

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1) CRR No.649 of 2021 (O&M)

The Associated Journals Limited

....Petitioner

Versus

Central Bureau of Investigation

....Respondent

2) CRR No.650 of 2021 (O&M)

Bhupinder Singh Hooda

....Petitioner

Versus

Central Bureau of Investigation

....Respondent

1	The date when the judgment is reserved	26.11.2025
2	The date when the judgment is pronounced	25.02.2026
3	The date when the judgment is uploaded on the website	25.02.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not Applicable

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sartej Singh Narula, Senior Advocate, with
Mr. Mayur Singla, Advocate, and
Dr. Amardeep Singh Sandhu, Advocate,
for the petitioner in CRR No.649 of 2021.

Mr. R.S. Cheema, Senior Advocate, with
Ms. Sumanjit Kaur, Advocate,
Mr. Siddharth Bhukkal, Advocate,
Mr. Satish Sharma, Advocate,
Mr. Prince Bharol, Advocate, and
Ms. Vibhuti Manchanda, Advocate.

and

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Mr. Pardeep Singh Poonia, Senior Advocate, with
Mr. Pulkit Dhanda, Advocate,
Mr. Dharampal Saini, Advocate,
for the petitioner in CRR No.650 of 2021.

Mr. Ravi Kamal Gupta, Advocate, for the respondent-CBI.

TRIBHUVAN DAHIYA, J.

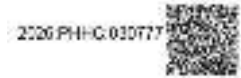
These two petitions are being decided together as the petitioners herein are accused in the same transaction concerning which the FIR in question has been lodged.

2. The petitions have been filed for setting aside the orders dated 16.04.2021 passed by learned Special Judge, Central Bureau of Investigation (CBI), Panchkula, whereby charges have been framed against the petitioners-accused, and the application filed on behalf of the petitioner-Bhupinder Singh Hooda (hereinafter referred to as, 'BSH') under Section 239 read with Section 240 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.'), seeking discharge in case FIR No. RC CHG 2017 A0008, dated 05.04.2017, registered under Sections 120-B, 420 IPC, and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act'), at Police Station ACB, CBI, Chandigarh, has been dismissed.

Factual background

2.1. This matter pertains to allotment of institutional plot no. C-17, Sector 6, Panchkula, by the Haryana Urban Development Authority (HUDA/Authority), now known as the Haryana Shehri Vikas Pradhikaran. The case was initially registered as FIR No. 03, dated 05.05.2016, under Sections 409, 420, 120-B IPC, and Section 13 of the PC Act, at Police

Station State Vigilance Bureau, Panchkula. It was, however, transferred to



the CBI by State Government, and was registered as FIR No. RC CHG 2017 A0008, dated 05.04.2017, under Sections 120-B, 420 IPC, and Section 13(2) read with 13(1)(d) of the PC Act, at Police Station ACB, CBI, Chandigarh, Annexure P-1, which reads as under:

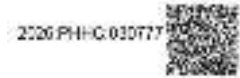
PROFORMA FOR MAKING REFERENCE TO CENTRAL GOVERNMENT FOR INVESTIGATION OF FIR NO.03, DATED 05.05.2016 REGISTERED AT POLICE STATION STATE VIGILANCE BUREAU PANCHKULA, DISTRICT PANCHKULA, HARYANA THROUGH THE CBI.

1	Brief facts of the case to be enquired	A source report regarding wrongful reallotment of resumed institutional plot No. C-17, Sector-06, Panchkula was received in the Vigilance Department on which comments from the Additional Chief Secretary to Govt. Haryana, Town & Country Planning Department were obtained. From a perusal of the source report and keeping in view the comments of the Town & Country Planning Department, it was found that Institutional plot No.C-17, Sector-6, Panchkula was allotted to M/s Associated Journals Ltd. (AJL), New Delhi by the Haryana Urban Development Authority on 24.08.1982 and the possession of the plot was delivered on 30.08.1982. The above said firm made a request to the then Chairman, HUDA, to make ten annual instalments of the balance payment of the plot which was accepted by the then Chairman, HUDA on 12.09.1983. As per the terms and conditions of allotment, it was necessary for the company to start the construction over the plot within six months from the date of delivery of possession and to complete the construction within two years. The company failed to raise the construction within the given time. The Estate Officer, HUDA, Panchkula resumed the plot on 30.10.1992 and made refund to the said company after deducting 10% of the total deposit amount on 10.11.1995. The company preferred an appeal before the Administrator, HUDA, Panchkula against the order of the Estate Officer, HUDA, Panchkula on 30.10.1992, who dismissed the appeal vide his orders dated 26.07.1995. Upon this, the company filed a Revision Petition before the Financial Commissioner and Secretary, Government of Haryana, Town and Country Planning Department against the orders of the Administrator, HUDA, Panchkula dated 26.07.1995, who dismissed the Revision Petition vide his orders dated 10.10.1996. Sh. Abid Hussain requested the then Chairman, HUDA to restore the plot on 14.03.1998, upon which the Chairman, HUDA intimated Sh Abid Hussain that since the construction was not raised over the plot within the stipulated period,
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		the allotment was cancelled and the appeal for restoration and Revision Petition were already dismissed. On the request made by Sh. Moti Lal Vora on 07.04.2005, the then Chairman, HUDA directed to explore the possibilities of restoring the plot at the then current rates. The then Chief Administrator, HUDA obtained the legal opinion of Secretary to Govt. Law & Legislative Department and Legal Remembrancer, Haryana regarding re allotment of the said plot, who opined that the resumed plot cannot be re allotted or restored to the same allottee because the resumption order regarding the plot had attained finality. He further opined that if however the provisions or the policy allow, fresh allotment at prevalent rates could be made as per the procedure for the allotment of the Institutional sites. The then Chief Administrator, HUDA and the then Financial Commissioner and Secretary, Government of Haryana, Town and Country Planning Department proposed on 18.08.2005 that applications can be invited through advertisement for re-allotment of above said plot, in which the above said firm can also apply for the allotment of the plot. The then Chairman, HUDA, in violation of the rules and by misusing his official position ordered on 28.08.2005 to re allot the plot to the above said firm at original rates plus interest thereon till date and further ordered to start the construction over the plot within six months and complete the same within two years. On 01.09.2005, the above said firm sought a period of one year time to start the construction work and thereafter complete the same within two years from the date of start of construction. On the basis of source report and the comments of Town & Country Planning Department, an FIR No. 03 dated 5/5/2016 under section 409/420/120B IPC and 13 of PC Act, 1988 was registered at Police Station, State Vigilance Bureau, Panchkula, District Panchkula.
2	xxx xxx	xxx xxx
3	Result of the investigation done by the local police	1. The statements of number of witnesses are recorded under section 161 Cr. PC. 2. During investigation, official records relating to the allotment of said plot have been obtained and have been examined. 3. During the course of investigation, Smt. Shakuntala Jakhu, IAS (Retd) the then Financial Commissioner, Town & Country Planning Department and Sh. S.S. Dhillon, IAS the then Chief Administrator, HUDA and Sh. Vineet Garg, IAS, Administrator, HUDA have joined in investigation and they have made statements that they never recommended for restoration and re-allotment of the said Plot to M/s AJL. They have also explained that they were not in favour of or involved in the re allotment of the said plot.



		4. During the course of investigation, no incriminating material has been found against Smt. Shakuntala Jakhu, IAS (Retd.) the then Financial Commissioner, Town & Country Planning Department, Sh. S.S. Dhillon, IAS the then Chief Administrator, 'HUDA and Sh. Vineet Garg, IAS, the then Administrator, HUDA at Panchkula and as such they have been found to be innocent.
4 to 7	xxx	xxx

2.2. Brief facts of the case as mentioned in the chargesheet dated 30.11.2018 are, the petitioner-Associated Journals Limited (hereinafter referred to as, ‘the AJL/company’) through its Managing Director requested the then Chief Minister of Haryana, Sh. Bhajan Lal, for allotment of land to the Company to establish an office of “Daily National Herald” for publication of daily newspaper “Nav Jiwan” in Hindi edition, vide letter dated 22.06.1981, Annexure P-12. Accepting the request, the plot in question measuring 3/4 of an acre was allotted to the AJL by HUDA on 24.08.1982 at the rate of ₹91 per square yard on ‘no profit no loss’ basis, and the company was directed to deposit twenty-five per cent of the tentative price, ₹68,250, out of ₹2,73,000. Possession of the plot was given to it vide letter dated 30.08.1982, Annexure P-13. And ex-post facto approval to the allotment was accorded by the Finance Committee of HUDA on 09.11.1982. In terms of clause 18 of the allotment, the AJL had to start construction within six months from the date of possession and complete it within two years. The Managing Director of AJL requested the Chief Minister to allow the company to deposit the remaining amount of ₹2,04,750 in ten yearly installments, which was accepted.

2.3. The company failed to start the construction as per terms of the allotment, and notices dated 16.11.1988, 06.08.1992, 21.09.1992 and

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12.10.1992 were issued under Section 17(3) of the Haryana Urban Development Authority Act, 1977, now known as Haryana Shehri Vikas Pradhikaran Act, 1977 (hereinafter referred to as 'the 1977 Act'), to complete it within the stipulated period. The AJL still failed to start construction, and the plot was resumed by the HUDA under Section 17(4) of the 1977 Act, vide office order dated 30.10.1992, Annexure P-15, for violation of terms and conditions of allotment. Pursuant thereto, an amount of ₹27,300 out of the total deposited amount was forfeited, and the balance amount of ₹1,55,662 was refunded vide cheque dated 10.11.1995; but the company did not encash the cheque.

2.4. The AJL wrote to the Chief Minister a letter dated 07.12.1992, Annexure P-16, seeking cancellation of resumption order. And a communication from the Estate Officer, HUDA, was sent to the AJL, dated 04.01.1993, informing that the latter can challenge the resumption order by filing an appeal before the Administrator, HUDA. The AJL in turn filed an appeal, dated 25.02.1993, against the resumption order, which was dismissed by the Administrator under Section 17(6) of the 1977 Act, vide order dated 03.01.1995, Annexure P-17, due to the company's failure to start construction over the plot even after a lapse of more than twelve years from the date of allotment.

2.5. The AJL represented against the order passed by the Administrator, which was treated as a revision petition under Section 30(2) of the 1977 Act by Commissioner and Secretary to Government of Haryana, Town and Country Planning Department. During the proceedings, the company represented by its counsel was duly heard, as also the Authority.

The revision petition was finally dismissed vide order dated 10.10.1996,

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Annexure P-19, which was communicated to the AJL vide letter dated 11.03.1997, issued on behalf of the Chief Administrator, HUDA.

2.6. It has also been mentioned in the chargesheet that as per policy regarding allotment of institutional plots announced by the HUDA vide memo dated 06.05.1997, *'(t)he cabinet in its meeting held on 27.03.1997 had decided that all institutional plots would be allotted by the Authority after inviting applications on the basis of recommendation of the Committee constituted for the purpose headed by Zonal Administrator'*. This policy was in vogue in 2005 also.

2.7. A new Government headed by Sh. Bansi Lal as Chief Minister was formed in the State in 1996, and the then Chairman of the AJL, Mr. Abid Hussain, sent letters to him requesting restoration of the plot, dated 07.08.1997, 28.10.1997, 14.03.1998, Annexure P-9. The AJL was informed by the Chief Minister vide letters dated 15.04.1998, 16.03.1999, Annexure P-10, that the allotment stood cancelled due to non-construction within the stipulated period, and appeal as well as revision against cancellation had also been dismissed. Thereafter, no correspondence was carried out by the AJL, either with the HUDA or the Government, up to 06.04.2005.

2.8. The Indian National Congress, a political party, formed the next Government in the State of Haryana and the petitioner-BSH became its Chief Minister on 05.03.2005. Immediately thereafter, the then Chairman of AJL - Motilal Vora (who is co-accused and no more) wrote to the Chief Minister vide letter dated 07.04.2005, Annexure P-5, seeking his intervention in the matter for restoration of the plot, which reads as under:

3/4 Acre (3,500 sq mts) bearing identification No. C-17,
Sector 6, Urban Estate, Panchkula vide letter No. 1527 dated 24

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August, 1982. It had been stipulated that we would complete the construction with two years. However, due to acute financial difficulties, we were unable to adhere to the time limit and put in a request on 21 September, 1992 for extension of time for completing the construction.

The Estate Officer, HUDA, Panchkula, vide his order dated 30th October, 1992, cancelled the allotment and also forfeited the money paid by us, i.e, 2,73,000/-.

The Administrator, HUDA, to whom an Appeal had been filed upheld the order of the Estate Officer. In view of the decision of the Administrator, the Estate Officer refunded a sum of Rs.1,55,662/- through a cheque dated 10th November, 1995 out of the amount paid by us (Rs.2,73,000/-).

As the circumstances under which we were unable to complete the construction were beyond our control, I would request you to kindly intervene in the matter and order the restoration of the plot to us.

The letter was down marked by the Additional Principal Secretary to the Chief Minister (for short, 'APSCM-1') to the then Financial Commissioner, Department of Town and Country Planning. The file came back with the remarks dated 02.05.2005 that '*(t)here was no merit in the request and the case needs to be filed, please*'. The APSCM-1 again sent the file on 14.05.2005 conveying the direction of the Chief Minister/BSH that '*CM has seen the position as explained on NP 56-57. He has directed that the possibility of restoring the allotment of plot to this organisation at current rates may be examined as indicated at 'Y' on page no.56 ante*'. The then Chief Administrator, S.S. Dhillon, recorded his remarks on 17.06.2005 that allotment in favour of the AJL on freehold basis at the rate of ₹3200 per square yard could be done in relaxation of the policy. Finally, the file was sent to the Chief Minister/BSH by the Financial Commissioner with the note

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dated 23.06.2005, *‘(s)ince the policy was approved by the Cabinet, the relaxation will have to be given by the Cabinet. Another option is to advertise the institutional plot (as ordered by CM in case of Gurgaon on a separate file) immediately. For orders please’.*

2.9. The Chairman of the AJL/Motilal Vora sent a reminder to the Chief Minister/BSH, dated 29.06.2005, requesting for restoration of the allotment made vide letter dated 24.08.1982. APSCM-I conveyed observations of the Chief Minister/BSH on 04.07.2005 that *‘CM had directed to examine the fresh petition dated 29-6-2005 of M/s Associated Journals Ltd. and legal opinion be obtained in the contention of the applicant company M/s Associated Journals Ltd. for restoration of institutional site’.* Thereupon, an opinion was sought from Joint Legal Remembrancer, Haryana, who opined against re-allotment or restoration of the plot on 17.08.2005. His opinion was, *‘(r)evision petition having been dismissed way back on 10.10.1996, the order of resumption had attained finality. There can thus be no question of re-allotment or restoration of the plot to same allottee. If, however, the provisions or policy allow, fresh allotment at prevalent rates can be made as per procedure for allotment of institutional sites’.*

2.10. Accordingly, the file was finally put up before the Chief Minister/BSH by the Financial Commissioner on 22.08.2005 with the remarks of the Chief Administrator, dated 18.08.2005, that *‘(l)egal opinion may kindly be seen. The said plot can be advertised and Associated Journals Ltd. can apply against this plot’.* The Chief Minister/BSH being Chairman of the HUDA, however, passed the order dated 28.08.2005 directing

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re-allotment of the plot in question to the AJL at old rates plus interest thereon till date. The order reads as under:

Shri Motilal Vora, Chairman, Associated Journals Ltd. (AJL) vide letter dated 29.6.2005 has represented to me that the organization was not able to undertake construction of building within the stipulated period due to financial crunch. They had requested HUDA authorities for extension of time. HUDA authorities, however, did not accede to their request and cancelled the allotment. Shri Vora has also indicated that a sum of Rs.1,55,662/- was refunded out of the total amount deposited by them but the cheque has not been encashed. Shri Vora has requested that allotment of this plot be restored to the Associated Journals Ltd.

I have noted that AJL had submitted building plans, thereby indicating their intention to take up the construction work. In their letter dated 21.9.92 they had also explained circumstances due to which they were not able to take up the construction on time. The organization even made an appeal to the then CM vide letters dated 7.8.1997, 28.10.1997 and 14.3.1998. The matter does not seem to have been put up to CM despite instructions to this effect. I have further noted that this plot is lying unutilized till date.

Order of resumption is a last resort with the Government and such an order needs to be made with great caution. In my view this was a fit case for grant of further extension in time for construction. The Associated Journals Ltd. is a renowned organization founded by Pt. Jawahar Lal Nehru. The Hindi Daily 'Navjivan' which this organization plans to start will serve a huge public interest. It will also add yet another feature to the prestigious town of Panchkula. I, therefore, order that plot No. C-17, Sector-6, Panchkula be re-allotted to M/s Associated Journals Ltd. at original rates plus interest thereon till date. This re-allotment will be subject to the condition that the Associated

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Journals Ltd. would start construction in the next six months and complete the same in a period of two years.

In terms therewith, the then Estate Officer, HUDA, issued letter dated 31.08.2005, to the AJL informing the decision to re-allot the plot to it, and requested to deposit an amount of ₹59,39,200 before 30.09.2005, which included interest as on date. The amount was duly paid by the AJL. Re-allotment letter was issued thereafter vide memo dated 28.09.2005, Annexure P-8, giving the plot on freehold basis, requiring the company to start construction in six months from the date of allotment and complete it within two years therefrom. In terms of clause 14 of the letter, the plot was not to be used for any purpose other than the one it had been allotted for.

2.11. On 28.12.2005, a note was put up by officials of the Office of Chief Administrator, HUDA, that as per existing policy the allotment of institutional sites to a non-governmental organisation is to be done after carrying out due advertisement, interview and approval from the Authority. This policy was made as a follow-up to the Cabinet decision dated 27.03.1997. The Administrator HUDA, thereupon, recorded observation on 04.01.2006 that *‘(i)t is a restoration/re-allotment of a previously allotted but resumed plot. Put up an agenda for ex-post facto approval of Authority immediately’*. Finally, on 07.02.2006, APSCM-1 conveyed order of the Chief Minister/BSH, Annexure A-1, that the matter be placed before the Authority. Accordingly, the matter was placed before the Authority in its 97th meeting held on 16.05.2006, vide agenda item no.5, and the decision of the Chief Minister in his capacity as Chairman of the Authority to re-allot the plot to the AJL was unanimously approved.

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2.12. On 21.11.2007, an audit memo 13 was issued by the then Audit Officer, Office of Accountant General (Audit), Haryana, titled “Camouflage aid to firm” observing that the AJL was restored the plot in August 2005 at ₹59.39 lakh, whereas cost of the plot worked out to be ₹1.22 crore at current rate. Thus, the camouflage aid of ₹63.08 lakh had been given to the AJL. In this regard, the Deputy Accountant General, Haryana, sent a tentative draft para titled “Loss due to undue favour to allottee of institutional plot” to the Chief Administrator, HUDA, on 03.12.2008, for inclusion in the report of Comptroller and Auditor General (CAG) for the year ending 31.03.2009. Reply was prepared by the Accounts Officer, HUDA, and approved by the Chief Administrator on 30.04.2009, which was sent to the Accountant General (Audit) on 01.05.2009, stating that there was no financial loss as the order had been passed by the Chief Minister for re-allotment of the plot at original rates in public interest. Thereupon, the Deputy Accountant General gave approval for dropping of the tentative para on 12.05.2009, and it was ultimately dropped.

2.13. On 01.09.2005, the AJL requested for grant of one year time for starting the construction and to complete the same within two years therefrom, which was allowed by the HUDA. The construction was, however, not completed and the AJL sought second extension for the purpose for one year more on payment of extension charges, vide letter dated 22.07.2010. The request was approved by the Chief Minister/BSH, and the second extension was granted on 14.02.2011 up to 31.12.2011. The construction could not be completed even after the second extension, and the AJL requested for third extension to the Chief Minister/BSH on 08.05.2012.

The Administrator, HUDA, on 04.05.2012 put up a note on the file that

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extension may not be granted as the AJL had repeatedly failed to complete the construction within the stipulated period. The file was put up to the Chief Minister/BSH; APSCM-I down marked it on 09.05.2012 conveying the Chief Minister's order to ascertain status of construction on the site. A report dated 09.05.2012 was submitted that the construction had started and a boundary wall up to four feet height had been constructed on the site by the AJL. Thereafter, the Chief Minister/BSH agreed to grant two years' extension to the AJL for completing the construction, and a letter to that effect, dated 11.05.2012, was issued to the Administrator conveying the extension of two years, up to 31.12.2013, for completing the construction on payment of double the extension fee. Ex-post facto approval for this extension to the AJL was granted by the Authority in its 105th and 106th meetings held on 20.09.2012 and 18.09.2013, respectively. The extension fee was paid by the company. Finally, after completing construction of the building, the AJL applied for occupation certificate on 04.08.2014, which was issued by the Estate Officer vide memo dated 14.08.2014.

2.14. Subsequently, the AJL sought permission to mortgage the plot and the building with the Syndicate Bank for taking two term loans to make payment to the Municipal Corporation, Greater Mumbai, for construction of a plant at Mumbai and closure of an existing loan. The permission was duly granted by the Authority. Thereupon, the loans were taken by mortgaging the plot in 2012.

2.15. On completion of investigation, the CBI filed chargesheet against the petitioners-accused, dated 30.11.2018. After rejecting the application for discharge filed by BSH vide impugned order dated

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16.04.2021, charges were framed against the petitioners vide a separate order of the same date which are as under:

From perusal of challan documents, a prima facie case for commission of offences punishable under Section 120-B r/w Section 420 IPC r/w 13(2) r/w 13(1)(d) is made out against accused B.S.Hooda, accused M/s The Associated Journals Ltd as well as accused Moti Lal Vora (since deceased) *and* further a prima facie case for commission of offences punishable under Section 420 IPC and Section 13(2) r/w 13(1)(d) (ii) & (iii) of the PC Act, 1988 is also made out against accused B.S.Hooda; *further* a prima facie case for commission of offence punishable under Section 420 IPC is also made out against accused M/s The Associated Journals Ltd., to which accused persons pleaded not guilty and claimed trial.

Submissions on behalf of the petitioners

3. In this background, Mr. R.S. Cheema, learned senior counsel for BSH *firstly* contended that the order of re-allotment, dated 28.08.2005, was passed by him in *bona fide* exercise of powers vested with the Government. Prior thereto, BSH had taken opinions from the officers concerned, as also of the Legal Remembrancer. Considering the same and keeping all the relevant facts in view, he took a considered view in deciding to re-allot the plot to the AJL. The order also noted the objective for which it was done, as also the public interest involved. Besides, it was in line with the statutory provisions incorporated in the 1977 Act. Combined reading of Sections 15 and 30 of the Act makes it clear that the Authority has the power to dispose of the land in any manner except by way of gift. Accordingly, there was no bar on re-allotment or restoration of an institutional plot also which was done by exercising power under Section 30(2) of the 1977 Act. And the

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decision was unanimously ratified by the Authority later in its 97th meeting held on 16.05.2006. Initial allotment to the AJL had also been ratified in the similar manner ex-post facto. Besides, the decision to re-allot the plot was a collective decision, for which BSH alone could not have been held responsible. The investigating agency has declared other members of the Authority innocent on baseless grounds which shows the entire exercise was only to frame BSH for dubious reasons at the behest of the Government to settle political scores.

3.1. Secondly, learned senior counsel contended that investigating agency/CBI has wrongly concluded that after dismissal of the appeal and revision against resumption of the plot in question filed by the AJL, there was no power with the accused/BSH to re-allot the plot. In fact, there was no revision petition maintainable under the 1977 Act, nor any could have been entertained at the time when the order in revision, dated 10.10.1996, was passed by the Commissioner and Secretary to Government Haryana. The provision to file revision petition before the Secretary, Government of Haryana, Town and Country Development Department, was incorporated for the first time by the Haryana Act No.11 of 2004, dated 17.03.2004, whereby sub-section (8) to Section 17 was inserted to enable filing of a revision petition against the order of the Administrator passed under Section 17(5) of the Act. In the absence of any provision to challenge the appellate order, dated 03.01.1995, confirming the order of resumption/cancellation against the AJL, the so called order dated 10.10.1996 passed under Section 30(2) of the Act is void, *ab initio*, without jurisdiction and *non est*, and is not required to be challenged also.

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3.2. Thirdly, it has been contended by learned senior counsel that re-allotment of the plot to the AJL has neither been challenged nor set aside by any authority or Court of law. Also, the act of re-allotment of the plot is not a criminal misconduct under the provisions of Section 13(1) of the PC Act. It is a case where there is no allegation of illegal gratification to BSH, nor has he gained anything by way of re-allotment of plot to the AJL. The offence under Section 420 IPC is not made out against BSH even *prima facie*. The ingredients of conspiracy alleged against him are also not established as there is nothing to show that there has been any meeting of minds of the co-accused. No period of conspiracy has been fixed either, and no *mens rea* to commit any offence has been found in the extensions granted to the AJL. Further, a charge under Section 13(1)(d)(ii) & (iii) cannot be framed without informing the accused as to which of the two sub-sections is applicable. Such a charge could also not be framed against Chairman/BSH alone when the decision to re-allot the plot was unanimously taken by the Authority.

3.3. Fourthly, it has always been the policy to allot institutional plots on 'no profit no loss' basis, and allotment to the AJL at the rate of ₹91 per square yard was also on that basis. Consequently, the re-allotment had to be on the same principle. Besides, there is nothing to indicate that any loss has been caused to the Authority in the process. The audit objections raised in this regard were dropped under orders of the Accountant General (Audit) on being conveyed that no loss was caused to the Authority in any manner. Also, there is no basis to frame charge on account of any loss to the Exchequer, as the Government money is not at all involved in the

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re-allotment of plot which has been done by the HUDA, an autonomous body.

4. Mr. Poonia, learned senior counsel, also appearing on behalf of BSH, raised an additional ground that charge under Section 13(1)(d) of the PC Act could not have been framed as the provision stood substituted with a new one by way of an amendment to the Act notified on 26.07.2018, Prevention of Corruption (Amendment) Act, 2018 (16 of 2018), which was prior to presentation of chargesheet in the Court, 30.11.2018. The provision which was not there on statute book on the day of presentation of chargesheet, could not have been invoked against the petitioner. In this regard he has also referred to the saving provision, Section 30, which does not contain any clause to save Section 13(1)(d) of the original Act; it has been omitted altogether. And as per the settled law, omission of a statutory provision means it never existed in the Act. To reject the contention, learned trial Court wrongly relied upon the Delhi High Court judgment in *Central Bureau of Investigation v. A. Raja and others*, 2021(2) RCR (Criminal) 692, which is based upon the Supreme Court judgment in *State of Telangana v. Sri Managipet alias Mangipet Sarveshwar Reddy*, 2019 (19) SCC 87, since the latter is not a binding precedent as it has not considered the aforementioned relevant aspects concerning the amendment.

5. Mr. Narula, learned senior counsel for the AJL, has contended that the company made an application for restoration of the plot in a *bona fide* manner, which was acted upon by the Authority in accordance with rules. Despite resumption of the plot vide order dated 30.10.1992, the possession always remained with the AJL. It did not even encash the cheque

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sent by the HUDA after resumption, and the amount kept lying in the coffers of the Authority itself. The re-allotment was done in accordance with law on payment of original price with interest, and extension fee was also duly paid to construct the building. The company never asked for allotment of plot at any particular rate. After completion of construction, occupation certificate has been issued by the Authority. Accordingly, no criminal offence is attracted against the company. The loans that have been taken by the company after seven years of re-allotment by mortgaging the plot, are with prior approval of the Authority. Also, there is no bar on the allottee/AJL to take such loans as per terms of the allotment. *Bona fides* of the AJL have been established from the letter dated 31.05.2016, Annexure P-7, whereby it has expressed its willingness to make good the loss, if any, caused to the Authority on account of the re-allotment. It is, accordingly, contended that the AJL had no intention to cause any loss to anyone, nor is there any allegation that it ever approached any officer of the Authority or paid any gratification to anyone. Learned senior counsel further contended that no loss was caused on account of re-allotment as the AJL paid interest on the cost of the plot from the date of original allotment, though the amount paid towards its cost was never returned and remained with the Authority.

Submissions on behalf of the respondent

6. *Per contra*, Mr. Ravi Kamal Gupta, learned counsel for the CBI, has submitted that the impugned order dismissing the petitioner's application seeking discharge has been passed in accordance with the provisions of law, and suffers from no infirmity. *Firstly*, he has contended that Section 30(2) of the 1977 Act, read with Haryana Gazette Notification dated 16.05.1977,

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Department, with revisional powers against an order passed by the appellate authority/Chief Administrator under Section 17(5) of the Act. The notification is to the following effect:

Secretary, Town and Country Planning as Revisional Authority-No.2116-2T, CP-77/14788-. In exercise of the powers conferred by sub-section (2) of Section 51 of the Haryana Urban Development Authority Act, 1977, the President of India hereby directs that the revisional powers exercisable by the State Government under sub-section(2) of Section 30 thereof, shall also be exercisable by the Secretary to Government, Haryana, Town and Country Planning Department.

Accordingly, it is wrong to say that prior to notification of Haryana Act No.11 of 2004, dated 17.03.2004, inserting sub-section (8) to Section 17 of the Act, the Secretary had no revisional powers and the order, dated 10.10.1996, dismissing the revision petition filed by the AJL could not have been passed. Also, the AJL was duly represented before the revisional authority by its lawyer, as recorded in the order itself, who did not raise any objection regarding non-maintainability of revision petition. Therefore, it cannot be taken before this Court also.

6.1. Secondly, he has contended that there is no explicit or implied power under Sections 13 and 15 of the 1977 Act with the Authority to re-allot a plot which has been resumed. Section 30 of the Act also does not confer any such power; it is about control of the State Government and provides that the Authority shall carry out directions issued to it by the Government from time to time for efficient administration of the Act. It was under this provision that the notification dated 16.05.1977 was issued,

vesting revisional powers with the Secretary of the Department, and there

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was no occasion for the Chief Minister to exercise the power again after about nine years of dismissal of the revision petition. The order passed by BSH, dated 28.08.2005, is without jurisdiction; it is, in fact, a colorable exercise of power. The order being not in consonance with law, all subsequent actions taken on that basis automatically become illegal.

6.2. Thirdly, it has been contended that the order dated 28.08.2005, restoring the plot in question, has been passed on baseless grounds. There was no public interest involved in re-allotment of the plot, as the premises had been lying unused after resumption and no newspaper had ever been published from there. It has also been wrongly recorded in the order that the matter was not put up before the Chief Minister earlier. This is factually incorrect as the then Chief Minister, Sh. Bansi Lal, had responded to the AJL vide letters dated 15.04.1998 and 16.03.1999, informing that the allotment of plot had been cancelled due to non-construction, and its appeal as well as revision for restoration had also been dismissed by the competent authority. The order by BSH wrongly records another fact that the Authority did not accede to the request by AJL for extension of time and cancelled the allotment. In fact, notices had been issued to the AJL, dated 16.11.1988, 06.08.1992, 21.09.1992 and 12.10.1992, for competition of construction at the site but it failed to do so, leading to passing of the resumption order dated 30.10.1992. Therefore, the order by BSH is contrary to the record as well.

6.3. Fourthly, he contended that the 97th meeting of the Authority dated 16.05.2006, which gave ex-post facto approval to the order dated 28.08.2005, was a mere formality and could not legalise the re-allotment.

Not only the order of re-allotment was passed by BSH in his own hand, it

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had been acted upon much before its ex-post facto approval was sought; as pursuant to the order, re-allotment letter had been issued to the AJL on 28.09.2005, and possession had also been given on 30.09.2005. It is also a fact that prior thereto, BSH had granted extension of time to the AJL on 13.10.2005 from six months to one year to start construction on the site.

6.4. Fifthly, it was contended that merely because cheque of the amount returned to the AJL after cancellation of allotment was not encashed, it could not give any right to the company to seek restoration of plot. Validity of the cheque, dated 10.11.1995, was for six months, and the company deliberately chose not to get it encashed during that period. No benefit can be drawn out of this inaction on their part; rather, the amount would be deemed to have been paid to the AJL, in these circumstances.

6.5. Sixthly, it has been contended that there was a serious objection by the audit regarding re-allotment of plot to the AJL at original price, as in terms of the rates applicable at the time of allotment the cost of plot worked out to be ₹1.22 crore at the rate of ₹3200 per square yard (as per rates fixed by Chief Town Planner for the year 2005-06). As against this, the total cost with interest paid by the AJL on re-allotment was ₹59.39 lakh. This resulted in loss of ₹63.08 lakh to the Authority. The audit objection/para to that effect was dropped solely on the basis of order passed by the Chief Minister/BSH, dated 28.08.2005, without examining its financial impact and ignoring the fact that the order was bad for various reasons right from its inception. He also referred to the statements of certain senior officers recorded during investigation, like that of the Chief Administrator and officials from the Office of Principal Accountant General (Audit) Haryana, who stated, had the

plot been re-allotted at current rates, it would have fetched much more

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amount for the Authority. Therefore, it cannot be said that no loss has been caused on account of this re-allotment.

6.6. Seventhly, it has been contended that ingredients of all the offences alleged against the petitioners are *prima facie* established on the basis of material collected during the investigation, which forms part of the chargesheet and fulfills the requirements for framing the charge. The trial Court is not required to sift through material at this stage to test their evidentiary value. He further contended that all the allegations of criminal conspiracy have been established in the case as the accused had the intention to commit the illegal act of re-allotment of the plot by following a particular plan which they actually executed. It was in criminal conspiracy with co-accused Motilal Vora and the AJL that BSH overruled all legal opinions and advice or notings of the officers, and re-allotted the plot. The criminal intention to defraud the Authority is also established from the fact that pursuant to re-allotment, the plot was mortgaged with its building to the Syndicate Bank, IP Estate Branch, New Delhi, on term loans for a purpose other than the one allotment was meant for. Similarly, ingredients of the offence under Section 13(1)(d) of the PC Act are *prima facie* made out, as a valuable thing (plot) or pecuniary advantage has been given by BSH to the AJL through corrupt and illegal means. This has been done by abusing his position as public servant, as is the requirement under sub-clause (ii). Further, the requirements of sub-clause (iii) have also been met as he passed the order while holding the public office of Chief Minister, without any public interest. BSH has abused his official position and used it as a cloak to commit the criminal act. Further, under Section 13(1)(d) it is not necessarily

required to establish that any illegal gratification has been demanded by or

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paid to the public servant. BSH has committed nepotism to promote the interests of his near and dear ones, which is a corruption under the Act. Offence under Section 420 IPC is also made out as BSH has intentionally cheated the Authority of valuable security/money by adopting unlawful means with the intention to cause wrongful gain to the co-accused/AJL. He has, in fact, induced the Authority into an illegal transaction by re-allotting the plot in question at the original 1982 rates, which has caused wrongful loss to it.

6.7. Eighthly, he has contended that in terms of law laid down in *A. Raja case (supra)* there is no impediment in framing charge under Section 13(1)(d) of the PC Act, since the offences alleged were committed prior to coming into force of the 2018 amendment which was notified on 26.07.2018. *Lastly*, the contention is that the act of re-allotment by BSH cannot be treated as an error of judgment, as contended by learned senior counsel for the petitioner. There is enough material on record to *prima facie* establish that it was done with *mala fide* intention, by abusing the official position.

7. Submissions made by learned counsel for the parties have been considered and the case files have been perused.

Overview of facts

8. As apparent on record, the AJL was initially allotted the plot in question for publication of daily newspaper “Nav Jiwan” in Hindi edition on 24.08.1982 at the rate of ₹91 per square yard on ‘no profit no loss’ basis. This allotment was done by the then Chief Minister accepting the request of the AJL made to him vide letter dated 22.06.1981. On depositing twenty-five

per cent of tentative price of the plot, its possession was handed over to the

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company vide letter dated 30.08.1982 and, thereafter, ex-post facto approval was accorded to the allotment by the Authority on 09.11.1982. The AJL could not comply with terms and conditions of the allotment as it failed to complete construction within the stipulated period, leading to resumption of the plot by the HUDA under Section 17(4) of the 1977 Act vide order dated 30.10.1992. It was challenged by the AJL in appeal under Section 17(6) of the Act, which was dismissed by the Administrator on 03.01.1995. A representation submitted by the AJL against the appellate order was treated as a revision petition under Section 30(2) of the 1977 Act, and after hearing the parties, the revisional authority/Secretary to Government dismissed it on 10.10.1996. The AJL represented against resumption and sought restoration of plot by writing letters to the then Chief Minister, who informed it vide letters dated 15.04.1998 and 16.03.1999 that the allotment stood cancelled, and the appeal as well as the revision petition filed against it had also been dismissed. The matter rested there for about six years till BSH became the Chief Minister on 05.03.2005. On receiving a letter from Chairman of the AJL seeking restoration of the plot, dated 07.04.2005, he asked the concerned officers of the Authority to examine the possibility of restoring the plot at current rates. Legal opinion was also sought on the issue. The predominant view presented to the Chief Minister/BSH was that re-allotment/restoration of the plot would not be permissible, and it should be re-advertised for allotment. Considering the same, BSH took an independent view and ordered re-allotment of the plot to the AJL at original rates plus interest to date, vide order dated 28.08.2005, passed in his own hand. Accordingly, on being informed the AJL deposited the due amount with interest, and a re-allotment letter was issued to it on 28.09.2005. In terms

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therewith, it was required to start construction within six months and complete it within two years therefrom. Thereafter, the decision was placed before the Authority and was ratified by it unanimously on 16.05.2006. It is also on record that the audit objection, dated 21.11.2007, regarding loss of ₹63.08 lakh on account of re-allotment at old rates was dropped on 12.05.2009; it was on receiving reply from the Administrator of the Authority that there was no financial loss as the re-allotment had been done under orders of the Chief Minister at original rates in public interest. It has also come on record that the AJL sought certain extensions of time to complete the construction, and paid extension fee for the purpose. Ex-post facto approval for extension was also granted by the Authority in its meetings held on 20.09.2012 and 18.09.2013. The construction of the building was completed, and the AJL was issued occupation certificate by the Estate Officer on 14.08.2014.

The alleged offences and the requisite ingredients

9. As apparent from the impugned chargesheet, the petitioners have been charged under Sections 120-B, 420 IPC, read with Sections 13(1)(d)(ii)(iii) and (2) of the PC Act. It remains settled that the Court can frame charges against the accused on the basis of material brought before it *prima facie* indicating the ingredients of the alleged offences.

9.1. Essential ingredients to attract the offence of conspiracy under Section 120-B IPC is an agreement between two or more persons to do an illegal act, or a legally permissible act with illegal means. The principles governing the law have been outlined by the Supreme Court in *State through Superintendent of Police, CBI/SIT v. Nalini and Others*, (1999) 5 SCC 253,

which are as follows:

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583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

2. to 10. xxx xxx

These aspects have been further explained by the Supreme Court in *Kehar Singh and others v. State (Delhi Administration)*, (1988) 3 SCC 609; relevant paragraph whereof reads as under:

276. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

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Resultantly, there has to be some material before the Court pointing towards a conspiracy in which two or more accused have conscientiously joined with the intention to commit a crime.

9.2. The offence of cheating under Section 420 IPC is made out when a person fraudulently and dishonestly induces a person to deliver any property to another, or to make, alter or destroy the whole or any part of a valuable security. The ingredients stand explained by the Supreme Court in *Jupally Lakshmikantha Reddy v. State of Andhra Pradesh and Another*, 2025 SCC Online SC 1950, as under:

12. The ingredients of the offence of cheating are as follows:
 - 1) Deception of a person by making false representation which the maker knows or has reason to believe is false and thereby
 - 2) (a) Fraudulently or dishonestly inducing such person:
 - (i) to deliver any property to any person, or
 - (ii) to consent that any person shall retain any property, or
 - (b) Intentionally induces that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.
13. The words 'dishonestly' and 'fraudulently' are defined as follows:

“24. “Dishonestly”-

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

25. “Fraudulently”-

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

Section 23 IPC defines wrongful loss/wrongful gain:

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“Wrongful gain”: Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss”: Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled.”

Reading the ingredients in the backdrop of these definitions, it is evident in order to attract the offence of cheating, a person must knowingly make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property.

14. In *Dr. Sharma's Nursing Home v. Delhi Admn. & Ors.*, (1998) 8 SCC 745, para 3. this Court held mere deception by itself would not constitute cheating unless the other essential ingredient, i.e., dishonest inducement is established. This Court held as follows:

“....both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement. “Dishonesty” has been defined in Section 24 IPC to mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed....”

15. In *Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr.*, (2000) 4 SCC 168, paras 13-15. this Court reiterated that Section 415 IPC contemplates two distinct situations; the first where a person is dishonestly induced to deliver property, and the second where a person is induced to do or omit an act which, but for the deception, he would not have done or

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omitted. In the former, the inducement must be fraudulent or dishonest, whereas in the latter it need only be intentional. Therefore, intention is the gist of the offence.

9.3. Under Section 13(1)(d) (ii) and (iii) of the PC Act, a public servant is said to commit the offence of criminal misconduct if he obtains for himself or any other person, any valuable thing or pecuniary advantage by ‘abusing his position’ or ‘without any public interest’. It has been laid down by the Supreme Court in *Rajiv Kumar v. State of Uttar Pradesh and Another*, (2017) 8 SCC 791, that all three sub-clauses of Section 13(1)(d) are independent of each other and if ingredients of any of those three are met, the offence of criminal misconduct would be made out. The observations explaining the provision are:

10. Section 13 of the PC Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of “criminal misconduct”. Sub-section (2) of Section 13 speaks of the punishment for such misconduct. Section 13(1)(d) read with Section 13(2) of the PC Act lays down the essentials and punishment respectively for the offence of “criminal misconduct” by a public servant. Section 13(1)(d) reads as under:

“13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct-

(d) if he-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself for any other

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person any valuable thing or pecuniary advantage, or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of “criminal misconduct” under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i) of the PC Act obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning under Section 13(1)(d)(ii) of the PC Act “obtaining a valuable thing or pecuniary advantage” by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.

9.4. The justification to frame charge is when facts emerging from the material disclose existence of all the ingredients constituting the offence alleged, as reiterated by the Supreme Court in *Suresh alias Pappu Bhudharmal Kalani v. State of Maharashtra*, (2001) 3 SCC 703. The observations in this regard are the following:

9. We do not feel it necessary to repeat the discussions on the different points and the decisions which have been referred to in the judgment. However we notice a few recent decisions of this Court touching on the question. In the case of *State of Maharashtra v. Priya Sharan Maharaj* this Court referring to the case of *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* held (at SCC p. 397, para 8) that at the stage of

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Sections 227 and 228 the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as the gospel truth even if it is opposed to common sense or the broad probabilities of the case. *Therefore, at the stage of framing of the charge the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.*

(emphasis supplied)

10. In the case of State of M.P. v. Mohanlal Soni this Court referring to several previous decisions, held (at SCC p. 342, para 7) that *the crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.*

(emphasis supplied)

Analysis

10. In the light of these settled propositions of law, it is to be seen whether the impugned order framing charge against the petitioners is sustainable. The entire case set up by the CBI is that the re-allotment by BSH was in violation of the statutory provisions, it was for extraneous reasons without any public interest; he abused his official position to give pecuniary advantage to the AJL by allotting the plot at original rates. It is

because, after resumption of the plot vide order dated 30.10.1992, and

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dismissal of appeal as well as revision against it vide orders dated 03.01.1995 and 10.10.1996, respectively, there was no lawful authority vested with BSH to order its re-allotment almost after a decade on 28.08.2005.

10.1 However, as mentioned hereinbefore, the re-allotment of plot to the AJL, vide order dated 28.08.2005 passed by BSH, stands unanimously ratified by the Authority ex-post facto on 16.05.2006. The decision has not been reviewed or recalled, nor declared illegal by any Court of law. The allotment is valid as on date, it has also not been cancelled, nor declared illegal or arbitrary. Instead, the AJL after payment of re-allotment price as well as the extension fee has raised construction, and has been given occupation certificate by the Authority on 14.08.2014. No grievance has been raised regarding any loss to the Authority; nor has the AJL or any other accused been called upon to make good any perceived harm. Even the Government auditors have dropped their objection regarding financial loss to the Authority on account of this re-allotment. Further, the legality of decision taken by BSH has also not been questioned before any Court or Tribunal, either by the Authority or the Government or anyone else. Even the FIR in question has been lodged by the Vigilance on the basis of a source report, and not on a complaint by the Authority. Ignoring these vital facts of the matter, the CBI has taken upon itself to term the re-allotment illegal being violative of the 1977 Act which would, in its view, attract criminal liability under the provisions of the IPC and the PC Act invoked against the petitioners. It is unfathomable as to how the investigating agency can consider the re-allotment of plot unlawful on its own, and proceed to register

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a criminal case on that basis. This is absolutely illegal, and far from any procedure known to law.

10.2. To fasten criminal liability and frame the charge, there has to be material on record to enable the Court to form an opinion as to existence of ingredients of the offence alleged. In the facts of the case, there is no material to establish any agreement between the accused to intentionally cheat the Authority by re-allotting the plot in question. Although there has been a request from the AJL seeking restoration of the plot to it, there is no material forthcoming to indicate that it was in concurrence with BSH to fraudulently or dishonestly get the plot restored at original rates. Undeniably, the AJL never asked for restoration/re-allotment at any particular rate, nor is there anything on record to even *prima facie* indicate thus. It is also a fact that entire amount of re-allotment as demanded has been duly paid by the AJL, including the extension fee. It is, therefore, rather strange to accuse the AJL of harboring any intention to cause loss to the Authority by seeking restoration of the plot in question. And once the intention of causing any loss cannot be attributed to the AJL, it cannot be accused of conspiring with BSH for any wrongful gain. Pertinently, all the documents relied upon by the CBI show that BSH had been acting independently taking advice from the officers with regard to restoration of the plot. There has not been any interference, suggestion or exercise of influence by the AJL in this regard. Apart from making the requests to reconsider restoration of the plot to it, there has not been any other effort on its part in that direction. Evidently, nothing suggests a joint effort or any meeting of minds between the AJL and BSH with the intention to get the plot re-allotted.

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10.3. Next, it requires consideration as to whether any loss has been caused to the Authority on account of re-allotment of the plot in question to the AJL. The initial allotment to it was at 'no profit no loss' basis at the rate of ₹91 per square yard. Although an audit objection had been raised regarding loss of ₹63.08 lakh to the Authority since the re-allotment was at the prevalent rates, it was not sustained. The objection was dropped by the auditor/Deputy Accountant General on 12.05.2009. And no other document has been brought on record to even *prima facie* indicate cost of the plot on the date of re-allotment. Therefore, there is no material indicating any loss to the Authority, nor has any assessment been made by it in this regard; rather, it has accepted and implemented the decision to re-allot the plot on the rate fixed. Merely because statements of some officers of the Authority or Government have been recorded to the effect that re-allotment of the plot at current rates would have fetched more money to the Authority, it cannot form a basis to contend that any loss has actually been caused. The statements are without any factual basis. To claim on this premise that the re-allotment caused any loss to the Authority, is fictional which cannot afford any ground to frame charge for commission of the alleged offences.

10.4. Further, it is also not the case that unlawful means were adopted to perform that act of re-allotment inasmuch as there is no allegation of illegal gratification to anybody or BSH in the entire exercise. The illegality alleged is, passing of the order without legitimate authority. But that cannot be the case as the order has not been declared illegal by any Court of law or tribunal; rather, it has been duly implemented without any question raised by anybody. Also, the act of passing the order, dated 28.08.2005, to re-allot the

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It is a different matter that those reasons have been termed extraneous and the act of re-allotment illegal, by the CBI. But it is superfluous to consider it thus in the absence of any authoritative pronouncement to that effect. Therefore, due to an act which has not been declared illegal, nor has it resulted in any loss to the Authority, as discussed hereinbefore, there cannot be any unlawful gain to anybody either. And in the absence of any wrongful loss or wrongful gain, there cannot be any dishonest inducement to part with the property by BSH.

10.5. So far as the offence under Section 13(1)(d)(ii)(iii) of the PC Act is concerned, it requires the CBI to *prima facie* show that BSH while acting as a public servant committed criminal misconduct by obtaining for himself or any other person any valuable thing or pecuniary advantage in re-allotting the plot by abusing his position, or that it was without public interest. Undeniably, he has not gained anything by re-allotting the plot; nor can he be said to have obtained any valuable thing or advantage for any other person, since the re-allotment of plot to AJL at original price stands ratified by the HUDA which makes it a decision of the Authority. And the cost of the plot as demanded, has been paid with interest. Additionally, to say that re-allotment of the plot at original rate with interest was in itself a pecuniary advantage, there has to be material on record to show the actual price that the re-allotment would have fetched, which is not there. In its absence, there is no basis to allege that any valuable thing or pecuniary advantage has been obtained by re-allotting the plot. In other words, the pecuniary advantage cannot be ascertained in isolation, it has to be in relative terms *vis-à-vis* actual cost of the plot on the date of re-allotment, in terms whereof the loss could have been measured or assessed. But no loss

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has been caused in the process to the Authority, as stated by the Administrator to the Accountant General (Audit), vide letter dated 01.05.2009. And without the loss there cannot be any concomitant gain. Further, it cannot be said that BSH has misused his position as a public servant, as the order passed by him to re-allot the plot has been ratified by the Authority unanimously, and the decision has been duly implemented. The ratification gives validity to the order from the date it has been passed. Also, the abuse of position as a public servant presupposes an unlawful act which is not the case as the re-allotment has not been termed illegal by any competent Court or Tribunal.

10.6. Furthermore, BSH has passed a reasoned order of re-allotment regarding the plot in question. In doing so he has gone against the legal advice tendered on the issue, as also the official notings/opinions; and allegedly violated the statutory provisions of the 1977 Act as well as the policy of allotment of plots. Can BSH be attributed dishonest intention in passing the order so as to attract penal provisions under the PC Act? The question can be answered by referring to the law laid down by the Supreme Court in *C.K. Jaffer Sharief v. State (through CBI)*, (2013) 1 SCC 205. The allegations against the appellant in that case were that as Minister of Railways he had prevailed upon two public sector undertakings to take four employees on deputation for the sole purpose of sending them to London in connection with his medical treatment. It was also alleged that none of those four employees had performed any official duty to the undertakings while they were in London; still, to and fro airfare for those four persons was paid by the public sector undertakings. Accordingly, the appellant was accused of

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undertakings by arranging the visits of those four persons without any public interest. Rejecting the contention, the Court held that dishonest intention, which is the gist of offence under Section 13(1)(d) of the PC Act, cannot be attributed on the basis of violation of rules/norms or for a decision showing extravagant display of redundancy. The observations to that effect are as under:

17. ... If the statements of the witnesses examined under Section 161 CrPC show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in *M. Narayanan Nambiar v. State of Kerala* while considering the provisions of Section 5 of the 1947 Act.

In the instant case, BSH is also accused of the offence under Section 13(1)(d) (ii) and (iii) of the PC Act on account of abusing his position as a

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public servant in passing the re-allotment order, dated 28.08.2005, in violation of rules/norms. He is not accused of obtaining any undue pecuniary advantage for himself by passing the order, nor can he be accused of obtaining such an advantage for anyone else, as discussed hereinbefore. Accordingly, it cannot be said that the order was passed with a dishonest intention, which is the essence of the offence alleged against him.

10.7. The ratification of re-allotment by the Authority has been termed sham by the CBI on the ground that prior to ratification the plot had already been re-allotted and the possession had also been given. Nonetheless, undeniably, the decision to re-allot the plot, issuance of re-allotment letter, acceptance of cost in terms thereof, as also extension of time to construct the building on the re-allotted plot, had been ratified by the Authority unanimously. It is not the case that the Authority had no power to overrule the re-allotment and order *status quo ante*. But it chose not to, and approved the decision without any dissent by any of the members on any ground whatsoever. Also, to term the ratification fake the CBI relied upon certain statements of senior officers, who were members of the Authority, to the effect that they were not aware of all the facts of the case and had they been, they would not have consented to the decision to re-allot. Such statements are not only a reflection on the functioning of the officers concerned, to consider the unanimous resolution of the Authority a mere formality on the basis of such self-serving statements is itself questionable. Conscious decision taken by the Authority cannot be termed inconsequential and fake based upon subsequent statements of its members who, undisputedly, concurred with it without demur. It is manifestly illegal, and defies all logic. Besides, the fact that the CBI has chosen to chargesheet only

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BSH, Chairman of the Authority, by ignoring all other members who ratified the decision, also raises doubts about its *bona fides* and the nature of investigation carried out. It gives credence to the assertions made by Mr. Cheema that BSH has been framed in the case for ulterior motives.

10.8. The contention on behalf of the CBI that the act of mortgaging the plot with its building in question by the AJL for taking loans for the purposes other than the one the re-allotment was meant for shows the criminal intention to defraud the Authority, has also no legs to stand upon. It is because the property was mortgaged by the AJL with prior consent of the Authority. Also, it could not be pointed out that there was violation of any specific term of re-allotment by the AJL in mortgaging the plot. The only condition said to have been violated requires that the plot cannot be used for any purpose other than the one it had been allotted for. Mortgaging the property for securing some loans does not indicate in any manner that the plot is not being used for the purpose it has been allotted, i.e., publication of a Hindi newspaper. Also, this mortgage of property by the AJL after seven years of re-allotment, cannot possibly have any bearing on the act of re-allotment vide order dated 28.08.2005.

11. The argument raised by learned senior counsel Mr. Poonia that after amendment to the PC Act, dated 26.07.2018, substituting Section 13(1) with a new provision, the charge under Section 13(1)(d) as it existed prior to the amendment could not have been framed especially when the chargesheet was presented post-amendment on 30.11.2018, is not sustainable. It is for the reason, the offences for which the petitioners have been charged under the PC Act have statedly been committed before the amendment, and the FIR

has also been registered prior thereto. It stands settled in *Sri Managipet alias*

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Mangipet Sarveshwar Reddy case (*supra*) that the offences committed prior to the amendment are to be tried under the unamended provision. His argument that the judgment cannot be considered a binding precedent because it does not consider all the relevant aspects concerning the amendment, including the effect of substitution without any saving provision in the Act, is misconceived. Once the Supreme Court has opined on the issue, it is the law declared which has to be followed, and the reasoning behind the declaration cannot be reviewed by this Court.

12. The arguments raised by Mr. Cheema that a combined reading of Sections 15 and 30 of the 1977 Act gives power to the Authority to dispose of the land in any manner, which would include re-allotment as well, and that prior to enforcement of Haryana Act No.11 of 2004, dated 17.03.2004, there was no revisional power with the Authority, etc., need not be considered in the light of above discussion, especially when legality of the order, dated 28.08.2005, as also the consequent re-allotment and ratification, have not been questioned to date.

View taken by the Special Judge

13. The aforementioned vital aspects of the case have been ignored by learned Special Judge in passing the impugned order, dated 16.04.2021, rejecting the petitioner's application seeking discharge. Regarding the stated loss caused on account of re-allotment, the order records as under:

51. ... However, as alleged by the prosecution, it appears that accused B.S. Hooda had over-ruled the recommendations/opinions/notings of the officials of HUDA, the then FCTCP, Haryana and the then Legal Remembrancer, Haryana and had re-allotted the above plot to accused AJL by violating the policies/guidelines of HUDA. As alleged, it appears that it had

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caused wrongful gain of ₹67,65,002/- to accused AJL and corresponding wrongful loss to the Government exchequer. ...

52. xxx xxx

53. ... However, as argued by the Public Prosecutor for the CBI, it is beyond the sense of prudent man that the price of ₹91 per square yard of the plot C-17, sector 6 Panchkula of 3500 sq.yard which was fixed in the year 1982, would also remain the same price in the year 2005 and subsequently, the same plot which was re-allotted to accused AJL on 28.08.2005, was mortgaged to Syndicate Bank, New Delhi in the sum of ₹17.50 Crores as fair market value assessed on 01.08.2012. Meaning thereby, the price of the said plot was not increased from the year 1982 to 2005, but suddenly, it increased in the year 2012 by ₹17.50 Crores which was valued by the Syndicate Bank on 01.08.2012, after the lapse of about 7 years as alleged by the prosecution. Therefore, these are the question of facts, which are required to be proved by the prosecution during the course of trial.

Ostensibly, learned Special Judge has not referred to any material or document on record in ascertaining the alleged loss to the Authority, or the corresponding wrongful gain to the AJL. Merely because a policy has statedly been violated while passing the order of re-allotment, it cannot *ipso facto* form a basis to hold that loss of certain amount has been caused as a result. Further, by referring to the factum of mortgage of the plot to the Syndicate Bank long after re-allotment, learned Judge has concluded that the assessed value of the plot at the time of mortgage indicates its increased price; therefore, it can be taken that there has been an increase in price of the plot between the year of allotment - 1982 and re-allotment - 2005. Framing of charge on such an assumption is not known to law. There is no definite conclusion about the actual loss suffered by the Authority on account of the

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re-allotment. The value of the plot assessed by the Bank for the purpose of mortgage after seven years of re-allotment cannot be a basis to ascertain actual price of the plot at the time of re-allotment, or the consequent loss. It is sheer imagination, and cannot afford any ground to even *prima facie* form an opinion of actual loss to the Authority.

13.1. Further, learned Special Judge has not examined ingredients of the offences of conspiracy, cheating and criminal misconduct *vis-à-vis* the accused simply by mentioning that there was sufficient material to proceed against them. It is apparent from para 55 of the order, which is as follows:

55. Learned Senior Counsel Sh. R.S. Cheema has drawn my attention to the ingredients of criminal conspiracy, cheating, misconduct, public interest and abuse of public office being public servant by citing the authorities as mentioned above. Learned Senior Counsel has drawn the attention of the Court to these cited case laws, but at the stage of framing of charge, this Court cannot pass an order in favour of the accused because *prima facie* sufficient material is available to proceed against accused B.S. Hooda as well as accused M/s AJL, as discussed above.

This shows without examining the material facts to ascertain whether ingredients of the alleged offences can be said to have been *prima facie* made out against the petitioners, charges have been framed.

13.2. Still further, the dishonest intention of BSH has been inferred from the fact that he has passed the order in violation of the policy/guidelines/notings/opinions/recommendations of officers, and by ignoring the facts on record. This has been so recorded in the following paragraph:

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60. However, this submission has no force because as discussed above, dishonest intention of accused B.S. Hooda cannot be gathered from the vacuum, but it can be gathered from the facts and circumstances of the case. As alleged by the prosecution, order dated 28.08.2005 passed by accused Bhupinder Singh Hooda for re-allotment of said plot to accused AJL by flouting the policies/guidelines of HUDA and ignoring the notings/opinions/recommendations of officials/officers of HUDA and Joint L.R. Haryana, which prima facie shows the dishonest intention of accused B.S. Hooda. Ld. Public Prosecutor for the CBI has also alleged that at this stage, the said re-allotment of plot to accused AJL cannot be treated as error of judgment because power under Section 30(2) of the HUDA Act, 1977 had already been exercised by Sh. M.L. Tayal, the then Commissioner cum Secretary, Govt. of Haryana, Town & Country Planning Department. Even then accused B.S. Hooda exercised the same and re-allotted the plot to M/s. AJL on 28.08.2005 and ignored the notings/opinions/recommendations of officials/officers of HUDA and L.R. Haryana. It is further submitted that accused B.S. Hooda had full knowledge about the order dated 10.10.1996 passed by Sh. M.L. Tayal, the then Secretary, Government of Haryana, Town & Country Planning Department, but despite that he re-allotted the said plot to accused M/s AJL, which allegedly reveals the dishonest intention on his part at this stage.

It is a settled law, as discussed hereinbefore, that passing an order against the policies, guidelines or opinions and in ignorance of any fact cannot be a basis to attribute dishonest intention to the accused.

13.3. Accordingly, the orders passed by learned Special Judge rejecting the petitioner's discharge application and framing charges are perverse and have resulted in miscarriage of justice.

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Order

14. In view of the discussion, it is apparent that the material brought on record does not even *prima facie* disclose the existence of essential ingredients of the alleged offences against the petitioners, and there is no ground to proceed against them. Continuation of prosecution will be an abuse of the process of Court. Consequently, both the petitions are allowed. The impugned orders, dated 16.04.2021, framing charges against the petitioners as well as dismissing the discharge application, are hereby set aside along with all subsequent proceedings arising therefrom, and the petitioners stand discharged.

15. Pending miscellaneous application(s), if any, also stand(s) disposed of.

16. A photocopy of this order be placed on the case file(s) of connected matter(s).

(TRIBHUVAN DAHIYA)
JUDGE

25.02.2026
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes