

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition Nos.24634 and 24655 of 2017

COMMON ORDER :

CrI.P.No.24634 of 2017

1-a. The petitioners 1 to 6 viz: 1) M/s Gagan Aero Space Limited (for short, 'the Company'), 2) Dr.Subba Rao Pavuluri, Director of the Company 3) Mrs. Anantha lakshmi w/o Dr.Subba Rao Pavuluri, 4) Anurup Pavuluri s/o Dr.Subba Rao Pavuluri, 5) V.Shashi Kumar and 6) G.Mohan Rao-Practicing Company Secretary, are the A.1 to A.6 in C.C.No.328 of 2017(old C.C.No.122 of 2015) on the file of the Special Judge for Economic Offences at Nampally, Hyderabad.

CrI.P.No.24655 of 2017

1-b. The petitioners 1 to 11 1) self-same company supra, 2) Dr.Subba Rao Pavuluri, Director of the Company, 3) V.Shashi Kumar(the petitioners 2 and 3 are also the accused in C.C.No.328 of 2017), 4) Chadalavada Nanda Kishore, 5) Hanumantha Rao Thagirisa, 6) Chaitanya Pavuluri, 7) Sudhir Babu Pavuluri, 8) Tummala Ramakrishna, 9) Venugopal Raju Penmetcha, 10) Upadrasta Satish Kumar and 11) Vivek Surana are the A.1 to A.11 in C.C.No.327 of 2017(old C.C.No.121 of 2015).

2. Impugning the revised cognizance orders, for the offences punishable u/sec.447 and 448 of the Companies Act, 2013 (for short, 'the Act') and Section 120-B IPC, against the petitioners-accused respectively supra, by allotting fresh C.C.No.328 of 2017 & C.C.No.327 of 2017, passed by the learned Special Judge for Economic Offences at Nampally supra, dated dt.20.11.2017 in S.R.No.3326/ 1/ 2017 and S.R.No.3326/ 2/ 2017, based on the private complaints, dt.30.06.2017 and 03.08.2015 of Rachakonda Siva Kumar- the 2nd respondent/self-same complainant, which is consequent to the common orders, by remand for passing orders afresh, passed in

CrI.P.Nos.13470 of 2015 and 13469 of 2015, dated 20.04.2017, by another single judge of this High Court by setting aside the earlier order of that Court taking cognizance for the offences supra and issue of summons to the respective petitioners/accused persons by allotting C.C.No.122 of 2015 & C.C.No.121 of 2015, the present two quash petitions are filed.

3. The revised cognizance orders of the learned Special Judge supra dt.20.11.2017, in S.R.No.3326/1/2017 and S.R.No.3326/2/2017, which are subject matter of present quash petitions impugned, speaks that “having satisfied with the allegations made in the respective complaints coupled with the documents referred to above, it prima facie constitutes the offences supra and directed the office thereby to register the case and allot fresh Calendar Case numbers”, since earlier the High Court set aside the earlier order of that Court taking cognizance and issue of summons to respective petitioners/accused persons covered by the earlier calendar cases.

4. Above orders passed pursuant to the common orders of remand supra by this Court earlier the operative portion of which reads that: “In the result, the petitions are disposed of setting aside the order dated 14.08.2015 passed in C.C.No.121 of 2015 and C.C.No.122 of 2015 by the Special Judge for Economic Offences– cum–VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad. The Special Judge for Economic Offences–cum–VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad is directed to apply his/her mind to the facts of the case and record his/her satisfaction about the existence of grounds to proceed further keeping in mind various questions regarding vicarious liability of the directors etc., referred in the earlier paragraphs and pass a reasoned order afresh within one month from the date of receipt of a copy of this order.”

5. For more clarity the common orders of remand supra by this Court earlier in CrI.P.Nos.13469 and 13470 of 2015 are reproduced hereunder:

“The allegations made and grounds urged in both the petitions are almost identical. Hence, they can be decided by passing a common order.

CRIMINAL PETITION NO.13469 OF 2015

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short “Cr.P.C.”) to quash the proceedings in C.C.No.121 of 2015 on the file of Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, registered for the offences punishable under Sections 447 and 448 of Companies Act, 2013 and under Section 120-B of Indian Penal Code (for short “I.P.C.”).

CRIMINAL PETITION NO.13470 OF 2015

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short “Cr.P.C.”) to quash the proceedings in C.C.No.122 of 2015 on the file of Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, registered for the offences punishable under Sections 447 and 448 of Companies Act, 2013 and under Section 120-B of Indian Penal Code (for short “I.P.C.”).

CRIMINAL PETITION NO.13469 OF 2015

Respondent No.2 – Rachakonda Siva Kumar is the complainant before the Special Judge for Economic Offences. He filed private complaint under Section 200 of Cr.P.C. alleging that he is the Director of petitioner No.1’s company since its incorporation on 16.10.2008 as “Gagan Aerospace Pvt. Ltd”, later it was converted into public limited company on 16.12.2011. The

Complainant is a shareholder of accused No.1’s company. Petitioner No.2 is director since its inception. The respondent No.2/complainant and his wife R.Rama Devi, his son Ravi Kumar and a company floated by complainant by name Zetatek Technologies Private Limited put together hold 24,20,000 shares. Petitioner No.2, his wife P.Anantha Lakshmi and the company floated by petitioner No.2 by name M/s Ananth Technologies Ltd., put together hold 24,20,000 shares. The total shares are 48,40,000. The complainant and his group hold 50% of shares and petitioner No.2 and his group hold 50% of shares. The shares held by complainant and petitioner No.2 groups are as follows:

Tables of shares.....

It is the specific contention of the respondent No.2 that himself, his wife R.Rama Devi, petitioner No.2 and his wife Mrs.Anantha Lakshmi are the directors of the company. Mrs.Anantha Lakshmi, wife of the petitioner No.2, ceased to be a Director by virtue of her retirement on 30.09.2014 and she was not re-elected, as the Annual General Meeting for the year ending 31.03.2014 was not held on or before 30.09.2014. In terms of article 51 (b) of Articles of Association of petitioner No.1- company, the complainant has issued notice on 01.05.2015 to the directors proposing to convene a meeting of board of directors on 09.05.2015. As a counter blast to the same, petitioner No.2 has also issued notice dated 02.05.2015 proposing to convene a meeting on 09.05.2015. In the said notice, petitioner No.2 stated that the meeting has been requisitioned by him as Chairman and the notice dated 01.05.2015 issued by the complainant is not valid. Accordingly, meeting was held on 09.05.2015 and petitioner No.2 came along with his wife Mrs.Anantha Lakshmi, who was no longer a Director and also brought one V.Sashi Kumar, who is not a Director of petitioner No.1- company, but he is the C.E.O. of M/s.Ananth Technologies Ltd., one of the shareholders of accused No.1 company. Mrs.Anantha Lakshmi would not have attended the meeting, as she ceased to be a Director, but she also participated in the meeting as one of the Directors, contrary to the retirement dated 30.09.2014.

In the meeting of the board of directors, when the election of Chairman of meeting was mooted by the Complainant as petitioner No.2 has been functioning continuously as Chairman for more than six years, petitioner No.2 and his group resisted the same. Hence, the meeting of board of directors could not be commenced and the

complainant and his wife left the meeting. There was no scope for conducting the meeting for want of quorum, as the quorum for the meeting is two directors.

The Secretary of the Company/petitioner No.11 uploaded Form DIR – 12 on behalf of petitioner No. 1 – company on 23.06.2015 describing petitioner Nos.3 to 10 - accused Nos.3 to 10 as additional directors of petitioner No.1 company as if they were attended as additional directors in the board meeting held on 09.05.2015. As no meeting was held, the question of their appointment as additional directors does not arise that apart Mrs.Anantha Lakshmi ceased to be a Director and petitioner No.2 alone could not have passed any such resolution appointing petitioner Nos.3 to 10 as additional directors.

Petitioner Nos.3 to 10 by virtue of their alleged appointment as additional directors, fraudulently increased the strength of board of directors of the petitioner No.1 – company by filing DIR-12 on 23.06.2015 with an ante date and that they all played fraud on respondent No.2 to defeat the legitimate rights of the shareholders and directors representing the group of respondent No.2 – complainant, thus committed fraud against the shareholders and other directors of petitioner No.1 – company.

CRIMINAL PETITION NO. 13470 OF 2015

Respondent No.2 – Rachakonda Siva Kumar is the complainant before the Special Judge for Economic Offences. He filed private complaint under Section 200 of Cr.P.C. alleging that he is the Director of petitioner No.1's company since its incorporation on 16.10.2008 as "Gagan Aerospace Pvt. Ltd", later it was converted into public limited company on 16.12.2011. The complainant is a shareholder of accused No.1's company. Petitioner No.2 is director since its inception. The respondent No.2/complainant and his wife R.Rama Devi, his son Ravi Kumar and a company floated by complainant by name Zetatek Technologies Private Limited put together hold 24,20,000 shares. Petitioner No.2, his wife P.Anantha Lakshmi and the company floated by petitioner No.2 by name M/s Ananth Technologies Ltd., put together hold 24,20,000 shares. The total shares are 48,40,000. The complainant and his group hold 50% of shares and petitioner No.2 and his group hold 50% of shares. The shares held by complainant and petitioner No.2 groups are as follows:

Table of shares.....

It is the specific contention of the respondent No.2 that the petitioner No.2 was having complete control over the premises of registered office of accused No.1 company and was not conducting the board meetings and AGM regularly and fabricating fake and bogus documents, as if the board meetings are held and brought into existence purported minutes of board resolutions and submitted Form MGT – 14 to the Office of the Registrar of Companies and the same was uploaded on 01.12.2014 which is a false and fabricated document and by virtue of which transfer of 100 shares each were effected in favour of A4 and A5 in gross violation of law with a malafide intention to increase the number of members of shareholders and to usurp the management of accused No.1 company by accused Nos.2, 3 and 6 in connivance of accused Nos.4 and 5. The aforesaid act causes injury to the interest of shareholders of the complainant's group which amounts to an offence under Sections 447 and 448 of Companies Act and criminal conspiracy to commit the said offences.

It is further alleged that accused No.2 was allowed to act as a Chairman of accused No.1 – company by virtue of a board resolution held on 16.10.2008 and he was allowed to continue till otherwise decided by the board of directors. The accused No.2 was exclusively dealing with bankers, as he was also given single signature power to operate bank accounts. The accused No.2 failed to convene proper board meetings as prescribed under the law and moreover, indulged in fabrication of various fake and fabricated documents and resolutions as if they were passed in the board meetings, though no such board meetings were held.

In contravention of provisions of Companies Act, accused No.6 uploaded Form MGT-14 under the digital signature of accused No.2, as if the same was done under the authority of resolution of board of directors of accused No.1 Company as if a board meeting was held on 02.09.2014, though no such board meeting was held. The said Form MGT-14 is not only a false declaration which amounts to an offence under Section 448 of Companies Act, 2013 and the same was brought into existence through fraudulent means and amounts to fraud which is punishable under Section 447 of the Companies Act, 2013.

The complainant further alleged that the accused No.2 in order to gain undue advantage and in violation of Section 56 of Companies Act, 2013 regarding transfer of shares created two additional shareholders i.e. accused Nos.4 and 5 showing transfer of 100 equity shares to each of them from the shares held by accused No.2 and the same was done by the approval of the Board at its meeting dated 02.09.2014, which in fact, was never convened and no notices were issued for convening the said board meeting.

It is further alleged that it came to light from public records i.e. Form MGT – 14 filed with Registrar of Companies. Accused No.2 is holding a single share certificate for his entire holding of 4990 shares and there are no share certificates of 100 shares each and the minimum requirement for effecting transfer of shares should be single share certificate of accused No.2 should be split into 100 shares which has to be approved in a duly convened board meeting and thereafter the shares should be sent to accused No.2 by accused No.1 company and thereafter the accused No.2 can transfer his shares of 100 each in favour of accused Nos.4 and 5. But no such procedure was followed and they simply submitted MGT – 14 with false recitals and approved the transfer of shares and no such share certificate accompanied by transfer deed was placed before board of accused No.1 company which amounts to creation of fake and fabricated form and uploaded the same. The aforesaid acts of accused are in contravention of Section 56 of Companies Act, 2013 and Rule 6 of Companies (share capital and debentures) Rules, 2014 relating to issue of a renewed/ duplicate share certificate.

The complainant further alleged that after coming to know about the same, he sent a notice on 09.02.2015 to the accused Nos.4 and 5, but accused Nos.4 and 5 failed to give any reply, hence the said transfer is a sham transaction. Further, the complainant got issued a legal notice dated 30.03.2015 to accused Nos.2,4 and 5 and issued another notice on 31.03.2015 to accused No.6, who is Company Secretary, who certified and uploaded the above Form MGT – 14. The accused Nos.4 and 5 did not give any reply, but accused No.2 gave his reply on 02.04.2015 with all denials. Accused No.6 also gave reply through electronic mail dated 10.04.2015. Complainant sent a rejoinder through his counsel dated 13.04.2015 to accused No.6 with copies to accused Nos.2, 3, 4 and 5. Further, on 14.04.2015 the Complainant has also sent a rejoinder to accused No.2 with para-wise denials through his statements contained in his reply dated 02.04.2015.

Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad recorded the sworn statement of the complainant – respondent No.2 and passed orders in both the cases, taking cognizance of the offence in relation to the petitioners/accused for the offences punishable under Section 447 and 448 of Companies Act, 2013 and under Section 120-B of I.P.C. and issued summons.

In the present petitions, the petitioners raised identical grounds. For convenience sake, I refer the following grounds urged in the petition No.13469 of 2015:

(1) Documents annexed to the complaint and allegations made in the private complaint does not disclose any offence against the petitioners, but the Special Court took cognizance of the offences against the petitioners under various sections referred above by passing an order in C.C.No.121 of 2015, which is extracted hereunder for better appreciation:

“Sworn statement of Complainant is recorded. Heard the counsel for complainant, perused the complaint and material papers on record. Taken of file U/ sec. 447, 448 of Companies Act 2013 and 120-B IPC. Office is directed to register the case as CC.NO.121/2015. Issue summons to the accused. Call on 18/9/2015.”

The order taking cognizance of the offence by the Special Judge for Economic Offences, does not disclose application of mind by the Special Judge and taking cognizance is wholly illegal, unsustainable and contrary to the law laid down in *Pepsi Foods Limited v. Special Judicial Magistrate-1998(5) SCC 749*, *Maksud Saied v. State of Gujarat-2008(5) SCC668* and *M.N.Ojha v. Alok Kumar Srivastav-2009(9) SCC682*. Thus, on this ground alone the proceedings in C.C. are liable to be quashed as the order taking cognizance of the offence in relation to the petitioners is contrary to the law and it shows non-application of mind by the Special Judge for Economic Offences, Nampally, Hyderabad.

(2) The Special Judge did not consider the allegations made in the complaint in proper perspective including the factum of issuing notice for convening meeting by the respondent No.2 dated 01.05.2015 to all the directors to convene a meeting on

09.05.2015, where Mrs. Anantha Lakshmi was shown as one of the Directors of petitioner No. 1 company and Mrs. Anantha Lakshmi acknowledged receipt of the same in the capacity of a Director. When she was continuing as a Director appointing petitioner Nos. 3 to 10 as additional Directors in pursuance of the meeting held on 09.05.2015 is valid and it does not amount to fraud and it would not attract the offence punishable under Sections 447 and 448 of Companies Act, 2013.

(3) Uploading DIR-12 on 23.06.2015 does not attract any offence under Section 448 of the Companies Act punishable under Section 447 of the Companies Act. Section 448 of Companies Act, 2013 deals with filing of any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder, any person makes a statement, which is false in any material particulars, knowing it to be false, or which omits any material fact, knowing it to be material, he shall be liable under Section 447 of Companies Act. But here, no false statement was uploaded and thereby the petitioners are not liable to be proceeded in C.C.No. 121 of 2015 as there exists no material to constitute an offence punishable under Section 447 of the Companies Act, 2013.

(4) It is specifically contended that unless and until a resolution is held to be invalid by a competent judicial forum, complaint for the offence punishable under Section 447 of the Companies Act, 2013 is not maintainable. In fact pursuant to the resolution of board meeting held on 09.05.2015 petitioner Nos. 3 to 10 were appointed as additional directors. Respondent No. 2 – complainant filed a Company Petition before the Company Law Board, later it was not pressed, in such case unless the resolution appointing petitioner Nos. 3 to 10 as additional directors is set aside on the ground that it is a false resolution, the petitioners cannot be proceeded for the offence under Section 447 of Companies Act, 2013.

(5) The complaint is bereft of allegations to attract the offence punishable under Section 447 of the Companies Act, 2013, however Special Judge for Economic Offences took cognizance without there being any material or evidence.

(6) The petitioner Nos. 3 to 10 were appointed as additional directors on 09.05.2015, they cannot be arrayed as accused since they are not parties to the alleged fraud or mis-statement or false statement uploaded in the web portal of Registrar of Companies by filing DIR – 12, but they were arrayed as accused and the Special Judge for Economic Offences, Nampally, Hyderabad took cognizance even against those persons erroneously.

(7) Petitioner No. 11 is practicing Company Secretary, who uploaded DIR – 12 in the web portal of Registrar of Companies, he did it only while discharging his duties prescribed under the Companies Act and rules framed thereunder and there is no truth in the allegations made against the petitioner No. 11 and he cannot be proceeded for the said offence.

(8) Respondent No. 2 – complainant suppressed the proceedings in O.S.No. 633 of 2015 on the file of VII Additional District Judge, Ranga Reddy, L.B.Nagar, seeking perpetual injunction against the petitioner Nos. 2 to 9 from interfering with the management and conduct of business of petitioner No. 1 – company by representing as Additional Directors and he also filed I.A.No. 1172 of 2015 seeking temporary injunction and the same was dismissed by order and decretal order dated 19.08.2015 and the same is carried into C.M.A.No. 682 of 2015 to this Court and this Court heard the arguments of both sides in the above matter and reserved for judgment. On the ground that suppression of those facts, the petitioners cannot be proceeded in the Criminal Court for the alleged offences punishable under Sections 447 and 448 of the Companies Act and under Section 120-B of I.P.C.

(9) Respondent No. 2 filed Company Petition No. 72 of 2015 before the Company Law Board, later he sought to withdraw the same by filing a memo dated 08.10.2015 with liberty to apply. Based on such memo, the Company Law Board by order dated 15.10.2015 dismissed the Company Petition as withdrawn with liberty to apply. Thereafter, the respondent No. 2 – complainant filed caveat petitions before the Courts entered into registered correspondence and also filed C.C.No. 122 of 2015.

Basing on the above grounds, the petitioners contended that the present complaints are not maintainable and prayed to quash the proceedings in C.C.No. 121 of 2015 and C.C.No. 122 of 2015 on the file of Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

During hearing, Sri S.Satyanarayana Prasad, learned Senior Counsel for the petitioners, while reiterating the grounds urged in the petitions, he mainly questioned the very taking cognizance by exercising power under Section 200 of Cr.P.C. and issue of process under Section 204 of Cr.P.C. and placed reliance on *Anil Kumar v. M.K.Aiyappa*-(2013)10 SCC 705 and *Sunil Bharti Mittal v. Central Bureau of Investigation* in support of his contentions that unless the Court records satisfaction to issue summons under Section 204 of Cr.P.C. the Court cannot issue summons or warrant depending upon the nature of the case. But here, the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, did not record his satisfaction as to existence of grounds to proceed against these petitioners as required under Section 204 of Cr.P.C. and committed an error in ordering notice. He also drawn the attention of this Court to the judgments rendered in “*Pepsi Foods Limited v. Special Judicial Magistrate*” and “*M.N.Ojha v. Alok Kumar Srivastav*” (referred supra).

Based on the principles laid down in the above judgments, learned Senior Counsel for the Petitioners argued that very issue of summons to the petitioners for their appearance before the Court is vitiated by irregularity and illegality, on this ground also the petitions are liable to be allowed quashing the proceedings.

Learned Senior Counsel appearing on behalf of the petitioners further contended that the directors are not at all liable for punishment when the company allegedly committed an offence and that apart the petitioner Nos.3 to 10 in Cr.I.P.No.13469 of 2015, who were allegedly appointed as additional directors are no way concerned with the offence and they were not the directors as on the date of passing such resolution since they came on record as additional directors only on the day when Dr.Subba Rao Pavuluri, petitioner No.2 herein and his wife P.Anantha Lakshmi passed a resolution and submitted the same to the Registrar of Companies. Therefore, issue of summons/ notice to the petitioners to proceed against them is an illegality committed by the trial Court.

Wife of petitioner No.2 Dr.P.Subba Rao though due for retirement by 30.09.2014 she did not retire as one of the directors of the company, for the reason that no Annual General Meeting was held to retire her from company as a director. Therefore, she deemed to have been continued as director by virtue of provisions of Companies Act, 2013 and thereby passing resolution in the Annual General Meeting and submitting the same to Registrar of Companies in DIR-12 is not an illegality and it would not amount to any offence punishable under the Companies Act. Therefore, taking cognizance and issuing summons against these petitioners is grave illegality committed by the trial Court.

The other ground urged before this Court is that the directors/ petitioner Nos.3 to 10, who were elected as additional directors in the Board meeting held on 09.05.2015, cannot be made liable for punishment in view of the settled law in “*Sunil Bharti Mittal v. Central Bureau of Investigation*” (referred supra) and other judgment and prayed to quash the proceedings.

Learned Senior Counsel for the petitioners also relied on the judgments rendered in “*G.Sagar Suri v. State of U.P.*-(2000) 2 SCC 636, *Ram Biraji Devi v. Umesh Kumar Singh*-(2006) 6 SCC 669, *Suryalakshmi Cotton Mills Limited v. Rajvir Industries Limited*-(2008) 13 SCC 678, *Paramjeet Batra v. State of Uttarakhand*-(2013) 11 SCC 673, *Rishipal Singh v. State of Uttar Pradesh*-(2014) 7 SCC 215, *Rashmi Jain v. State of Uttar Pradesh*-(2014) 13 SCC 553, *Gold Quest International Private Limited v. State of Tamil Nadu*-(2014) 15 SCC 235, *Pooja Ravinder Devidasani v. State of Maharashtra*-(2014) 16 SCC 1, *Rajib Ranjan v. R.Vijaykumar*-(2015) 1 SCC 513, *M.Mahendar Kumar v. M.Mani*-(2015) 11 SCC 519, *HMT Watches Ltd. v. M.A.Abida*-(2015) 11 SCC 776, *K.K.Kuda v. Chief Enforcement Officer, Enforcement Directorate*-(2015) 12 SCC 298, *Sharad Kumar Sanghi v. Sangita Rane*-(2015) 12 SCC 781, *M.Pitchaiah and others v. K.S.Periyaswamy*-ILR 2016 KAR 2437.

Whereas Sri S.Pavi, learned Senior Counsel for the respondents, would contend that when Mrs.Anantha Lakshmi was due for retirement by 30.09.2014, failure to conduct Annual General Meeting to retire Mrs.Anantha Lakshmi is not a ground to quash the proceedings and her continuation as one of the directors of the company and passing resolution is nothing but fraud played by the petitioners on the company so as to defeat the rights of the respondent No.2 herein and when she was due for retirement, merely because no resolution was passed in Annual General Meeting, she is not entitled to continue as a director of the company and in support of his contentions he relied on *A.Ananthalakshmi Ammal v. The Indian Trades and Investments Ltd.*-----”

and “B.R.Kundra, Proprietor, Film Exploiters, Chandni Chowk, Delhi v. Motion Pictures Association, Film Colony, Chandni Chowk, Delhi”

He further contended that there is no illegality in the order passed by the trial Court in issuing summons under Section 204 of Cr.P.C. and that itself not a ground to quash the entire proceedings.

He further contended that the Company has inherent power to take all steps to ensure its proper working and that, of course, includes the power to appoint directors. It can delegate this power to appoint directors to the board of directors and such delegation will be binding upon it. If there is no legally constituted board which could function or if there is a board but that is unable or unwilling to act, then the authority delegated to the board lapses and the members can exercise the right inherent in them of appointing directors.

In the present case, the petitioner No.2 and his wife P.Anantha Lakshmi, one of the directors, passed resolution ignoring the requisition given by the respondent No.2 transferred shares in favour of newly appointed directors to defeat the rights of respondent No.2, thereby the respondent No.2 can exercise his right in the administration of the company as the petitioner Nos.3 to 10 are not the members of legally constituted board and placed reliance on “B.N.Viswanathan and another v. Tiffin’s Baryt Asbestos and Paints Limited by their Agents and Secretaries, The Indian Trades and Investments Ltd. and Others”.

Learned Senior Counsel for the respondents further contended that when the petitioners played fraud on the company including the Directors and Additional Directors, they are liable for such offence and the Court cannot quash the proceedings by exercising inherent jurisdiction under Section 482 of Cr.P.C. at this stage and placed reliance on a judgment of Apex Court rendered in “Ganga Dhar Kalita v. The State of Assam”.

He further contended that the Company cannot claim any immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. In other words, the criminal intent of the “alter ego” of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the Corporation since they are the persons, who are 22 AIR 1953 Mad 520 23 (2015) 9 SCC 647 managing the affairs of the Company and placed reliance on “Iridium India Telecom Limited v. Motorola Incorporated and others”

On considering the rival submissions and perusing the material available on record, the points that arise for consideration are as follows:

(1) Whether Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, exercised his power in accordance with Sections 190, 200 and 204 of Cr.P.C. while issuing summons to the petitioners, if not, whether entire proceedings are vitiated and thereby the proceedings in C.C.No. 121 of 2015 and C.C.No. 122 of 2015 are liable to be quashed?

(2) Whether the petitioner Nos.3 to 10 in Criminal Petition No. 13469 of 2015, who are claiming to be additional directors, are liable for any of the offences as they were inducted as additional directors by passing a resolution dated 09.05.2015 and filed DIR-12 with Registrar of Companies on 23.06.2015, so also petitioner Nos.4 and 5 in Criminal Petition No. 13470 of 2015, if not the proceedings against them are liable to be quashed?

(3) Whether the resolution passed by the directors i.e. Dr.Subba Rao Pavuluri, petitioner No.2 and his wife Mrs.Anantha Lakshmi would amount to defeating the rights of the respondent No.2 by fraudulent acts, if so, are the petitioners are liable for the offences punishable under Sections 447 and 448 of the Companies Act and under Section 120-B of I.P.C.?

Points 1 to 3:

The first and foremost contention raised in Ground (C) of both the petition Nos. 13469 of 2015 and 13470 of 2015 is that the order of taking cognizance is wholly illegal, unsustainable and contrary to law laid down by the Supreme Court in “Pepsi Foods Limited v. Special Judicial Magistrate” (referred supra) and in “M.N.Ojha v. Alok Kumar Srivastav” (referred supra).

During hearing learned senior counsel appearing for the petitioners contended that very taking cognizance by issuing summons under Section 204 of Cr.P.C. is grave illegality committed by the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad and the order was passed mechanically without applying his mind and thereby entire proceedings are liable to be quashed.

The Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad received complaint and recorded the statement of defacto complainant/respondent No.2 herein and thereafter passed the following order:

“Sworn statement of Complainant is recorded. Heard the counsel for complainant, perused the complaint and material papers on record. Taken of file U/ sec. 447, 448 of Companies Act 2013 and 120-B IPC. Office is directed to register the case as CC.NO.121/2015. Issue summons to the accused. Call on 18/9/2015.”

Based on the order extracted above, Sri S.Satyanarayana Prasad, learned Senior Counsel for the petitioners would contend that the order passed by the trial Court, which took cognizance of the offences in relation to the petitioners must disclose that the Special Judge for Economic Offences has applied his mind and only after recording satisfaction as to existence of grounds to proceed against the petitioners issued summons/warrant, as the case may be, under Section 204 Cr.P.C. Thus, recording of satisfaction about existence of sufficient grounds to proceed against the petitioners is sine qua non and in the absence of such recording the entire proceedings taking cognizance and issue of process vitiates. The order under challenge extracted above is bereft of such requirement and in such case very taking of cognizance is vitiated.

Chapter XIV of Cr.P.C. deals with conditions requisite for initiation of proceedings. Section 190 of Cr.P.C. deals with the power of the Magistrate to take cognizance of the offence; subject to the provisions contained under Chapter XIV of Cr.P.C. any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered on his behalf under sub-section (2), may take cognizance of any offence upon receiving a complaint of facts which constitute such offence; upon a police report of such facts; upon information received from any person other than police officer, or upon his own knowledge, that such offence has been committed. Here, the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad is the officer, who is competent by virtue of his office. Section 190 of Cr.P.C. is the first Section of the Sections laying requisites for initiation of the criminal proceedings. Criminal proceedings, if initiated before the Magistrate and the Magistrate may take cognizance of the offences or offences alleged only by applying his/her mind to the facts. Mere presentation of the complaint is not sufficient to proceed against the accused as issuing summons will have serious consequences. The word “cognizance” is not defined anywhere in the Cr.P.C. But the meaning of taking cognizance is “applying mind of the Presiding Officer to the facts of the case and arriving at a conclusion that there is material to proceed against the accused”. Taking cognizance does not involve any formal action or indeed action of any kind, but occurs as soon as the Magistrate applies his mind to the suspected commission of an offence. Magistrate can be said to have taken cognizance of any offence when he applies his mind to the offence for the purpose of proceeding in a particular way as indicated in Chapter XVI of the Code, proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202 of the Code. Taking cognizance is a judicial act. By mere presentation of challan, the Court does not take cognizance of the offence. Where the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of Chapter XVI but for taking action of some other kind i.e. ordering investigation under Section 156 (3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence.

The word “cognizance” with reference to a Court or Judge means to “take notice of judicially”. Cognizance occurs as soon as Magistrate as such applies his mind to the suspected commission of an offence and the cognizance ends when the Magistrate ceases to have seisin of the case.

Thus, the pre-requisite for taking cognizance is application of mind by the Magistrate judicially. It is a judicial order. But here the Magistrate passed the order, extracted above, only based on the arguments advanced by the counsel and perusing the material papers available on record, issued summons, without recording his/her satisfaction as to the existence of sufficient grounds to proceed against the accused.

What the material papers contain and whether there are grounds to proceed against the petitioners for the offences punishable under Sections 447 and 448 of Companies Act and under Section 120-B of I.P.C. was not recorded by the trial Court.

There is no mention in the impugned order that the allegations made in the complaint *prima facie* constitute the offences punishable under Sections 447 and 448 of Companies Act, 2013 and Section 120-B of I.P.C. which requires a thorough investigation and report. Mere using of words "Heard the counsel for complainant, perused the complaint and material papers on record." does not denote or connote application of mind. Application of mind is something more than the perusal of the record.

After taking cognizance under Section 190 of Cr.P.C. the procedure to be followed by the Court is to issue summons/process under Section 204 of Cr.P.C.

According to Section 204 of Cr.P.C., if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-(a) a summons-case, he shall issue his summons for the attendance of the accused, or (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

The process of securing the presence of the accused is mentioned in Section 204 of Cr.P.C. and where the evidence on record makes a *prima facie* case against the accused, the Magistrate issues summons to secure the attendance of the accused. In determining whether the accused should be summoned or not the Magistrate should simply see if there is *prima facie* evidence in support of the complaint allegations and not whether there is sufficient ground for conviction. Where a *prima facie* case is made out against the accused the Magistrate has no option but to summon the accused and the Magistrate cannot refuse to summon the accused on the ground that it is likely to result in acquittal of the accused. When summoning the accused the Magistrate should specify the section of the Act under which the accused is being summoned.

What is sufficient ground to proceed varies from case to case. When the Magistrate decided to issue process against the accused, the Magistrate must apply his judicial mind to the material before him and ascertain not only that there is sufficient ground for proceeding further in the complaint but also the nature of the offence for which the accused need be summoned. The Magistrate does not enjoy an unrestricted power to summon a person at his whim, fancy or caprice simply because indicates that there is no *prima facie* case against some of the accused persons and the Magistrate without applying his judicial mind summon all the accused persons, the order summoning all the accused persons is liable to be set aside as held in "*Nirod Chandra v. Dijabara*"

The issuance of the process is not a mechanical matter, the Magistrate must bestow upon the case before him his deliberate and thoughtful consideration whether it discloses sufficient ground for proceeding as held in "*Swami Mick Monassan v. Papatlal*"²⁶. The expression "there is sufficient ground for proceeding" appearing in Section 204 must be distinguished from expressions like "there is ground for presuming that the accused has committed an offence" used in Sections 240, 246 and 228 of the Code. While the stage at which the Magistrate decides to summon an accused is, no doubt an important stage in the proceedings, and must be preceded by an application of judicial mind to material before the Court to determine if "there is ground for proceeding", the stage nevertheless, does not call for any indepth examination of other material or possible defence of an accused. Thus, before issuing summons by exercising power under Section 204 of Cr.P.C. the Magistrate has to apply his mind to the facts of the case and unless the Magistrate concludes that there are sufficient grounds to proceed, issuance of summons itself is an illegality.

When an identical question came up before the Supreme Court in "*Pepsi Foods Limited v. Special Judicial Magistrate*", the Supreme Court held that "Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of

the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

In "M.N.Ojha v. Alok Kumar Srivastav" the Apex Court held that "it is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice". [Vide: State of Karnataka v. L. Muniswamy : (1977) 2 SCC 699]"

In a recent judgment "HDFC Securities Ltd. v. State of Maharashtra²⁷" the Apex Court relying on "Maksud Saiyed v. State of Gujarat²⁸" observed that Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156 (3) or Section 200 of Cr.P.C., the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents therein were personally liable for any offence.

The Apex Court also referred to a judgment rendered in "Thermax Limited and Others v. K.M.Johny and others" and "Sunil Bharti Mittal v. Central Bureau of Investigation" (referred supra). In those two judgments, the Apex Court discussed about vicarious liability of Directors of a company. However, a similar question is also required to be decided in the present petition as the petitioner Nos.3 to 10 are the additional directors, who were appointed in the Board Meeting held on 09.05.2015, which was submitted to the Registrar of Companies in DIR-12 on 23.06.2015. But the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, did not consider this aspect in proper perspective and mechanically took cognizance of the offences against the petitioners in both the petitions and ordered summons to them, simply directed to register the case for different offences against the petitioners, issued process even without finding prima facie case against the petitioners for various offences. Therefore, passing such order without applying his/her mind and taking cognizance of the offences against the petitioners, issuing summons exercising power under Section 204 of Cr.P.C. is an illegality, in such case the Court can exercise its inherent jurisdiction under Section 482 of Cr.P.C. in view of the principle laid down in "M.N.Ojha v. Alok Kumar Srivastav" (referred supra) and "State of Haryana v. Ch.Bhajan Lal"

In the earlier judgment rendered in "Ramdev Food Products Private Limited v State of Gujarat³¹", the Apex Court discussed about the powers of the Court under Section 156(3) of Cr.P.C. and held as follows:

"Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed".

Thus, the order whatever passed by the Magistrate while taking cognizance and issue of summons exercising power under Section 204 of Cr.P.C. must disclose that he/she has applied his/her mind to the facts of the case and found that there are sufficient grounds to proceed against the petitioners. But the order in question is bereft of any such conclusion or satisfaction recorded by the Court, in such case the order taking cognizance against the petitioners and issuing process under Section 204 of Cr.P.C. is an error apparent on the face of the record.

In CrI.P.No.13470 of 2015 the complainant specifically alleged that the accused No.2 in order to gain undue advantage and in violation of Section 56 of Companies Act, 2013 regarding transfer of shares created two additional shareholders i.e. accused Nos.4 and 5 showing transfer of 100 equity shares to each of them from the shares held by accused No.2 and the same was done by the approval of the Board at its meeting dated 02.09.2014, which in fact, was never convened and no notices were

issued for convening the said board meeting and filed Form MGT – 14 with Registrar of Companies.

In the present petitions, the petitioners raised several contentions, more particularly about the cause of action for filing complaint for the offences punishable under Sections 447 and 448 of Companies Act. The petitioner Nos.3 to 10 in Cr.I.P.No.13469 of 2015 joined as additional directors in pursuance of the resolution dated 09.05.2015 and DIR – 12 was submitted to the Registrar of Companies on 23.06.2015, but the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, did not apply his mind to any of these legal issues and the question of raising such contention before the Special Court for trial of Economic Offences by the petitioners does not arise in normal course of events as it is pre-cognizance stage. But still it is the duty of the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, to apply his/her mind and satisfy himself/herself whether the Court can proceed further against all or any one of the accused based on the settled principles of vicarious liability and take cognizance, issue process by exercising power under Section 204 of Cr.P.C., But the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, did not apply his/her mind to the various aspects referred above, mechanically took cognizance of the offences based on the statement of the complainant, arguments of the counsel for the complainant and documents produced before the Court i.e. without recording any satisfaction as to the existence of grounds to proceed further, which is sine qua non under Section 204 (1) of Cr.P.C. but issued summons or warrant, as the case may be, against the accused. Therefore, the order taking cognizance of the offences and issue of summons under Section 204 of Cr.P.C. is erroneous, on this ground the order passed by the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad in C.C.No.121 of 2015 and in C.C.No.122 of 2015 are liable to be set aside. However, the learned Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad is directed to follow the prescribed procedure for taking cognizance and issue of process under Section 204 of Cr.P.C. considering the questions mentioned in the earlier paragraphs and proceed further, if the Court finds that there are sufficient grounds to proceed against the petitioners herein for all or any of the offences allegedly committed by them.

In the result, the petitions are disposed of setting aside the order dated 14.08.2015 passed in C.C.No.121 of 2015 and C.C.No.122 of 2015 by the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad. The Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad is directed to apply his/her mind to the facts of the case and record his/her satisfaction about the existence of grounds to proceed further keeping in mind various questions regarding vicarious liability of the directors etc., referred in the earlier paragraphs and pass a reasoned order afresh within one month from the date of receipt of a copy of this order.

Consequently, miscellaneous applications pending if any, shall also stand closed.”

6. The contentions in the grounds of the two quash petitions almost common in impugning the revised cognizance orders respectively, by referring to some of the above facts are that:

6(i). The learned trial Judge took cognizance on 20.11.2017 without filing of any fresh material and further examination of the complainant and by not considering the intervention of the petitioners to appraise the learned Special Judge about the controversy involved and not even considering question of vicarious liability of the Directors and other various questions raised by the petitioners which were the following:-

(a) The documents annexed to the complaint and the allegations made in the complaint do not disclose commission of any offence by any of the Petitioners.

(b) The averments in the complaint relating to the meeting Notice dated 02/05/2015, the Meeting of the Directors held on 09/05/2015 and the continuance of third Petitioner as Director and the appointment of additional Directors in that meeting are valid and the same will not attract any offence punishable under Sec.447 and 448 of the Companies Act.

(c) Up-loading of MGT No.14 on 10/12/2014 and D.I.R.No.12 on 23.06.2015 do not attract any offence under Sec.448 of the Companies Act.

(d) There is no false statement that was up-loaded and therefore the Petitioners cannot be proceeded with for any prosecution as according to them they can up-load the Minutes of the meeting that was held on 9th May, 2015.

(e) Unless and until the Resolutions held to be invalid or vitiated by fraud by competent judicial Fora the complaint filed to punish the accused for the offence under Sec.447 of the Companies Act is not maintainable.

(f) The additional Directors who were appointed in the Meeting held on 9th May, 2015 could not have been arrayed as Accused as they cannot be held to be guilty of the alleged offence under Secs.447 and 448 of the Companies Act as there is no vicarious liability on them.

(g) There is no justification for filing the Complaint even as against the Company Secretary who had discharged his duties entrusted to him and who was obligated to discharge his duties under the Companies Act and the Rules made there under.

(h) The complainant had suppressed the proceedings in O.S.No.636 of 2015 on the file of VII Addl. District Judge, RR District, L.B.Nagar and about the order of dismissal dated 19.08.2015 of I.A.No.1172 of 2015 seeking temporary Injunction which was also confirmed by this Hon'ble Court in C.M.A.No.682 of 2015.

(i) The Complainant/ Respondent had suppressed about filing of the Company Petition No.72 of 2015 before the Company Law Board and about withdrawing the same by order dated 15.08.2015.

6(ii). 3rd Petitioner-Mrs. Anantha Lakshmi continued as Director of the company in accordance with the provisions of the Companies Act and as per the Articles of Association of the Company, for there was no any Annual General Meeting (for short, 'AGM') held to retire her as Director of the Company and thus there is no illegality in the meeting held on 09.05.2015 and no offence is made out, that the learned trial Judge did not even consider any of the averments in the complaints as well as the provisions of the Companies Act to substantiate as to how any offence is made out, that the complaint itself is *malafide* and is liable to be dismissed on the ground of suppression of material facts and on the ground that the dispute involved is

of civil nature, that it is obligatory on the part of the trial Judge to consider all those aspects and then to decide as to whether there is any prima facie case to proceed against any of the petitioners either individually or jointly for any offence alleged against them.

6(iii). The dispute relating to transfer of shares is essentially of civil nature which is to be adjudicated by the competent authorities in accordance provisions contained in the Companies Act and the Rules made there under and not open to the Special Judge to consider and adjudicate on the legality of transfer of shares. Section 14 of the Act, deals with inspection, enquiry and investigation into affairs of any company. Under Section 206(4) of the Act, the Registrar of Companies has power to conduct enquiry into allegations of fraud. Under Section 210 of the Act, the Central government can order for investigation. Under Section 211 of the Act, Serious Fraud Investigation Office was established which will look into the allegations of fraud in the affairs of the company. Section 213 of the Act, contemplates investigation into continuous affairs in other cases. If after investigation proved that the business of the company is being conducted with intent to defraud the creditors/ Members or any other persons, then every officer of the company can be prosecuted in the manner, as provided under Section 447 of the Act and *de hoarse* this investigation, it is not open to the complainant to assume that the affairs of the A.1-company are being conducted fraudulently or that there is any act of false statement made in the Minutes filed by the A.6. The complainant on 04.08.2015 made a complaint to the Registrar of Companies which relates to Share Transfer instrument, appointment of Additional Directors among other affairs and allegations are the very same that of the complaint given before the learned Special Judge and the complainant also failed to mention the same in his sworn statement recorded subsequent to 04.08.2015.

6(iv). Further coming to C.C.No.327 of 2017, sole contention of the complainant, on the validity of the meeting held on 09.05.2015, is that one of the Directors Smt. P.Anantha Lakshmi, ceased to be a Director by operation of law. The Contention was that as per the 6th Annual Report for 2013-14 of the Company, it was proposed to re-appoint Smt. P.Anantha Lakshmi, as a Director, as she was to retire by the time of the AGM for 2013-14, but AGM proposed to be held on 02.09.2014 was not held and therefore, she ceased to be a Director automatically. In this regard, there is no provision either in the Act or in the Articles of Association of the Company, for such automatic cessation. Under Article 50 (d) and (e), if the retiring Directors vacancy is not filled up, the retiring Director shall be deemed to have been re-appointed. Section 152 (7) (b) (iv) deals with re-appointment of retiring Director and state that a retiring Director will get automatically re-elected if the meeting is not held. Under Article 50 of the Articles of Association of the Company, retirement of a Director will be at the AGM because the re-appointment to the vacancy, arising of such retirement, has to be filled up. If the AGM itself is not held, there is no provision that the Director due for retirement at the AGM will automatically vacate the office of his directorship. If such interpretation is allowed serious complications could arise, in the management of the companies, if AGM is not held, could not be held, or is delayed. It is submitted that when Section 167 of the Act, deals with the circumstances under which Director vacates the office, it is not open to complainant to contend that Smt. Anantha Lakshmi ceased to a Director dehors this provision.

6(v). The other contention is that the learned trial Judge erred materially in not noticing that Section 447 would only apply if there is no prior adjudication judicially that the accused guilty of "fraud" and therefore, to proceed against any of the accused under Section 447 of the Act, then it is

not open to the Special Judge to adjudicate as to whether the petitioners are guilty of fraud and then take upon the present complaint for the alleged offence under Section 447/ 448 of the Act. The Petitioners submit that a bare reading of the complaint and the documents annexed thereto as well as the sworn statement do not disclose commission of any offence by any of them. The impugned Cognizance orders are illegal, unsustainable and contrary to settled legal principles. Even as per the complaint made about uploading of MGT 14 is as per the meeting held and the same is not alleged by any of petitioners that there is any false statement. Therefore without any adjudication of the validity of said meeting by competent Fora, it cannot be alleged that petitioners are guilty of any offence Under Section 448 of the Act. It is further contended that the special Judge failed to notice that as A.1 is a company, how it can be alleged to have committed any offence. The trial Judge failed to notice that even according to the complaint, the A.2-Dr. Subba Rao Pavuluri, was appointed as Chairman of the A.1-Company in the meeting held on 16.10.2008 and he continued as Chairman of the Company till date. Pursuant to the notice dated 01.05.2015 in the meeting held on 09.05.2015, he attended and presided over the meeting. Even as per the Complaint, the Complainant and his wife left the meeting. When the said meeting was thus held, the proceedings took place and Additional Directors were appointed; the Complainant cannot say that any of the petitioners are guilty of any offence.

6(vi). The complainant filed O.S.No.636 2015 on 29.06.2015 on the file of VII Addl. District Judge, Ranga Reddy District, at L.B.Nagar for an Injunction against the Petitioners 2 to 9 herein from interfering with the management and conduct of 1st Petitioner Company which was suppressed by the complainant. The complainant also filed I.A.No.1172 of 2015 for a temporary injunction pending the suit with the same allegations as in the suit and in the complaint and said petition was dismissed by order dated

19.08.2015 categorically holding that the dispute with regard to appointment of Additional Directors and classification of them has to be dealt by the Company Law Board and the civil courts have no jurisdiction which was confirmed by the High Court in C.M.A.No.680 of 2015.

6(vii). By the time the learned Special Judge passed the impugned Order, all these facts are glaring and are evident and are referred to by this Court in said Criminal Petition and in spite of it, the trial Court ignoring all these aspects, not questioned the Complainant as to how the Complaint is maintainable.

6(viii). The allegations made in the Company Petition No.72 of 2015 before the Company Law Board, Chennai, and in the present Complaints are identical and the complainant suppressed in the Company Petition about filing of these complaints and also about suit O.S.No.632 of 2015. Ultimately said Company Petition was withdrawn by filing a Memo, dated 08.10.2015 and the same was dismissed as withdrawn on 15.10.2015 with a liberty to apply which itself shows the complaint is of civil nature and his remedy is to approach a competent Forum under the Companies Act.

6(ix). The Complainant filed Caveat Petitions in which he addressed the 3rd petitioner as Director of the A.1-Company. Further it is submitted that with the self-same allegations in the complaints vide SPIN Nos.60448495 and 60447760, dt.04.08.2015 were made to the Registrar of Companies, Hyderabad by the complainant which positively show that the dispute is of civil nature.

6(x). The trial Judge failed to see that one of the accused persons arrayed before him is a practicing Company Secretary but he is not the Company Secretary of A.1-company but as a practicing Company Secretary, he just discharged his professional obligation by uploading the relevant form

to the office of the Registrar of Companies, for which he could not have committed any offence as alleged.

6(xi). From the above contentions sought for quashing the revised cognizance orders impugned supra of the learned trial judge.

7. Coming to the averments in the respective complaints

7(1). In C. C.No.328 of 2017 in nutshell are that:

7(1).(i). The Complainant is a Director in the Board of the A.1-Company since its inception on 16.10.2008, originally incorporated in the name and style of "Gagan Aerospace Pvt. Ltd.," and later converted into a public limited company on 16.12.2011, with its registered office at Plot No.39, Hi-Tech City, Phase-II, Madhapur, Hyderabad-500081, State of Telangana till 18.6.2015, before it is changed to Plot No.31, TIE, Balanagar, Hyderabad. The A.2 Dr.Subba Rao Pavuluri also a Director of A.1-Company since inception. The Complainant is a shareholder of A.1 Company holding 4980 equity shares and total number of shareholders and their respective shareholding in AI Company is as under:

S.No.	Name of shareholder	No. of shares held
1	R. Siva Kumar	4980
2	Zetatek Technologies Pvt. Ltd	2415000
3	R. Ravi Kumar	10
4	Mrs. R. Rama Devi	10
	Sub Total (A.)	2420000
5	Dr. Subba Rao Pavuluri	4990
6	Ananth Technologies Ltd.	2415000
7	Mrs. P. Anantha Lakshmi	10
	Sub Total (B)	2420000
	Total (A+B)	48,40,000

Both the Group-A and B shareholders have equal share holdings at 50% each
There are total 7 shareholders which is mandatory for a Public limited company

to have minimum number of 7 shareholders. The Group-A shareholders belong to complainant's group and Group-B belongs to A2 group. There are four Directors in A.1-Company viz: the complainant, his wife Mrs. R. Rama Devi, A2 and his wife Mrs. Anantha Lakshmi Pavuluri(A3) i.e. two each from the respective groups till A3 ceased to be a Director by virtue of her retirement on 30.09.2014. The A.2 was having complete control over the premises of the registered office of the A.1-Company and was not conducting the Board meetings and AGMs regularly and fabricating fake and bogus documents as if the Board Meetings are held and brought into existence purported minutes of Board resolution and submitted Form MGT-14 to the office of Registrar of Companies, Andhra Pradesh and 'Telangana by uploading the same on 1.12.2014 by virtue of which transfer of 100 shares each to A4 & A5 are purported to be affected arbitrarily and illegally in gross violation and utter contempt of law with dishonest and mala fide intention by increasing the number of share holders to his advantage to usurp the management of A.1 Company by A2, A3 & A6-G.Mohan Rao-Practicing Company Secretary who abused their position in the company in connivance with A4-Anurup Pavuluri and A.5-V.Shashi Kumar to cause injury to the interest of shareholders of complainant's group amounting to offences u/ sec.447 and 448 of the Companies Act (for short, 'the Act') and criminal conspiracy to commit said offences.

7(1).(ii). At the first Board Meeting of the A.1-Company held on 16.10.2008 the A.2 was allowed by the Board to act as Chairman of the meetings till otherwise decided by the Board of Directors of the Company and the copy of its minutes was furnished by A2 to the Complainant as he represents 50% shareholding in the A.1 Company. For the last more than two years, the A.2 was exclusively dealing with Bankers as he was also given Single Signature Power to operate Bank Accounts but to the shock of the Complainant, various acts of omissions and commissions came to light. The A.2 even failed to convene proper Board meeting as prescribed by law and on the

other hand, indulged in fabrication of fake documents and resolutions as if they were passed in the Board though not held. When the complainant confronted with the facts, the A.2 refused to give copies of balance documents. Thus, there is a deadlock in the management of A.1-Company on account of management dispute as the complainant and A2 are equally divided in the strength of Board of Directors as well as percentage of shareholding. Therefore instead of resolving the issues in a lawful manner, A2 in connivance with other accused, contravened various provisions of the Act. The modus operandi adopted by the A.2 is filing Form MGT-14 by uploading the same by A.6 under the Digital Signature of A2 as if the same on the authority of the Board of A.1-Company as if a Board Meeting is held on 02.09.2014 resulting effect in the transfer of shares.

7(1).(iii). The A.2 with a dishonest intention of gaining undue advantage and injure the interest of shareholders of complainant's group, arbitrarily, illegally, in flagrant violation of substantive law contained in Section 56 of the Act, (corresponding Section 108 of the Companies Act, 1956) regarding transfer of shares created two additional shareholders namely A4 and A5 showing transfer of 100 equity shares to each of them from the shares held by the A.2 purported to have been transferred by the approval of the Board, at its Board Meeting dt.02.09.2014 which in fact was never convened and never conducted at all and no notices were issued which came to light only from public records i.e. Form No.MGT-14. The A.1 and A.2 never issued notice dated 23.08.2014 for the purported Board meeting dt.02.09.2014 as falsely stated in the first page of Form No.MGT.14. It is a fact that the A.2 is holding a single share certificate for his entire shareholding of 4990 shares and there are no share certificates of 100 shares each issued to him by the A.1-Company. The minimum requirement for effecting transfer of shares from A2 to A5 should be the single share certificate of A2 should be split into 100 shares which should be approved in a duly convened and conducted Board meeting of the A.1 and

the split shares should be sent to the A.2 by the A.1 Company and thereafter, the A.2 can sell his shares of 100 each to A.4 and A.5 as shown in the fake Board resolution dt.02.09.2014. The A.4 and A.5 together with the A.2 should execute a prescribed physical transfer deed and bring it before the Board of Directors for their consideration and after its approval the same included in terms of the Articles of Association of the A.1 Company. Nothing of these procedures were performed.

7(1).(iv). Section 56 of the Act, 2013 (corresponding Section 108 of the Act, 1956) mandates that *"a company shall not register a transfer securities of the company, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor (seller) and the transferee (buyer) and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities."* and Rule 6 of the Companies (Share Capital and Debentures) Rules, regarding *"Issue of renewed or duplicate share certificate"* mandates that before split of shares, the original certificate in lieu of which it is issued for the purpose of sub-division (from jumbo certificate in the present case) shall be surrendered to the Company and split of shares should be approved by the Board of Directors.

7(1).(v). None of the above mandatory requirements were followed and all the accused have created fake documents and fake Board resolution and uploaded into Roc web portal by filing a false Form MGT-14 pursuant to Sec.94 (I) and 117 (I) of Companies Act, 2013 and Sec.192 of Act, 1956 in the office Of Registrar of Companies, Andhra Pradesh and Telangana. As soon as the Complainant came to know the same, he sent a notice on 09.02.2015 to the A.4 and 5 refuting the alleged Board meeting and the share transfers

shown in Form No.MGT.14 and the said Form is a false declaration made to ROC. Even when the Complainant demanded the copies of all relevant documents to prove the transfer of shares, the A.4 and A.5 failed to reply. Subsequently, the Complainant also got issued a legal notice, dt.30.03.2015 to the A.2, 4 and 5 seeking their explanations and demanded production of credible evidence to support the contents of said Form for illegal transfer of shares and again on 31.03.2015 got issued another legal notice to the A.6-the Practising Company Secretary who certified and uploaded the above Form without verifying the genuineness of the same. The A. 4 and A.5 failed to reply but the A.2 gave reply, dt.02.04.2015 with vague denials and false statements and a similar reply was received through e-mail,dt.10.4,2015 from the A.6 also.

7(1).(vi). The Complainant through his Counsel sent a rejoinder dated 13.04.2015 to the A.6, with copies to A.2 to A.5 refuting his false defence and also sent a Demand Draft for Rs.500/-towards defraying photocopying charges of the documents claimed to have been in the custody of the A.6 who uploaded the Form supra but there is no reply which confirms the fabrication.

7(1).(vii). On 14.4.2015 the Complainant also sent a rejoinder to the A.2 with para-wise denials to his false statements in his reply, dated 02.04.2015 and also enclosed another D.D. for Rs.500/- in favour of the A.1 for making available photocopies of the relevant documents as provided in the Act. It is further submitted that A2 being the Director of A.1-Company under whose Digital Signature Form MGT.14 is uploaded by A6 and the contents of the same show that A3 to A5 are parties to the said document which is filed on the basis of a purported Board resolution and thus all the accused are parties to above form MGT-14 and entered into a criminal conspiracy to file the above said Form on behalf of A.1-Company and hence

all the accused are interested in each other to achieve their object and thus are liable for punishment.

7(2).The complaint averments in C.C.No.327 of 2015 save those covered from supra in C.C.No.328 of 2015 are that:

7(2).(i). The A2, having control over A.1-Company not conducting board meetings regularly, fabricated fake documents as if conducted and brought into existence purported resolutions/ minutes of Board Meetings taking advantage that A.2 and his wife to technically constitute a quorum to conduct board meeting at least till 30-09-2014. As A.2 failed to comply with legal requirements of filing of necessary forms with ROC regarding cessation of his wife Mrs. Anantha Lakshmi Pavuluri as Director of A1 company, the Board of Directors at their meeting held on 18.06.2015 reviewed the matter and as a mere procedural compliance of law under the Companies Act, 2013, filed Form DIR-12 on 18.06.2015 with ROC intimating cessation of Mrs. Anantha Lakshmi Pavuluri as a Director. It was proposed by the complainant to hold a meeting of the board of directors and in terms of the powers vested in Article 51(b) of the Articles of Association of the A1 Company which provides that any Director of the Company can issue a notice convening board meeting and the complainant issued notice dated 01.05.2015, to the Directors convening a meeting on 09.05.2015, with 13 items of agenda and as a counter blast, A2 also issued a notice dt.02.05.2015 convening a board meeting with 13 items of agenda. A protest letter, dt.05.05.2015, with detailed reasoning is addressed to A2 by the complainant. However, when the complainant and the other existing Director, Mrs.R.Rama Devi were present themselves for the meeting at the appointed time and venue, A2 came with his wife, Mrs.P.Anantha Lakshmi who is no longer a Director and also brought one more person by name, V.Shashi Kumar, not a Director of A.1-Company but CEO of M/s Ananth Technologies Limited functioning in the same premises. When the matter of election of the Chairman of the meeting was moved to elect the

complainant for three years in the place of A.2, the A.2 along with his wife and V.Shashi Kumar supra resisted without any right to participate in the proceedings and therefore the Board Meeting could not commence and vexed with the conduct of the A.2 and his wife and V.Shashi Kumar, the complainant and his wife left the premises. The minimum quorum to conduct a board meeting of A.1-company is two Directors but out of three Directors of the A.1-company as on 09.05.2015, the A.2 by himself cannot conduct any board meeting for want of quorum without participation of the complainant and his wife another Director.

7(2).(ii). As can be seen from the 6th Annual Report for 2013-14, containing notice dt.02.09.2014 to shareholders signed by A.2 himself and sent to the Statutory Auditor of the A.1 Company for certification and issuing of Auditors report stating to re-appoint the Director Smt. P.Anantha Lakshmi who is eligible to retire by rotation and being eligible, offers herself for re-appointment and resolved that pursuant to Section 255 of the Act, and other applicable provisions P.Ananthalakshmi is appointed as Director of the Company. As the AGM consequent to the above did not take place till date, she ceased to be a Director w.e.f.30.09.2014 which is statutorily last date for conducting AGM for the financial year 2013-14 as per the Act. The A.2 knowing that he has no majority to conduct any Board Meeting for want of quorum, resorted to illegal acts in conspiracy of other accused to create illegal parallel board of A.1 by fraudulent means by filing Form DIR-12 which is filed by A.2 on behalf of A.1 Company claiming to be its Chairman showing 8 new persons i.e. A.3 to A.10 whoa are none other than relatives and friends of A.2 as additional Directors as if they were appointed at the Board Meeting, dt.09.05.2015, with an intention to defeat the legitimate rights of shareholders and Directors representing the Complainant's group. The complainant also in para-8 of

the complaint mentioned the circumstances where the fraud is apparent. Hence the complaint.

7(2).(iii). One of the main causes of action in C.C.No.327 of 2017, according to the complainant from the above further is that he issued notice dated 01/05/2015 calling for a Board Meeting on 09.05.2015, however, without adhering to it and as a counter-blast to it, the 2nd petitioner-A.2 with fraudulent and malicious intention issued a parallel notice, dt.02.05.2015 and also convened a purported Board Meeting on the very same date, by allowing his wife, who even ceased to be a Director of the A.1-Company, to participate, besides allowed one Shashi Kumar a stranger and not a Director also to participate, on 09.05.2015, despite protest raised by Complainant and his wife and without allowing their participation and without quorum, created a show as if of a meeting purportedly convened and certain resolutions were purportedly passed and minutes of said purported resolutions which are perse illegal and falsely created were fraudulently filed by A.11 to the Registrar of Companies and said filing of Forms constitute the offences punishable under Sec.447 and 448 of the Companies Act. The complainant further claims that he convened a meeting on 18.06.2015 and filed D.I.R.No.12 Form with the Registrar of companies on 23.06.2015, intimating cessation of directorship of wife of the A.2, that answers the definition of forged documents. The complainant alleges therefrom fraud committed with criminal conspiracy by all the accused in creating record falsely as if appointed others among them as Additional Directors for the following circumstances that also constitutes "fraud" committed by the accused that:

- (a) There are already disputes between two groups of share holders of A.1-Company,
- (b) Extensive notices were exchanged between two groups,
- (c) No necessity to increase the strength of the Board of A.1 Company,

(d) The Agenda of the meeting on 9.05.2015 did not have the agenda for appointing 8 Additional Directors i.e., A.3 to A. 10.

(e) That A.3 to A.10 consented to be appointed as Additional Directors knowing fully well that A.2 cannot induct them as Additional Directors of A.I company.

(f) The Board Meeting on 9.05.2015 was planned to be held and in fact was never held. D.I.R. 12 Form was certified on 23/ 06/ 2015 and it is a false recital that a Board Meeting took place on 09.05.2015 and it falsely certified that A. I had verified the records.

(g) Notices were issued to the Accused but there was no response

and that it is on above premise, complained that D.I.R.12 Form uploaded on 23.06.2015 is a false document, filed knowing to be false and therefore it is an offence under Sec.448 of the Act punishable under Sec.447 of the Act.

8. Heard both sides in both the Criminal Petitions and also perused the entire material on record including the decisions relied by both sides in support of their contentions.

9. From the above whether the impugned revised cognizance orders are unsustainable and are liable to be set aside and with what result?

10. Leave about the fact that prospective or proposed accused has no right of audience or hearing at the pre-cognizance stage in a private complaint proceedings covered by Sections 200 to 204 read with Section 190 CrPC, but for only if the complaint not rejected under Section 203 CrPC having found *prima facie* case to proceed by taken cognizance and consequent to it issued summons to accused to appear under Section 204 CrPC, for any right of hearing after such appearance; there is nothing in the above remand common order of this Court supra dated 20.04.2017 to give notice to any prospective or proposed accused and right of audience or hearing at the pre-cognizance stage of fresh consideration to pass reasoned order after application of mind to the material. There is nothing even in said order to permit any fresh material of complainant or to permit examination

further of complainant or any witnesses on his behalf, much less to consider the defence of accused propounded in the earlier quash petition grounds while remanding to deal with the same, much less in extensive. What all observed was only to keep that in mind and not stated to discuss and arrive a finding in support of each aspect to take cognizance or not. The order which is very clear in this regard is reproduced herein for more clarity to the readers -....record his/her satisfaction about existence of grounds to proceed further, keeping in mind various questions regarding vicarious liability of the Directors etc., referred in the earlier paragraphs and pass a reasoned order afresh... Thus the contentions that the learned trial Judge took cognizance on 20.11.2017 without filing of any fresh material and further examination of the complainant and by not considering the intervention of the petitioners to appraise the learned Special Judge about the controversy involved is untenable and liable to be rejected at the threshold. No doubt the trial judge as per remand order in passing revised cognizance order if any was to keep in mind the aspects like vicarious liability of the Directors and other aspects like dispute is predominantly civil in nature or only having civil trappings and whether alternative remedy available is a bar to criminal prosecution etc., and nothing even to direct to deal with every such aspect and give reasons in relation thereto respectively.

11. It is the well settled law including from the expressions of the Apex Court referred in the earlier remand order reproduced above that unless the dispute is predominantly civil in nature, mere fact that there is also a civil or other remedy available or the lis involves also civil trappings, including from any civil lis, by itself is not a bar for criminal prosecution to maintain. In this regard decades back it was held by the Apex Court by scanning the law in *Irisuns Chemical Industry v. Rajesh Agarwal*¹ while dealing with the effect of existence of even arbitration clause in an agreement for settling the lis, is

¹ [1999] 8 SCC 686

not a bar to the criminal prosecution, much less on a ground of civil proceedings are otherwise and also maintainable. Thus concluded in holding that merely because an act has a civil profile, it is not enough to stop an action on the criminal side. It is further held that a provision made in the agreement for referring the disputes to arbitration is thus not an effective substitute for a criminal prosecution, when the disputed act constitutes a criminal offence.

12. Therefore whether the facts constitute a criminal offence or not is to be considered first and it is only where the dispute is predominantly civil in nature and only criminal proceedings initiated despite civil court findings making out no offence or to abuse the process and not as a legitimate prosecution to continue, the inherent powers can be invoked to quash such proceedings to subserve the ends of justice for ends of justice are more important than mere enforcement of law, which is the principle to be kept in mind from facts and circumstances of each case. In this regard, it is very clearly held by the 2 Judge Bench of the Apex Court in Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur Vs. State of Gujarat² at paras-16.3,4 and 7.

13. The expression in *Irisuns Chemical Industry* supra was quoted with approval by the Apex Court in *S.W.Palanitkar V. State of Bihar*³ in holding that merely because there is an arbitration clause in the agreement for remedy cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out. Even in *State of Orissa V. Ujjal Kumar Burdhan*⁴, the principle laid down in *S.W.Palanitkar* supra was reiterated.

² (2017) 9 SCC 641

³ 2002 (1) SCC 241

⁴ 2012 (4) SCC 547

14. Once such is the legal position, the fact that the complainant filed O.S.No.636 2015 on 29.06.2015 on the file of VII Addl. District Judge, Ranga Reddy District, at L.B.Nagar for prohibitory permanent Injunction, with I.A.No.1172 of 201S for temporary injunction pending disposal of the suit against the accused/ Petitioners 2 to 9 herein from interfering with the management and conduct of the 1st Petitioner Company and said petition was dismissed by order dated 19.08.2015 for want of inherent jurisdiction to ordinary civil court without need of going into other merits in holding that the dispute with regard to appointment of Additional Directors and classification of them has to be dealt by the Company Law Board and the civil courts have no jurisdiction and same was confirmed by the High Court in C.M.A.No.680 of 2015, no way bars the present criminal prosecution, for not a case of any finding given by the civil court of no fraud or creation of false documents or wife of A2 by name Anatha Lakshmi no way seized as Director or there was minimum quorum or the meeting was actually held and resolutions passed and complainant and his wife with no justifiable reasons left and deemed participated with no objection therefrom or the subsequent proceedings taken by complainant and his wife are invalid or unenforceable. Mere inadvertent reference in the Caveat Petitions, the 3rd petitioner as if Director of the A.1-Company cannot make her so to claim the status for such a claim, if otherwise ceased as a Director.

15. Coming to the contention of Section 14 of the Act, deals with inspection, enquiry and investigation into affairs of any company; Section 206(4) of the Act, provides to the Registrar of Companies power to conduct enquiry into allegations of fraud; Section 210 of the Act, provides for the Central government can order for investigation; Section 211 of the Act, provides for Serious Fraud Investigation Office establishment to look into the allegations of fraud in the affairs of the company and or Section 213 of the Act, contemplates investigation into continuous affairs in other cases; to say

any of the other alternative remedies available to invoke by complainant is not a bar to the criminal prosecution from the settled legal position discussed supra. The other contention of if after investigation by any of above provisions, it is if proved of the business of the company is being conducted with intent to defraud the creditors/ Members or any other persons, then every office of the company can be prosecuted in the manner, as provided under Section 447 of the Act and *dehors* this investigation, it is not open to the complainant to assume that the affairs of the A.1-company are being conducted fraudulently or that there is any act of false statement made in the Minutes filed by the A.6, is untenable, for the above and for other reasons being mentioned herein contextually.

16. Coming to the other contention of the allegations made in the Company Petition No.72 of 2015 before the Company Law Board, Chennai, and in the present private Complaints are identical concerned, it is not even the case that after filing of the Company Petition only the present complaints filed and therefrom there were any material facts therein not disclosed herein and that tantamounts to suppression. The non-mention of the present criminal proceedings in a subsequent company petition is not a suppression of any material facts to say that is fatal to the already filed criminal proceedings to continue, for every non-mention of facts is even not suppression, but for those material facts which if disclosed not entitled to the relief. Undisputedly, said Company Petition was withdrawn by filing a Memo, dated 08.10.2015 and the same was dismissed as withdrawn on 15.10.2015 with liberty to apply afresh. That by itself even besides what is discussed supra cannot be contended as the complaint lis is predominantly civil in nature and or complainant can invoke by civil lis as an alternative to the criminal prosecution, in the forum under the Companies Act, by any say referred above, not a ground to impugn the criminal proceedings or the cognizance order therefrom.

17. Thus the contentions of any civil trappings to the lis or other remedy available is not tenable for same is not a bar to criminal prosecution, but for to decide on own merits of the prosecution is sustainable otherwise or not. There is nothing from what is discussed supra to say any suppression of material facts to disentitle to the continuation of criminal proceedings, for otherwise, since concluded supra of the complaints are maintainable.

18. Coming to other contention of by the time the learned Special Judge passed the impugned Orders, all these facts are glaring and are evident for those were referred to by this Court in earlier criminal Petitions and the trial Judge ignoring all these aspects from not questioned the Complainant as to how the Complaint is maintainable, taken cognizance concerned, as referred supra that is once no way bar, there is nothing therefrom to question the cognizance orders of the learned trial Judge, on any of the above grounds but for to consider on other merits touching the factual aspects.

19. Coming to the contention further of the trial Judge failed to see that one of the accused persons arrayed before him is a Practicing Company Secretary respectively viz: A.6 in one case and A.11 in other case for not respectively the Company Secretary of A.1-Company but as a Practicing Company Secretary, just discharged his professional obligation by uploading the relevant form to the office of the Registrar of Companies, for which he could not have committed any offence as alleged concerned, it requires to be dealt with hereunder on factual aspects with reference to the complaint allegations and sworn statement to sustain, for otherwise by virtue of mere status, no one can claim any immunity from criminal proceedings save those by virtue of office of status during their tenure or later even or in discharge of official duties cannot be prosecuted without sanction or till demitting office or the like. In this regard, Form MGT 14 was filed before the Registrar of Companies, Andhra Pradesh and Telangana by uploading it by A.6-Company

Secretary under the Digital Signature of A.2 on the basis of a Board meeting held on 02.09.2014 in which transfer of shares was affected in favour of A.4 and A.5. The complaint averment was that no notice preceding the said meeting was issued and the claim of holding the meeting and transfer of shares is not in accordance with the relevant provisions of the Companies Act and therefore it constitutes act of fraud for which the petitioners are liable for punishment for the offences supra. Once such is the issue from there is a sustainable accusation on the face value of complaint averments and sworn statement, the probable defence of the prospective accused need not be appreciated by assumptions, in the absence of any contention of face value of said allegations no way constitutes any offence, that too when it is the averment of he is also privy with preconcert with other accused being parties to their nefarious plan and conspiracy. However, when there is no sustainable accusation with material on the Company Secretaries of privy, mere assertion for no any even inferable circumstances against them won't sustain but for against others of privy. In fact the complainant has specifically alleged that the accused No.2 in order to gain undue advantage and in violation of Section 56 of Companies Act, 2013 regarding transfer of shares created two additional shareholders i.e. accused Nos.4 and 5 showing transfer of 100 equity shares to each of them from the shares held by accused No.2 and the same was done by the approval of the Board at its meeting dated 02.09.2014, which in fact, was never convened and no notices were issued for convening the said Board meeting and filed Form MGT-14 with Registrar of Companies. Once such is the case and as if there was a meeting and transfer of shares and Form MGT 14 filed before the Registrar of Companies, Andhra Pradesh and Telangana by uploading it by A.6-company Secretary under the Digital Signature of A.2 on the basis of a purported Board meeting which was not at all held as per complainant on 02.09.2014 to say in which transfer of shares was affected in favour of A.4 and A.5, A6 is also privy to the conspiracy. The contention

further of it is purely a dispute relating to transfer of shares or thereby it is essentially of civil nature, which is to be adjudicated by the competent authorities in accordance provisions contained in the Companies Act and the Rules made there under and not open to the Special Judge to consider and adjudicate, is untenable and baseless and liable to be rejected at the threshold.

20. Now coming to the core of the contention of the 3rd Petitioner, wife of A2, by name Anata Lakshmi, continued as Director of the A1-company in accordance with the provisions of the Companies Act and as per the Articles of Association of the Company, for there was no any Annual General Meeting (for short, 'AGM') held to retire her as Director of the Company and thus there is no illegality in the meeting held on 09.05.2015 and no offence is made out concerned, as per Complainant and as per the 6th Annual Report for 2013-14 of the Company, it was proposed to re-appoint Smt. P. Anantha Lakshmi, as a Director, as she was to retire by the time of the AGM for 2013-14, but AGM proposed to be held on 02.09.2014 was not held and therefore, she ceased to be a Director automatically. Leave about the fact that the question of re-appointment itself arises from cessation and once continues the said question does not arise to the conclusion of her cessation as director and meeting not deliberately even conducted, no one can take advantage of his or her laches or fault for not even asking to convene such meeting or otherwise to continue and for that no provision is required specifically and as such it cannot be taken advantage of own laches and fault. As such when Mrs. Anantha Lakshmi was due for retirement by 30.09.2014, failure to conduct AGM to retire Mrs. Anantha Lakshmi is not a ground to say that she is still continuing from such glaring failure *prima facie* for not a case of any compelling circumstances prevented from convening meeting, that too, when A3 is no other than wife of A2, who was in management of the affairs of the A1-Company, for no any reasons assigned as to why such meeting supposed to

be conducted not conducted but for oblique motive and criminal intention with *mens rea* and criminal conspiracy *prima facie* to eliminate the complainant and his wife from the affairs of A1-Company. It is in fact the specific averment and statement allegation that her continuation as one of the Directors of the A1-Company and bringing into existence, without any status to her as Director for so to treat her and allowing to participate as if Director, purported resolution, which is nothing but fraud played by the petitioners on the company, so as to defeat the rights of the respondent No.2 and his wife etc., herein and when she was due for retirement, merely because no resolution was passed in AGM, she is not entitled to continue as a Director of the Company.

21. Coming to the contention of accused referring to Article 50(d) and (e), of if the retiring Directors vacancy is not filled up, the retiring Director shall be deemed to have been re-appointed, it is not automatic but for from any compelling circumstances beyond control for not this case on hand such to take its aid. The petitioners/ accused also cannot take aid of Section 152(7)(b) (iv), which deals with re-appointment of retiring Director to contend that a retiring Director will get automatically re-elected if the meeting is not held, for same is not the wording from its specifically provides that if at the adjourned meeting also, the vacancy of the retiring Director is not filled up and the meeting also has not expressly resolved not to fill the vacancy, only in such contingent event, the retiring Director shall be deemed to have been reappointed at the adjourned meeting. It is not even a case of voluntary leaving by the complainant and his wife but for from the circumstances supra with say of no meeting at all was held. When there is contention of no meeting at all deliberately, the question of adjournment of a meeting does not arise and once said contingency has not arisen, the question of deemed re-appointment therefrom also does not arise at all. Section 167 of the Act also requires to read with in this context and in

consonance to the above. Thus, if the AGM itself is not held, there is no provision that the Director due for retirement at the AGM will automatically deemed as re-appointed to the office of his/her directorship and as such same is when a specific provision no more is to expect by accused/petitioners, much less to allow them with any contention of as if there is no provision, despite the above. If such interpretation is allowed to be given of what accused contend, everybody will take advantage of own fault and laches contrary to the basics on law and it tantamounts to committing mischief to the law and gives scope for serious complications to creep in, in the very management of the affairs of the companies, by not holding AGM as case on hand. The expressions in *A. Ananthalakshmi Ammal v. The Indian Trades and Investments Ltd.----* and “*B.R. Kundra, Proprietor, Film Exploiters, Chandni Chowk, Delhi v. Motion Pictures Association, Film Colony, Chandni Chowk, Delhi*,” already placed reliance in this regard in support of said contention of the Complainant is referred in the earlier remand order of this court. Further the main cause of action in C.C.No.327 of 2017, according to the complainant is also that he issued notice dated 01/05/2015 calling for a Board Meeting on 09.05.2015 and as a counter-blast to it, the 2nd petitioner-A.2 issued a parallel notice, dt.02.05.2015 for convening a Board Meeting on the very same date and in that purported meeting, wife of 2nd petitioner-A.2 also participated, though according to the complainant, she ceased to be a Director and could not have participated in the alleged Board Meeting on 09.05.2015. Besides that, his allegation was also specific that one Shashi Kumar, who is not a Director of the A.I-Company, being a stranger also participated without any right. Further it is the case of the Complainant that on 09.05.2015, protest raised by himself and his wife and without allowing participation of them and without quorum any meeting purportedly convened and any resolutions purportedly passed and minutes of said purported resolutions filed by A.11 to the Registrar of Companies amounts to offence

u/ sec.447 and 448 of the Companies Act. The complainant further claims that he convened a meeting on 18.06.2015 and filed D.I.R.No.12 Form with the Registrar of Companies on 23.06.2015, intimating cessation of directorship of wife of the A.2, that answers the definition of forged documents. The complainant's alleged fraud against all the accused is that they appointed Additional Directors and the following circumstances constitute "fraud" by the accused. The complainant specifically alleged fraud against all the accused saying they all collusively created false documents of as if meetings held and resolutions passed and purportedly appointed Additional Directors. The following circumstances stated by Complainant on the allegation of "fraud" committed by the accused that:

- (a) There are already disputes between two groups of share holders of A.1-Company,
- (b) Extensive notices were exchanged between two groups,
- (c) No necessity to increase the strength of the Board of A.1 Company,
- (d) The Agenda of the meeting on 9.05.2015 did not have the agenda for appointing 8 Additional Directors i.e., A.3 to A. 10.
- (e) That A.3 to A.10 consented to be appointed as Additional Directors knowing fully well that A.2 cannot induct them as Additional Directors of A.I company.
- (f) The Board Meeting on 9.05.2015 was planned to be held and in fact was never held. D.I.R. 12 Form was certified on 23/ 06/ 2015 and it is a false recital that a Board Meeting took place on 09.05.2015 and it falsely certified that A. I had verified the records.
- (g) Notices were issued to the Accused but there was no response.

It is on above premise, complained that D.I.R.12 Form uploaded on 23.06.2015 is a false document, filed knowing to be false and therefore it is also an offence under Sec.448 of the Act punishable under Sec.447 of the Act. Despite the above, the contentions of A.2-Dr.Subba Rao Pavuluri, was appointed as Chairman of the A.1-Company in the meeting held on 16.10.2008 and he continued as Chairman of the Company till date and pursuant to the notice dated 01.05.2015 in the meeting held on 09.05.2015, he attended and presided over the meeting and Additional Directors were appointed therein is not tenable in view of specific complaint averments, but for to say left open any such defence to raise in future during trial or pre-charge enquiry or at other appropriate stage with foundation for said plea to consider and but for that it cannot be contended that any of the petitioners

are not liable to be summoned by taking cognizance for any of the offences. In fact in the present case, as per the complainant's specific case, the petitioner No.2 and his wife smt. Anantha Lakshmi, one of the directors, passed resolution ignoring the requisition given by the respondent No.2 transferred shares in favour of newly appointed directors to defeat the rights of respondent No.2, thereby the respondent No.2 can exercise his right in the administration of the company as the petitioner Nos.3 to 10 are not the members of legally constituted board and placed reliance on *B.N.Viswanathan and another v. Tiffin's Baryt Asbestos and Paints Limited by their Agents and Secretaries, The Indian Trades and Investments Ltd. and Others*⁵.

22. Coming to the other contention of the learned trial Judge as if erred materially in not saying Section 447 would not only apply if there is no prior adjudication judicially that the accused guilty of "fraud" and therefore, to proceed against any of the accused under Section 447 of the Act, then it is not open to the Special Judge to adjudicate as to whether the petitioners are guilty of fraud and then take upon the present complaint for the alleged offence under Section 447/ 448 of the Act concerned, same is a misconceived argument and baseless contention to import what is not there in the very clear and unambiguous wording of the section. When the petitioners allegedly played fraud on the company including on some of its Directors, by other and by purported joining with no basis so called Additional Directors, they are liable for such offence and the Court cannot quash the proceedings by exercising inherent jurisdiction under Section 482 of Cr.P.C. at this stage, merely because the impugned cognizance orders not contained detailed reasons, once it discloses application of mind to the material on record, including from what all directed in the remand common order of this court earlier supra. In this regard complainant drawn attention of this Court to the

⁵ AIR 1953 Mad 520

decision placed reliance of Apex Court rendered in *Ganga Dhar Kalita v. The State of Assam*⁶ that was contained in the earlier remand common order.

23. No doubt the Apex Court as contended by the learned counsel for the petitioners-accused held in *Pepsi Foods Limited v. Special Judicial Magistrate*⁷, that summoning of an accused in a criminal case is a serious matter, for criminal law cannot be set into motion as a matter of course as it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.

24. No doubt application of mind is something more than the perusal of the record. What is sufficient ground to proceed varies from case to case. When the Magistrate decided to issue process against the accused, the Magistrate must apply his judicial mind to the material before him and ascertain not only that there is sufficient ground for proceeding further in the complaint but also the nature of the offence for which any of the accused need be summoned. The Magistrate does not enjoy an unrestricted power to summon a person at his caprice simply because it indicates that there is prima facie case against some of the accused persons, to summon all the accused persons as held in *Nirod Chandra v. Dijabara*⁸. Thus issuance of the process is not a mechanical matter, the Magistrate must bestow upon the case before him his deliberate and thoughtful consideration whether it discloses sufficient ground for proceeding as held in *Swami Mick Monassan v.*

⁶ (2015) 9 SCC 647

⁷ 1998(5) SCC 749

⁸ 1984 Cr.L.J.(NOC) 42(Ori)

Papatlal⁹. The expression “there is sufficient ground for proceeding” appearing in Section 204 must be distinguished from expressions like “there is ground for presuming that the accused has committed an offence” used in Sections 240, 246 and 228 of the Code. The Magistrate has to pose unto himself the question as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents therein were personally liable for any offence. While the stage at which the Magistrate decides to summon an accused is, no doubt an important stage in the proceedings, must be preceded by an application of judicial mind to material before the Court to determine if “there is ground for proceeding”, the stage nevertheless, does not call for any in depth examination of other material or possible defence of an accused. Thus what is required is not giving detailed reasons, but whether the cognizance order and summoning of respective accused from consideration of entire material reflects application of judicial mind of the Magistrate. In a recent judgment *HDFC Securities Ltd. v. State of Maharashtra*¹⁰ the Apex Court relying on *Maksud Saiyed v. State of Gujarat*¹¹ and also by referring to the expressions in *Priyanka Srivastava Vs. State of Uttar Pradesh*¹², *Ramdev Food Products Private Limited Vs. State of Gujarat*¹³; observed that where a jurisdiction is exercised on a complaint petition filed in terms of Section 156 (3) or Section 200 of Cr.P.C., the Magistrate is required to apply his mind. In *Priyanka Srivastava and Ramdev Food Products supra* and *Maksood Sayed supra* that also referred besides *Madhao V. State of Maharashtra*¹⁴, *Anil Kumar Vs. M.K.Aiyappa*¹⁵

⁹ (1983) 1 GLR 185

¹⁰ AIR 2017 SC 61

¹¹ 2008(5) SCC 668

¹² (2015) 6 SCC 287

¹³ (2015) 6 SCC 439

¹⁴ 2013(5) SCC 615

¹⁵ 2013(10) SCC 705

and *Pepsi Foods* supra followed in *G.Sagar Suri Vs. State of U.P.*¹⁶ and *Indian Oil Corp. Vs. NEPC India Ltd*¹⁷, it was held that a criminal Court before issuing process has to exercise caution and if essential, the High Court can quash where it is a dispute essentially of civil nature giving cloak on criminal offence and in Indian Oil Corporation supra held further that to settle the civil disputes involving in Criminal Cases by pressure to prosecute be deprecated. Thus every lis contains some civil trappings not a ground to quash but for on the above.

25. Coming to the contention of a company cannot be made accused concerned, law is fairly settled on the principle of alter ego of Company got flesh, blood and mind in taking decisions through the persons representing and acting on its behalf in the helm of its affairs to make it liable, besides the person so representing also vicariously. Thus a Company cannot claim any immunity from criminal prosecution on the ground that it is not a human being and by itself as artificial person incapable of possessing the necessary mens-rea for the commission of criminal offences. In other words, the criminal intent of the “alter ego” of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the Corporation, since they are the persons, managing the affairs of the Company as held by the Apex Court in “*Iridium India Telecom Limited v. Motorola Incorporated and others*”¹⁸

26. Coming to application of judicial mind and reflecting the same with reasons or even with no reasons if at all to sustain by sitting against by legal scrutiny, including to consider on vicarious liability on allegations of how personally liable that also required as part of judicial application of mind, in addition to the expressions in this regard referred and discussed supra, Indian Penal Code no doubt does not contain any provision for

¹⁶ 2002(2) SCC 636

¹⁷ (2006)6 SCC 736

¹⁸ (2015) 9 SCC 647

attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company as held in *HDFC Securities Ltd.*, supra. In *Maksood Saiyed* supra, that referred in several subsequent expressions, which not only deals with judicial application of mind to refer complaint for police investigation, but also on principle of alter-ego of no vicarious liability in IPC offences on mere status or holding office by persons of an entity, without specific allegations in the complaint to entertain as to how they or any of them individually liable and on what basis.

27. Coming to the expression in *Rajiv Modi Vs. Sanjay Jain*¹⁹, it is observed that High Court cannot go into deciding complicated questions of fact, but for to decide on reading of Complaint with cognizance order or FIR or Final report material, by proceeding if taken as true cognizable offence made out or not. It was also held in *Madhoa* supra that if on perusal of the complaint that shows allegations of cognizable offence, the Magistrate's detailed orders are required but for judicial application of mind. The Apex Court on point for consideration as to the Magistrate was justified or not in directing the police to investigate and submit a detailed report under Section 156(3) of CrPC observed that, impugned order of the Magistrate shows counsel for Complainant was heard and perused the allegations made against the accused in the complaint and documents annexed therewith and observed it needs proper investigation in forwarding, thereby held nothing to interfere with the impugned order of forwarding for registering of crime within the discretionary power. In *Bhushan Kumar vs. State (NCT of Delhi)*²⁰, it was held that subjective satisfaction is enough for no reasoned order contemplated to take cognizance and summoning of accused. Paras 8-11 of it speaks that: "8. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance..... If there is sufficient ground for proceeding then the

¹⁹ (2009) 13 SCC 241

²⁰ (2012) 5 SCC 424=AIR 2012 SC 1747

Magistrate is empowered for issuance of process under Section 204 of the Code. 9. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. ----- 10. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued. 11. Time and again it has been stated by this Court that the summoning order Under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the material filed therewith. In *Nupur Talwar v. CBI*²¹ having discussed the legal position covered by many of the decisions *supra*, it was concluded that, it is therefore apparent that an order issuing process cannot be vitiated merely because of absence of reasons. In *Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi*²² the Apex Court way back in the year 1976, held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. In deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the Complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised. Once the Magistrate has exercised his discretion and found within judicial discretion, it is not for the High Court, or even for the Apex Court,

²¹ (2012) 11 SCC 465

²² (1976) 3 SCC 736

to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction. In *U.P. Pollution Control Board V. Dr. Bhupendra Kumar Modi*²³, at Para No.23, it was held that “it is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint and the evidence lead in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.” Coming to other latest decision of *Ramdev Foods* it is observed the power under Section 156(3) of CrPC is distinct from the power under Section 202(1) of CrPC and there is even discretion to call for report under Section 202(1) of CrPC instead of directing investigation under Section 156(3) of CrPC, but for to say for such direction either for ordering to investigate or to issue summons from cognizance taken on complaint is only after application of mind by Magistrate, as to whether credibility of information available and weighing in such circumstances. In *Sunil Bharti Mittal Vs. Central Bureau of Investigation*²⁴ it was held judicial application of mind to take cognizance is required.

28. The ultimate analysis from all the expressions supra is that for taking cognizance on a private complaint, what is mainly required is judicial application of mind as to existence of a sustainable accusation making out offence or not and for that not necessary of giving detailed reasons, but for prima facie satisfaction of the Magistrate by judicial application of mind about prima facie accusation from material on record of the case on hand. Though reasons are required to be given for whatever the conclusion arrived to sustain, non-giving reasons no way vitiates the order, if otherwise from material justifies the decision to the judicial scrutiny of superior courts.

²³ (2009) 2 SCC 147

²⁴ (2015) 4 SCC 609-

Once there is judicial application of mind reflects on perusal of the material by the superior Court, the same no way requires interference. Thereby the contention of detailed reasons are necessary for taking cognizance on the complaint to summon the accused, is untenable.

29. From the above, now to answer the contention of no vicarious liability on the principle on *alter ego* for the company law offences to implicate the petitioners-accused if any concerned, in addition to the above, in *R.Kalyani V. Janak C.Mehta*²⁵ it was held that vicarious liability can be fastened only by reason of a conferment by a statute and not otherwise, and for said purpose a legal fiction has to be created thereby for the I.P.C offences of cheating and forgery or breach of trust of the respondents charged in individual capacity in the absence of showing how personally liable, referring to several expressions and upholding the F.I.R proceedings quashed by the High Court, by the Apex Court for no interference. In *Keki Hormusji Gharda V. Mehervan Rustom Irani*²⁶ it was held at para17 that: “The Indian Penal code, save and except some matters does not contemplate any vicarious liability on the part a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company”. The three Judges bench in Standard Chartered Bank Vs. Directorate of Enforcement²⁷ in the year, 2005 held

²⁵ (2009)1 SCC 516

²⁶ (2009)6 SCC 475

²⁷ (2005) 4 SCC 530

that Company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. Though it was held in *Standard Chartered Bank* supra that it is not expressing any opinion on the question whether a Corporation could be attributed with requisite Mensrea to prove the guilt, the same is later clarified by the subsequent three Judge bench expression in *S.M.S. Pharmaceuticals Limited Vs. Neeta Bhalla*²⁸ and same is reiterated in *National Small Industries Corporation Vs. Harmeet Singh*²⁹ and subsequent expressions following it are mainly in *Iridium India* supra referring to the several expressions of the Apex Court and of the American and England Courts in paras 59 to 64 and finally at page Nos.98 to 100 in nutshell that a Company in many ways be like a human body they have a brain and nerve centre which controls what they do. Some of the people in the Company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and Managers who represent directing the mind and will of the Company and control what they do. The state of mind of these managers is the state of mind of the Company and is treated the law as such. The fault of the manager will be the personal fault of the Company. The knowledge and intention must be imputed to the body corporate. It was concluded therefrom by referring to *Standard Chartered Bank* supra at para No.6 of a Company is liable to be prosecuted and punished for criminal offences in deviation to the earlier authorities in India of Corporations cannot commit a crime, for generally accepted modern rule is that except for such crime as a corporation is held incapable of committing by reason of the fact that they involve personally with malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agent. The criminal intent of the *alter-ego* of the Company that is the personnel group of persons that guide,

²⁸ 2005 4 SCC 70

²⁹ (2010)3 SCC 330

the business of the Company would be imputed to the Company/ corporation. It was the conclusion in *S.M.S Pharmaceuticals* and *Iridium* supra that was again followed in the latest three Judge Bench expression of the Apex Court in *Sunil Bharti Mittal* supra. It was observed in *Sunil Bharti Mittal* supra that the corporate entity, an artificial person acts through its Officers, Directors, Managing Director, Chairman etc, if such fact continues an offence involving Mensrea, it would normally be evident and action of that individual who would act on behalf of the Company in particular in relation to criminal conspiracy. However, the cardinal principle of criminal jurisprudence is that there is no vicarious liability unless the statute specifically provides so. An individual who has perpetrated the commission of an offence on behalf of a Company can be made as an accused along with the Company, if there is sufficient material on his active role. Second situation is knowledge it may be implicated is in those cases where statutory regime itself attracts the doctrine of vicarious liability by specifically incorporating by such a provision. It is therefrom referring the Section 141 of N.I.Act in particular as an example at para No.44 of *Sunil Bharti Mittal* supra and the expression of the Apex Court in *Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd*³⁰ held that the group of persons that guide the business of the company if the criminal intent that would be imputed to the body corporate and in this back drop Section 141 of the N.I.Act has to be understood. Such a position is therefore because of statutory intendment making it a deemed fiction. For that conclusion including on vicarious liability in *Sunil Bharathi Mittal* supra, the Apex Court referred *Aneeta Hada Vs. Godfather Travels and Tours (P) Ltd.*³¹, *Iridium India Telecom Ltd*³², *Maksood Sayed supra*, *Sabita Rama Murthy Vs. R.B.S Channabasavaradhya*³³, *SMS Pharmaceuticals Ltd. supra*, *Standard Chartered Bank supra* among other expressions. In *Sunil*

³⁰ (2012)5 SCC 661

³¹ (2012) 5 SCC 661

³² (2011)1 SCC 74

³³ (2006) 10 SCC 581

Bharti Mittal supra it also referred the observations in the three Judge Bench expression of the Apex Court in *S.M.S Pharmaceuticals* supra at para No.8 that there is no universal rule that a Director of a Company is in-charge of its every day affairs. It all depends upon the respective roles assigned. A company have managers or secretaries for different departments and may have more than one Manager or Secretary. In *S.M.S Pharmaceuticals* supra also it is made clear with reference to section 141 of the N.I.Act that it is necessary to aver that at the time the offence was committed, the person accused was in-charge of and responsible for conduct of business of the Company and without this averment being made in the complaint, the requirements of Section 141 of the N.I.Act cannot be said to be satisfied. A clear case should be spelled out in the complaint against the persons sought to be made liable to show as in-charge of and responsible to the Company for the conduct of its business. Every person connected with the Company thereby shall not fall within the ambit of Section 141 of the N.I.Act but of those persons who were in-charge of and responsible for the conduct of business of the Company at the time of commission of the offence. The liability arises on account of conduct or act or omission on the part of a person and not merely on account of holding an office or a position in a Company. The complaint therefore must disclose the necessary facts which make a person liable, specifically aver that at the time of offence committed, the person accused was in-charge of and responsible for conduct of the business of the company. A Director cannot be deemed to be in-charge of and responsible to the Company for the conduct of the business for no deemed liability of a Director from that status, unless the aforesaid requirement of Section 141 of the N.I.Act has been averred as a fact in the complaint. In another expression referring to Section 141 of the N.I.Act by the Apex Court in *Saroj Kumar Poddar* supra referring to *S.M.S Pharmaceuticals* supra apart from other expressions that for dishonour of

cheque making of requisite averments in the complaint is a statutory requirement and the allegations satisfy the same, in the absence of which the proceedings are liable to be quashed. The other expression of the Apex Court two Judge bench in *National Small Industries Corporation* supra also referring to *State of Madras V. C.V.Parekh*³⁴ and *S.M.S Pharmaceuticals* supra among other expressions held that vicarious liability on the part of any Director or other person as in-charge and responsible to the conduct of business be specifically averred, though same is not required against a Managing Director..... It is not even sufficient to make a bald and cursory statement in a complaint that the Director is in-charge of and responsible to the Company for conduct of its business without saying anything more as to his role. The complaint should spell out as to how and in what manner a co-accused was in-charge of or responsible to the accused company for conduct of its business. Same is also reiterated in another two Judge Bench expression of the Apex Court in *Central Bank of India V. Asian Global Limited*³⁵ relying on *S.M.S Pharmaceuticals* and those were followed by a single Judge expression of this Court in *Arrakuntal V. Ganeshan V. Sai Rama Cotton Syndicate*³⁶. It was also held in *S.K.Alagh Vs. Stat of U.P.*³⁷ that Indian Penal Code save and except some provisions specifically providing there for, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. A criminal breach of trust is an offence committed by a person to whom the property is entrusted. Even other latest expression in *Poojari Ravinder Devi Dasani V. State of Maharashtra*³⁸ reiterates the same relying upon *National Small Industries Corporation* supra. The same has been reiterated in the latest expression by this Court in *Narendra Urangi V. M/s.Greenmint India*

³⁴ 1973 SCC 491

³⁵ 2010(2) ALD (CrI.) 564 (SC)

³⁶ 2013(2) ALD (CrI.) 331 (AP)

³⁷ 2008(50)SCC 662

³⁸ AIR 2015 SC 675

*Agritech Pvt. Ltd.*³⁹ In *Punjab National Bank V. Surender Prasad Sinha*⁴⁰ it was held in para No.6 that: “It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance....” In another latest expression in *Gunmala Sales Private Limited V. Anu Mehta*⁴¹ it is held no doubt a case under Section 138 read with Section 141 of the N.I. Act, that the necessary requirements of the complaint which need to be indicated in the complaint are “how”, “in what manner”, “the role”, “description” and “specific allegation” as to the part played by a person before he could be made an accused. These conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principle accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In *G.M. Verma V. State of Jharkhand*⁴² held mainly on vicarious liability that for the alleged offence under Section 72(b) of the Mines Act against the Chief General Manager of the Colliery in the mine where fatal accident took place, the complaint does not

³⁹ 2015(3) L.S.239

⁴⁰ AIR 1992 SC 1815=(1993) Supp. 1 SCC 499

⁴¹ (2015)1 SCC 103

⁴² (2014)4 SCC 282

contain any allegation of specific role on the part of the Chief General Manager in the running of the colliery and as to in what manner he was in charge or responsible for the conduct of its business though same is the requirement of law to allege to fasten vicarious liability upon any officer of a Company in the absence any such specific allegation a complaint only contains a general statement does not make him vicariously liable in quashing the proceeding by the Apex Court by referring to *National Small Industries Corporation* supra. Here conspiracy of all privy and not other vicarious liability.

30. Now coming to decide how far any of the offences attracts against any of the accused persons for no vicarious liability from mere status of any accused to an entity to make liable along with for the offences punishable under Sections 447 & 448 of the Act r/w. Section 120-B IPC, on the basic ingredients required to satisfy for attributing criminal conspiracy, the Apex Court in *Maharashtra State Electricity Distribution Co. Ltd. vs. Datar Switchgear Ltd*⁴³ categorically held that merely on the basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy. The Constitution Bench expression of the Apex Court in *Bhagwan Swarup Lal Bishan Lal Vs. State of Maharashtra*⁴⁴ observed that the offence of conspiracy has to be established like any other offence but for Section 10 of the Indian Evidence Act introduces the doctrine of agency subject to conditions laid therein are satisfied for act done by one is admissible against co-conspirators. But this Section will come into play only when the Court is satisfied that there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or the actionable wrong that is to say there should be a prima facie evidence that a person was party to the conspiracy before his acts can be used against his co-conspirators.

⁴³ (2010)10 SCC 479

⁴⁴ AIR 1965 SC 682

31. From the above propositions on close analysis of facts of each case, it is clear that each of the case conclusions are resting on own facts but for understanding the basic principle that was keeping in mind in deciding the cases supra. In this context it is apt to refer on the concept of how to understand a precedent in its application to facts of the case on hand, the Courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made, that it is neither desirable nor permissible to pick out a word or a sentence from the judgment as held in *Bihar School Examination Board V. Suresh Prasad Sinha*⁴⁵ and *Rajbir Singh Dalal V. Chaudhari Devilal University, Srirsa*⁴⁶. Further in *Chauharya Tripathi V. Life insurance Corporation of India*⁴⁷ in Para 15, relying upon the observations of para No.18 of *Ambika Quarry Works V. State of Gujarat*⁴⁸ and of Lord Halsbury in *Quinn V. Leathem*⁴⁹ it was held “it has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.”

32. From the above, when the facts discloses *prima facie* accusation of fraud, creation of false documents and criminal conspiracy for which no direct evidence to expect for every conspiracy be hatched in secrecy but for to consider from entire facts and over all conduct of all accused, from the cognizance orders of the Special Judge, that reflects though not by giving reasons with discussion, once reflects judicial application of mind and sustainability of the cognizance orders and nothing shown of the impugned revised cognizance orders are running contrary to the common remand order of this court even, there is nothing to quash the criminal proceedings in the two calendar cases against any of the accused, for any of the offences, but for left open any defences to raise before the trial court at appropriate stage

⁴⁵ 2009 LawSuit (SC) 1468

⁴⁶ (2008)9 SCC 284

⁴⁷ (2015)7 SCC 263

⁴⁸ (1987)1SCC 213

⁴⁹ (1901) AC 495

and in future with foundation to make out within the parameters of defence of accused and presumption of innocence.

33. Accordingly and in the result, both the Criminal Petitions allowed in part as follows:-

a). So far as the CrI.P.No.24634 of 2017 covered by present C.C.No.328 of 2017(old C.C.No.122 of 2015) on the file of the Special Judge for Economic Offences at Nampally, Hyderabad concerned, there are no grounds to quash the proceedings insofar as A.1 to A.5 but for against the A.6 G.Mohan Rao-Practising Company Secretary, but for to say that he uploaded so called fake or false resolution with fraud, created by others in privy, there is no sustainable allegation to make him liable. Thus, the Criminal Petition is allowed by quashing proceedings insofar as against the 6th petitioner/ A.6 concerned.

b). So far as the CrI.P.No.24655 of 2017 covered by present C.C.No.327 of 2017 (old C.C.No.121 of 2015) on the file of the Special Judge for Economic Offences at Nampally, Hyderabad concerned, there are no grounds to quash the proceedings insofar as A.1 to A.10 but for against the A.11-Vivek Surana, the Company Secretary, with similar to allegation of A.6 in other case to say there is no sustainable allegation to make him liable. Thus, the Criminal Petition is allowed by quashing proceedings insofar as against the petitioner/ A.11 is concerned.

c). In view of the difficulty expressed for personal appearance of all the accused for every adjournment, it is directed in both the cases the learned Special Judge to permit under Rule 37 of the Criminal Rules of Practice for one to represent other accused respectively in both the cases in the event of filing such petitions respectively by allowing the same with necessary conditions including as to personal appearance of all whenever necessary.

At request by the learned counsel for the petitioners/ A.1 to A.5 in C.C.No.328 of 2017(old C.C.No.122 of 2015) and for the petitioners/ A.1 to A.10 in C.C.No.327 of 2017 (Old C.C.No.121 of 2015) on the file of the Special Judge for Economic Offences

at Nampally, Hyderabad, the order dismissing the quash petitions supra is suspended for four (4) weeks from today and consequently the stay of appearance of the petitioners supra granted earlier shall automatically continue till then.

Consequently, miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:03.04.2019

Note: Issue copy forthwith.
b/ o.
Vvr

