Sri M.Samuel (A-4)-Principal Secretary, in furtherance of the criminal conspiracy with other accused persons, by abusing

his office as a public servant said to have issued orders vide G.O.Ms.No.865, dated 11.07.2008 extending the lease of land in Sy.No.657/2, Ac.2-60 cents of Chowduru Village of Proddatur Mandal in favour of India Cements Limited (A-7), Chilamkur for a period as prescribed under G.O.Ms.No.1484, dated 15.11.1977 read with G.O.Ms.No.840, dated 14.10.1996, thereby giving the lease for 25 years instead of only five years and M/s.India Cements Limited (A-7) was unduly favoured through this and A-7, in furtherance of the above said criminal conspiracy and in quid-pro-quo for favours received, had paid illegal gratification to the tune of Rs.140.00 crores in total, in the guise of investment, in the companies viz., M/s.Raghuram Cements Limited (Rs.95.00 crores), M/s.Jagati Publications Limited (Rs.40.00 crores) and M/s.Carmel Asia Holdings Private Limited (Rs.5.00 Crores), owned by Sri Y.S.Jagan Mohan Reddy (A-1), who was the ultimate beneficiary to the illegal gratification.

19) From the above, there is nothing against A-3 of he played personal and specific role to make him liable and in the absence of which from his mere status as Managing Director of A-7 cannot be made liable for any of the offences taken cognizance by the learned Special Judge from the transactions supra. It is also important in this context of G.O.Ms.No.1484, dated 15.11.1977 is only applicable to the Telangana Area under Hyderabad Land Revenue Act for uniformity of the leases as it mentions specifically in so far as Andhra area or Andhra region the leases are covered by Revenue Board Standing Orders and in particular B.S.O No.24A. Same is also the position regarding G.O.Ms.No.840 only for Telangana Area. It is important to mention that the prosecution claims from the final report said G.O fixes the maximum 25 years of lease and cannot be extended beyond the period of the lease commenced in the year 1983. The final report speaks the entity was not acquired by A-7/India Cements in 1983 but for later. It is to say indirectly of the lease was continuing even to prior to acquisition of the entity by India Cements. Even otherwise, taken for granted the lease was from the beginning only in favour of the India Cements, a combined reading of the two G.O.Ms.Nos.1484 and 840 clearly visualizes that it mentioned lease initially for five

years and there is no outer limit to the maximum period of 25 years or it cannot be said more than 25 years, even to find fault for asking for 75 years or even by counting from the original commencement of the lease allegedly in the year 1983, extended beyond 25 years by the original lease initially for five years or the extension for further periods and the total period if counted comes beyond 25 years. In fact the Board Standing Orders 24 speaks with proforma of lease even coming to G.O.Ms.No.53, the same referring to B.S.O.No.24 for the lease rightly. Even coming to G.O.ms.No.865, dated 11.07.2008, same amended by G.O.Ms.No.100®, dated 02.02.2010, it also reflects B.S.O 24 and amended from five years to 25 years or so. As referred supra in none of the proceedings or material, there is anything to reflect any role or petitioner/A-3 specifically as privy but for to say by virtue of his status in A-7/India Cements which no way makes him vicariously liable for no statutory provision or legal fiction including on the principal of alterago”.

From this it was observed in paras 20 and 21 which reads as follows:

“20) So far as the water distribution or allotment of additional water component to any of the entities that were acquired by IC/A-7 concerned and making of the provision concerned, M/s.Visaka Cement Industries Limited was undisputedly amalgamated with India Cements Limited (A-7) only in the year 2007. In fact long prior to it, M/s.Visaka Cement Industries Limited was given permission undisputedly to draw 10 mcft of water vide G.O.Ms.No.244 dated 19.12.1996, though the Government`s order did not mention the period of permission and the rate of water royalty to be fixed by the Government. The India Cements Limited (A-7) applied only on 10.03.2008 for additional allocation of 13 Mcft water from River Kagna in addition to the already allocated 10 Mcft water to M/s.Visaka Cements. The Chief Engineer, Minor Irrigation forwarded the request for obtaining Government Orders, from Special Officer(Technical), Irrigation & Command Area Development (I&CAD) Department raised the following points to be ascertained as to the proposed

enhancement will not affect Lower & Upper Riparian Rights and does not exceed the restriction of 6 TMC, period of permission to be granted, whether the former company had paid royalty charges up-to-date and remarks of CE, ISWR on the proposal, the matter was needed to be referred to Inter State Water Resources (ISWR), terms and conditions of drawl of water in the earlier G.O.Ms.No.244 namely period and royalty fixed, however Sri Adithyanath Das (A-5) in furtherance of the criminal conspiracy, by breaching the trust reposed in him and by abuse of his official position, without referring the matter of allocation of water from Kagna River to Inter State Water Resources, only referred the file to Sri Lava Kusha Reddy, Advisor (Telangana), who made a favourable observation though the Secretariat Business Rules defined no role for the advisers. Sri Adithyanath Das (A-5), Secretary, Irrigation Department with the favourable noting from Adviser, overlooked the objections raised by the Special Officer (Technical), gave his assent for allocation of water to M/s. India Cements Limited (A-7). The proposal was put up to the Minister and there was a final approval of the then Chief Minister resulted in issuing G.O.Ms.No.94, I&CAD dated 12.08.2009. It was in saying conspiracy therein. For that there is nothing to attribute against the petitioner/A3-Srinivasan by any whisper much less specific and substantial allegation of any of his role. The earlier non-payment of royalty by Visakha Cements was for the period prior to amalgamation with India Cements Limited if at all owing water royalty since May, 1997, that cannot be a ground for attributing conspiracy. Similarly coming to the India Cements Limited (A-7) acquired in the year 1998, Raasi Cement Factory at Wazirabad; undisputedly the Raasi Cement was given permission to draw 3 lakh gallons of water from Krishna River by G.O.Ms.No.408 dated 21.06.1979 issued by Irrigation & Power (IRR.III) Department. What all later continued was in saying Sri R.Nagi Reddy, Senior Personal Manager of India Cements Limited (A-7), Wazirabad entered into Article of Agreement for permission to draw 3 lakh gallons of water per day from Krishna River for cement factory for the period from 20.09.2007 to 19.09.2008 for an amount of Rs.1,62,000/- for 12 months and Sri P.R.K.Raju, Chief Manager of India Cements Limited (A-7) vide letter dated 10.12.2007

addressed to the Executive Engineer, Irrigation Department, Nalgonda stating that they had taken permission to draw 3 lakh gallons of water per day from Krishna River earlier from Irrigation Department vide letter No.C/1, dated 12.10.1982 and that they were expanding their plant and require additional quantity of water to an extent of 7 lakhs gallons per day. Even therefrom, it is not A3-Srinivasan but local officers that were party to above agreement, based on which, the Superintendent Engineer requested Chief Engineer to obtain permission from the Government by alleged creation of agreement dated 20.09.2007 for a period of one year. The Executive Engineer, Nalgonda, recommended the request of India Cements Limited (A-7) for enhancement of water to a tune of 10 lakh gallons per day by letter dated 23.02.2008 and the Superintendent Engineer, Irrigation & Command Area Development, Irrigation Circle, Hyderabad by letter No.DEE-I/TS-2/7152, dated 12.03.2008 addressed to the Chief Engineer, Minor Irrigation, Hyderabad requesting the Chief Engineer to obtain necessary permission from the Government and the Chief Engineer, Minor Irrigation addressed a letter No.DCE(MI)/OT3-T4/India Cements/ 2008, dated 28.03.2008 to the Principal Secretary, Irrigation & CAD, Department, Hyderabad stating that permission was accorded to India Cements Limited (A-7) formerly M/s.Raasi Cement to draw water from Krishna River, downstream of Nagarjunasagar Dam near Wazirabad village at the rate of 3 lakh gallons per day as per G.O.Ms.No.408, Irrigation & Power (Irrigation-II) Department dated 21.06.1979 and are paying royalty and for additional drawl from 3 lakh gallons to 10 lakh gallons per day sought from expansion of the cement plant. Same was circulated with note put up in C.No.10548/Reforms/2008 on 03.04.2008 and the Special Officer (Technical) observed as period is not specified, remarks of the E in C (irrigation) and the CE/ISWR on sparing of 10 lakh gallons per day to the company are to be obtained subject to confirmation of the expansion of the cement plant. A-5-Adityanathdas issued a memo vide No.10548/Reforms/2008, dated 29.04.2008 to the Engineer-in-Chief/Chief Engineer, Inter State Water Resources to offer their remarks on sparing 10 lakh gallons of water per day to India Cements Limited (A-7) and send a report

in the matter at the earliest and Dr.P.Rama Raju, Chief Engineer, Inter State Water Resources, Hyderabad, vide letter No.RCWR/DD(K)/7527/89, Vol.III, dated 23.05.2008 mentioned that as per requirement sought by the firm is relatively small, the proposal may be considered for giving permission duly accounting for the above quantity against the savings from the utilizations within the framework of the Bachawat Tribunal allocations. It was therefrom on 25.06.2008 the then Minister (M & MI) Sri Ponnala Lakshmaiah agreed to the proposal and finally the then Chief Minister late Sri Y.S.Rajasekhara Reddy, in furtherance of criminal conspiracy accorded his assent on 03.07.2008, in quid-pro-quo to the illegal gratification paid by India Cements Limited (A-7) and A-5 by abusing his official position as a public servant issued G.O.Ms. No.146, dated 22.07.2008 according permission to draw 10 lakh gallons of total quantity of water per day including 3 lakh gallons of water already permitted from Krishna River unduly favouring the firm, by suppressing the facts pertaining to the terms and conditions mentioned in the earlier G.O.Ms.No.408, during the period 2007 to 2008 apart from India Cements Limited (A-7) other companies viz., M/s.Deccan Cements Limited, Hyderabad, M/s.Madhucon Sugar and Power Industries, M/s.Maruti Ispat and Energy Private Limited had also applied for allocation of water and whose proposals kept pending as there was quid-pro-quo investments by India Cements Limited (A-7) into the companies of Sri Y.S.Jagan Mohan Reddy out of 12,50,000 preference shares at a premium of Rs.110/- for a sum of Rs.15,00,00,000/-, India Cements Limited (A-7) invested Rs.80.31 crores at a premium of Rs.1440/- with no explanation available in the minutes of the meeting or the statements recorded from top management of the company with regard to the necessity to increase the premium from Rs.110/- to Rs.1440/- (sudden raise of almost 12 times within a small time span of 9 to 10 months), except a simple statement that it is a “bouquet of investments” and India Cements Limited (A-7) sold the shares at Rs.671/- to M/s.PARFICIM, SAS, FRANCE on 14.04.2010 undergoing a loss of Rs.26,85,50,489/- Even therefrom in saying the investments into M/s.Raghuram Cements Limited, M/s.Bharathi Cement Corporation Limited by M/s.India Cements Limited (A-7) was nothing but a quid-pro-quo investment, there is

nothing of any specific role of A3-Petitioner, but for saying his status as Managing Director of India Cements Ltd, including in regard to in April, 2010 M/s.Pani & Associates, Bangalore evaluated the share price of M/s.Raghuram Cement Corporation Private Limited at Rs.221.17 Ps per share and the Board Resolution of India Cements Limited (A-7) dated 14.04.2010 resolved to invest up to Rs.125 crores by way of Inter Corporate Loans/Advance/Investment in M/s.Bharathi Cement Group whereas on the same day India Cements Limited (A-7) had sold their stake 1803973 shares of Rs.10/-each in M/s.Bharathi Cements Corporation Limited at a total price of Rs.121.00 crores to M/s.PARFICIM, SAS, FRANCE. Thus, there is no any specific averment from the above of any role of the petitioner/A3-Srinivasan to make him liable.

21) Apart from it, in opposing to the accusing of Sri Ponnala Lakshmaiah in the water allocation as concerned Minister, being privy to the quid-pro-quo's conferred to A-1 by A-1 abusing his position as son of the then Chief Minister and said Lakshmaiah toed to the requirement or dictates of the then Chief Minister or his son concerned, the contents of the affidavit running in about 42 paras in about 28 pages submitted by Sri Ponnala Lakshmaiah before the apex Court in S.L.P. No.1609 of 2012 where the C.B.I was undisputedly arrayed as 15th respondent, reads particularly from Para No.27 that the Government Orders were issued in the public interest and there is no criminal conspiracy with so called beneficiaries of said Government Orders and G.O.ms.No.146, dated 22.07.2008 pertains to Krishna River water and G.O.Ms.No.94 dated 12.08.2009 pertains to Kagna river were issued by the Department of Major and Medium Irrigation by examined by various functionaries connected and concerned with the issue and after following due process and under A.P. Business Rules and Secretariat instructions and the allegation of water to India Cements Limited thus was only in public interest following the due process. The affidavit further reads the industrial policy of the State mandates that 10% of the water will be reserved from existing and future reservoirs for industrial use which policy is in vogue since the year 2001 and as public interest will be better

served more by timely utilization of water as it not only would accrue revenue through royalty to the Government but also facilitates industrial development and spurring economic growth besides employment generation and state water policy puts industrial use of water at third priority after drinking water and irrigation with subsidized price and the only way commercial use can be made of water is thereby through industrial use in order to subsidies atleast the O & M cost of said sources and if water is not used in the Run of the river then it assumes a perishable nature as it goes as waste to the sea or evaporates and it is from the field officers examined of availability interstate issues, upper and lower riparian rights, Run of the water and sources like run of the water or reservoir point of view, the recommendations were sent to the Government which examined the availability and the industrial use from the policy in issuing the G.Os concerned, it also made clear from para Nos.32 to 36 that the quantity required by India Cements Limited was relatively small even from the remarks of Chief Engineer, ISWR submitted to the Memo of Irrigation and CAD (PW-Reforms), preceded by recommendation of the Chief Engineer of sufficient quality of water available that also from report of Executive Engineer and Superintending Engineers concerned and what was accorded is from the savings from utilization within framework of Bachawat Tribunal allocations and within the water and industrial policy of the State pursuant to the Government Orders in vogue, leave about before acquisition by India Cements Limited, the earlier entities were even allotted the Water and the bonafide actions or conduct do not attract any liability under Prevention of Corruption Act muchless as misconduct or privy or abetment.”

8. Needless to repeat what is mentioned in para 21, the then Minister for Major and Minor Irrigation, Sri Ponnala Lakshmaiah in the Apex Court where C.B.I. also one of the parties, filed his affidavit running in 42 paras 28 pages in SLP No.1609 of 2012 where the CBI was respondent No.15, particularly from para 27 that the

Government Orders were issued for the additional allocation of water to M/s.India Cements in public interest and there is no criminal conspiracy with so called beneficiaries of said G.O.Ms.No.146, dated 22.07.2008 pertains to Krishna river and G.O.Ms.No.94, dated 12.08.2009 pertains to Kagna river issued by the department of Major and Medium Irrigation by examining the functionaries connected and concerned with the issue and after following due process and under A.P.Business rules and Secretariat instructions and the allocation of water to India Cements thus was only in public interest following due process and the affidavit further reads the industrial policy of the State mandates that 10% of the water will be reserved from the existing and future reservoirs for industrial use which policy is in vogue since the year 2001 and as public interest will be better served more by timely utilization of water as it not only would accrue revenue through royalty to the Government but also facilitates industrial development and spurring economic growth besides employment generation and State water policy puts industrial use of water at third priority after drinking water and irrigation with subsidized price and the only way commercial use can be made of water is thereby through industrial use in order to subsidize atleast the O & M cost of the said sources and if water is not used in the run of the river then it assumes a perishable nature as it goes as waste to the sea or evaporates and it is from the field officers examined of availability interstate issues, upper and lower riparian rights, run of the water and sources like run of the water or reservoir point of

view, the recommendations were sent to the Government which examined the availability and the industrial use from the policy in issuing the G.Os. concerned, the quantity required by M/s.Indian Cements as mentioned in G.Os., Paras 32 to 36 was relatively small even from the remarks of Chief Engineer, ISWR submitted to the Memo of Irrigation and C.A.D.(PW-Reforms), preceded by recommendation of Chief Engineer of sufficient quantity of water available that also from report of Executive Engineer and Superintending Engineer concerned and what was accorded is from the savings from the utilization within frame work of Bachawath Tribunal allocations and within the water and industrial policy of the State pursuant to the Government Orders in vogue, leave about before acquisition on M/s.India Cements Limited, the earlier entities were even allotted the water and the bonafide actions or conduct do not attract any liability under P.C.Act, much less as misconduct or privy or abetment.

9. Leave it as it is from the above what were the queries raised by Chief Engineer, ISWR for G.O.Ms.No.94 were rectified by issuing subsequent G.O.43. Further, the allocation of industrial water shown as third priority among the priorities and the fact that the water from the excess available if properly not utilized for generating income in commercial allotment to the industrial use purpose will not be served is one of the undisputed facts that can be drawn from the said affidavit of the Minister P.Lakshmaiah before the Apex Court that is referred supra. Once such is the case, the only thing if at all for the alleged conspiracy so far as the

petitioner concerned is that the objections of SO, Technical, should have been referred to Chief Engineer, ISWR instead of non referring, from that it is crystal clear that the same is applicable only for Inter State Water and for major irrigation water and not for the Kagna which is not a major river for same is tributary of only Bhima and the petitioner as A5 for the query of the Section Officer, Technical, endorsed to substantiate, if at all for reference to the Chief Engineer, ISWR, there is no clarification to it. Once such is the case when there is no rule or provision or practice, any mandate about referring to the Inter State Water Resources authority, the mere non referring so far as the allocation of 13 Mcft. from Kagna concerned cannot be found fault much less to say it is privy with other accused for any conspiracy, leave about from the Krishna Major water available resource that was within the permissible limit allotted as discussed supra. Without need of going into further merits, once such is the factual background, there is no sustainable accusation to take cognizance against the petitioner as A5 without any sanction from the Central and State Government, that too without mention in the charge sheet of applied for respective sanction that are awaiting, that too without even an order in the cognizance taken without any mention at all as to no sanction is required when the factual matrix clearly show he is the concerned Secretary and file processed by him in discharge of official duties in exceeding any limitation even from the discharge of official duty by itself will not cease the protection statutorily available to a public servant.

10. Once such is the case, the cognizance order simply mentioning taken cognizance for 120 B read with Section 420 IPC, so far as petitioner A5, no way sustainable not for mere bereft of reasons but for lack of even application of mind totally.

11. Now coming to the contention as to whether sanction is required or not is a matter to be decided in the factual matrix after trial or during trial and there is nothing for the Court against the cognizance order to say that for want of sanction cognizance is not sustainable in so far as the petitioner is concerned, he also faced accusation under Section 3 read with Section 4 of the Prevention of Money Laundering Act (for short, 'the PML Act') and as such W.P.No.2253 of 2018 was filed challenging the same, that was decided along with the cases of the other public servant covered by two Criminal Petition Nos.3988 of 2016 and 11942 of 2018 by common order dated 21.01.2019. It was categorically observed that even for proceeding under the PML Act with the self same allegations on which the present quash petition impugned from the accusation of the CBI in filing the charge sheet without any proceedings of sanction is pre-requisite against the petitioner because his acts were in discharge of his official duties. For that reason by referring to Sections 4 and 5 Cr.P.C. and the relevant provisions of the PML Act, it was categorically observed of the provisions of Section 197 Cr.P.C. are applicable for taking of cognizance from the filing of charge sheet, as part of the prosecution proceedings for which the Cr.P.C. is applicable, as per Section 65 of the PML Act. Those conclusions need not be

repeated herein covered from para Nos.7 to 31 of the judgment from pages 53 to 105.

11. In so far as requirement of sanction against the public servant is concerned, coming to the expression placed reliance by the learned public prosecutor of, it is a matter to be considered during trial and premature now to come into, placing reliance on ***Devinder Singh and others v State of Punjab***⁹.

12. There particularly in para 39 placed reliance, for more clarity reproduced herein, which reads as follows:

39. The principles emerging from the aforesaid decisions are summarized hereunder :

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 Cr.P.C. has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

⁹ (2016) 12 SCC 87

39.4. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 Cr.P.C., but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr.P.C. would apply.

39.5. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty

was. Accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial.

13. From para 39 running in sub-paras 1 to 9 supra, what all observed by sub-para 2 is once an act or omission found to have been committed by public servant in discharge of his duty, it must be given liberal and wide consideration so far as official nature is concerned. What was stated is a public servant since not entitled to indulge in criminal activities to that extent Section 197 Cr.P.C. has to be construed narrowly and in a restricted manner. Even taken therefrom in relation to the facts as discussed supra, even from the note of Section Officer (Technical) of need of referring to Chief Engineer, ISWR, what he put up the note is to quote the rule or provision or the procedure if at all invoke under which there is requirement, that too, for allotment of water from the tributary of a minor river when not a major river and not covered by Inter State Water Resources Authority amenable jurisdiction, the returning of the file even by nothing quoted cannot be ignored and had it been that when returned by requiring to bring to the notice of the officer as to any practice or procedure or rule or provision, when nothing noted, where is the question of finding fault to attribute criminal conspiracy so far as the petitioner concerned, much less any offence of cheating either Government or the superior officers or the Minister in passing the orders in favour of

India Cements. Once such is the case, it cannot be *prima facie* said that he indulged in a criminal conspiracy from the material on record and in the absence of which, it is not the narrow or restricted manner of consideration but the wide and liberal consideration that what the expression otherwise says, were supposed to adopt even in the facts on hand.

14. Even coming to what in para 39.3 observed while saying from para 39.1 of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty, though not camouflaged to commit crime, even a public servant on facts exceeded his duty if there is a reasonable connection it will not deprive him of the protection under Section 197 Cr.P.C.

15. Having regard to the above and for the facts on hand supra also protection is available to the petitioner under Section 197 Cr.P.C. even from the expression supra. Even coming to para 39.4 what was stated is in case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 Cr.P.C. would apply for offence directly and reasonably connected with official duty to require sanction. Once such is the case, what is pointed out supra, there is no any complete provisions of the acts criminal in nature on the part of the petitioner from raising an objection to the note put up by Section Officer (Technical) of referring to the Chief Engineer, ISWR, from return of the file to quote the rule or provision or procedure or practice and when not

quoted in processing the file that too for the Minister to take a decision, when Minister taken a decision and even from issuance of G.O.Ms.No.94 by the Government from the queries raised on two counts by the Chief Engineer, ISWR, those were rectified by subsequent issuance of G.O. that is also covered as referred supra, where is the question of a complete criminal act *prima facie* from the reading of the facts to involve him with criminal conspiracy and cheating, much less to say from the cognizance order taken rightly or wrongly, it is a matter to be left open to face the ordeal of unnecessary trial without deciding even the pre-requisite need of sanction from the facts required to take cognizance. Even coming to para 39.6, what is observed is an accused is entitled even learned trial Judge taken cognizance on the validity of the sanction order, the very cognizance without sanction and he can raise at any time and even before framing of charges, leave about the right always available. There is no dispute on that aspect from what he raised in impugning the very cognizance order in seeking to quash without need of the ordeal of facing trial. Thus, there is nothing to question the maintainability of the quash petition impugning the cognizance order by saying want of sanction that too same was subsequently refused by the State Government for the IPC offences under Section 197 Cr.P.C. and the Central Government for the offences under the Prevention of Corruption Act. Here, what para 39.9 of the judgment of **Devinder Singh** stated ultimately is in some cases, it may not be possible to decide the question effectively and finally without giving opportunity to

the defence to adduce evidence, then to be decided during trial. Here, it is not the case in the facts referred supra. Thereby the principle laid down in the expression squarely applies in the facts to hold sanction is a pre-requisite, leave about similar analogy from earlier Three-Judge Bench expression in ***Sankaran Moitra v. Sadhna Das and another***¹⁰. Leave apart rejection of the sanction of the public servant to prosecute itself a ground to not to continue proceedings as held in ***Vinod Chandra Semwal v. Special Police Establishment, Ujjain***¹¹, particularly observations at para 12.

16. Even coming to the another Single-Judge expression of this Court in CrI.P.No.346 of 2015, dated 15.11.2017, where ultimately observed of matter left open to decide during trial of sanction required or not to prosecute under the Prevention of Corruption Act and IPC offences supra, there is no dispute on the legal position discussed in the expression which has been gone through and the conclusion arrived is only on the factual matrix. There are no precedents on facts. Having regard to the above, the decision has no application from the conclusion already arrived on facts.

17. Having regard to all the above, the cognizance order taken by the learned Special Judge no way sustains against the petitioner, for want of sanction to proceed, even for the IPC offences a pre-requisite under Section 197 Cr.P.C. and which is

¹⁰ (2006) 4 SCC 584

¹¹ (2015) 8 SCC 383

lacking and the order taking cognizance is without even referring to it and without even perusal of the charge sheet contents and without even application of mind, thereby though otherwise the matter can be remitted for re-consideration for the factual matrix discussed supra, since sanction is pre-requisite and that was also rejected, the prosecution and the cognizance order no way survives and there is no any remitting back for any re-determination of requirement or not of sanction from what is observed of sanction is pre-requisite.

18. Here, it is not the end of the matter to say if at all during trial there is any material something more than for framing of charges as held by the Constitution Bench case of the Apex Court in ***Hardeep Singh case (supra)*** explaining ***Dharam Pal case (supra)***, if at all such foundation made during trial from prosecution evidence for the discretion left open to the trial Judge to invoke Section 319 Cr.P.C.

19. With these observations, the criminal petition is allowed by quashing the proceedings against the petitioner in C.C.No.24 of 2013 on the file of the Principal Special Judge for CBI Cases, Hyderabad. The bail bonds of the petitioner/accused, if any, shall stand closed.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:04.02.2019
vnb