IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH

***

CRIMINAL PETITION No.2345 of 2017

Between:

Sri Lanka Venkata Subrahmanyam

.....Petitioner

And

The State of Telangana., rep. by Special PP of CBI, Hyderabad

.....Respondent

Date of Judgment pronounced on : 04-01-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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! Counsel for the petitioner : Sri P. Sri Raghu Ram, for
Sri T. Nagarjuna Rekddy

^ Counsel for the respondent : Sri K. Surender, Special PP for CBI

? Cases referred

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22. AIR 1987 SC 773 = 1987 CrLJ 709
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62. (1998) 6 SCC 551
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96. (Crl.L.A. 1599/2009 decided by Supreme Court on 23.05.2014)
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129. 2006(3) SCC-245 at paras-30&31 page-260
130. 1976-1-SCR-803
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HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2345 of 2017

ORDER:

The petitioner-Sri LV Subrahmanyam, Special Chief Secretary working under the State of Andhra Pradesh, is in the array of several accused as A-11 in the final report, which is outcome of the crime in R.C.No.18(A)/2011, CBI Hyderabad, registered and investigated based on the directions given on 10.08.2011, in the public interest litigation (W.P.No 29358 of 2010) filed by one Sri P. Shankar Rao against State of Andhra Pradesh and others for CBI enquiry, for the offences punishable under 120-B IPC and 13(2) read with 13(1)(d) and 15 of the Prevention of Corruption Act,1988, (for short, 'the Act'), with allegations of huge extent of lands held by A.P. Industrial Infrastructure Corporation (APIIC) transferred to private parties and the State Government was put to loss and suspecting money laundering and in ordering CBI enquiry against M/s Emaar properties, Public Joint Stock Company (PJSC), Dubai, has involved in this public private partnership project, by relied upon some enquiry by the Vigilance Department of the State Government. (Undisputedly there is nothing in the vigilance report specifically against the petitioner-Sri LV Subrahmanyam).

2. The police final report is running about 320 pages against several accused and of which so far as petitioner concerned it speaks that:

1. He (Sri LV Subrahmanyam-for short LVS) was Vice Chairman and Managing Director (VC & MD), APIIC from September, 2003 to May, 2005. During said period the modalities and implementation structure of the integrated project were finalized by the Government of AP (GoAP) on the recommendations of APIIC,

2. LVS received the memorandum and articles of association in respect of the SPVs i.e., 1.M/s. EHTPL, 2.M/s. BHLPL and 3.M/s.CCCPL. However, LVS in furtherance of the criminal conspiracy did not ensure

that the memorandum and articles of association of the JVCos were suitably amended in consonance with the recitals of collaboration agreement and share holders agreement,

3. The Senior Manager Projects APIIC had recommended that the price of the land to be conveyed to SPV on free hold basis by making an upward revision from Rs.29,00,000/- to Rs.40,00,000/- per acre in view of the developments taken place resulting in appreciation of the land cost. However, LVS in furtherance of the criminal conspiracy made a recommendation to the GoAP favourable to M/s. Emaar Properties, PJSC, Dubai (A.2) to the effect of not enhancing the cost of the land per acre but to retain the same at Rs.29,00,000/- **assigning the reason that the project would suffer double jeopardy of the increased project cost and corresponding reduction in the Govt. equity, which may cast an additional debt burden on APIIC**. LVS himself admittedly accepted the price of Rs.35,00,000/- per acre fixed by the price fixation committee of APIIC in respect of the land at Manikonda Jagir (where the integrated project is located) for the year 2004, which was valid till 31.03.2005, by making an endorsement to that effect in the file,

4. LVS in furtherance of the criminal conspiracy agreed to the request of the developer and recommended lease rentals as 2% of gross annual revenues in respect of 235 acres of lease land for development of golf course contrary to the approval given by GoAP for a lease rentals at 2% for the initial period of 33 years and 3% for the further period of 33 years, thereby divested APIIC of its legitimate share in the lease rentals for the remaining period of 33 years at 3%,

5. The convention centre and business hotel were also established on leased land of 15 acres at Izzatnagar as in the case of golf course. LVS in furtherance of the criminal conspiracy did not recommend enhancement of lease rentals from 2% to 3% after expiry of lease period of 33 years on par with the golf course,

6. LVS was privy to the fact that the villa plots were being sold by Sri Koneru Rajendra Prasad (A.6) and Sri T.Ranga Rao (A14), Director of M/s. Stylish Homes Real Estates Pvt. Ltd. (A.5). However, LVS in furtherance of the criminal conspiracy did not object to the sale of villa plots by A.6 and even actively recommended the case of one of the villa plot buyer for allotment of a villa plot,

7. LVS in furtherance of the criminal conspiracy mentioned that the Govt. IC Dept. had agreed vide G.O.Ms.No.14 dated 11.01.2005 for exemption from payment of conversion fee for change of land by APIIC/Emaar Properties, which was factually incorrect. The fact remains that while issuing G.O.Ms.No.14, the GoAP had only agreed to look into the matter of exemption of conversion charges separately and not agreed for exemption per se as mentioned by LVS,

8. M/s. Emaar Properties, PJSC, Dubai (A.2) vide reference dated 02.05.2005 had mooted a proposal to the VC & MD, APIIC and marked a copy to the Principal Secretary, Industries and Commerce Dept. to bring in its subsidiary M/s. Fairbridge Holdings as a co-developer for the integrated project. LVS while dealing with the said proposal in furtherance of the conspiracy has called for further details of M/s.

Fairbridge Holdings from M/s. Emaar Properties, PJSC, Dubai(A.2), though the Principal Secretary, Industries and Commerce Department had categorically instructed not to entertain any change in equity structure till the project was fully implemented.

9. **The aforesaid overt acts of Sri LVS reveal the offences punishable under Sections 120-B IPC and Section 13(2) r/w 13(1)(d) and Section 15 of PC Act**.

3. From the final report filed against A.1 to A.6 and A.9 to A.14 on 05.03.2012, on 16.03.2012 by docket order of the Special Judge having taken up for hearing for want of sanction against A.1(B.P.Acharya) and A.11(LVS) to take cognizance observed that so far no sanction orders are obtained and filed as such, no cognizance of the offences alleged against them can be taken and A.1 in judicial custody shall be released on bonds and shall not leave Hyderabad without permission of Court and shall surrender passport or state by affidavit if no passport. Order was to summon only A.2 to A.5, A.9, A.10 and A.12 to A.14 by 30.03.2012.

Thus it is crystal clear from the docket order dt.16.03.2012 of the Special Judge that no cognizance can be taken for all the offences alleged against A1&11.

4. The CBI applied to the State Government, leave about the case of A1-Sri BP Acharya, to accord sanction to prosecute the petitioner-A11 for the offences punishable under Section 120-B IPC and under Sections 13(2) read with 13(1) (d) & 15 of the Act.

5. However subsequently on the memo of CBI stating orders of sanction by the State Government not accorded so far to prosecute Sri B.P.Acharya, IAS (A.1) and the petitioner-LVS(A.11), who are the public servants working in the State Government of AP, though cognizance taken against the non public servants accused by the Special Judge, cognizance may be taken against these two also for

the IPC offences respectively for which no sanction is necessary. Therefrom the learned Special Judge, only on objections and hearing of A.1, and before any notice and hearing of A.11-petitioner, to review the previous order dated 30.03.2012 supra, by his order dated 01.06.2012 observed that - in **State of Kerala Vs. Padmanabhan Nair**[1] held that offences committed by public servants under IPC in not relating to part of their duty sanction under Section 197 CrPC not required. Whereas in **Anjani Kumar Vs. State of Bihar**[2] held that act or omission found to have been committed by public servants in discharge of duties sanction under Section 197 CrPC is required. It also referred expression of this Court in **T.Gopala Rao Vs. State of A.P.**[3] and the decision referred therein of **MCV Vs. State of A.P.**[4] saying sanction mandatory; however observed of the decisions have no application for not a case of sanction rejected by State Government like therein. **However, even the earlier Special Judge observed on 16.03.2012 of want of sanction to take cognizance against A.1 and A.11 for the offences under the IPC and PC Act,** the later Special Judge observed as if there was no observation for the IPC offences to have such a bar to take cognizance. **The later Special Judge therefrom allowed the memo of CBI and took cognizance on 02.06.2012 only for the offence under Section 120-B IPC against petitioner-A.11 and only for the offences under Sections 120-B and 409 IPC against A.1**.

6. Said action of later Special Judge on 02.06.2012 is nothing but a review of its own order which is impermissible even from change of presiding officer because of bar under Section 362 CrPC for not having

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[1] 1999 (3) SCR 864
[2] 2008 Cr.L.J. 2558
[3] 2011 (1) ALD (Crl.) 324 (AP)
[4] 2010 (1) ALD (Crl.) 419 (AP)

the powers of High Court either inherent powers under Section 482 CrPC or supervisory powers under Section 483 CrPC, much less with any plenary powers under Articles 226 and 227 of the Constitution of India, even to overcome the bar under Section 362 CrPC for reopen by review of the matter - as held in **State of Kerala Vs. MM.Manikantan Nair**[5] and in a case of process issued under Section 204 CrPC was recalled in the expression of the Apex Court in **Adalat Prasad Vs. Rooplal Jinfdal**[6] and as held by the Division Bench expression of this court in a maintenance case restored of dismissed in **C. Subrahmanyam Vs. C. Sumathi**[7]. Thus, suffice to say the very cognizance order of the later Special Judge on 02.06.2012 to prosecute the petitioner-A.11 for Section 120B IPC without sanction, by review of the previous special judge order of sanction required, is per-se unsustainable and liable to be set aside without going into other merits at the threshold.

7. Later undisputedly the State Government refused on 05.06.2012 to accord sanction to prosecute the petitioner-A.11 for the offences. The proceedings refer the State Govt.,s consultation of the union of India by referring to the letter dated 31.01.2012 of the Joint Director, CBI, Hyd, letter dated 22.02.2012 of DoPT, New Delhi, addressed to the Joint Director, CBI, Hyd, GoAP memo dated 16.03.2012, letter of Sri LVS dated 04.04.2012, GoAP letter dated 20.04.2012 to the Joint Director, CBI, Hyd and letter dated 24.04.2012 of the Joint Director, CBI, Hyd, to the GoAP. Thus said refusal of sanction to prosecute is after application of mind to the material and that was not sought for review with any fresh material nor challenged otherwise, but made final and once such is the case, the CBI should not

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[5] 2001 (1) ALD (Crl.) 798 (SC)
[6] 2004(7)SCC 338
[7] 2003(2) ALD(CRL). 905

have ignored the adverse order in applying to union of India for sanction, which is a clear abuse of process and unfair.

8. Petitioner-A.11 pursuant to the summons, filed Crl.M.P. No.1163 of 2012, for suspending said order dated 02.06.2012 supra, in view of orders of the State Government refused to accord sanction to prosecute the petitioner-A.11 for the offences punishable under Section 120-B IPC and under Sections 13(2) read with 13(1) (d) & 15 of the Act, vide letter in 11/SC.D/A3/2012-6, dated 05.06.2012. Same was opposed by CBI with counter mainly saying the Court cannot review its order for no inherent power and relied upon the expression in **MM.Manikantan Nair** supra. The selfsame Special Judge on 15.06.2012 in his order held that petitioner-A11 only sought for suspension of the earlier order passed against him dated 02.06.2012 in taking cognizance for Section 120-B IPC without sanction because of the State Government later refused sanction. Suspension is only a temporary and stop gap relief and as rightly contended by counsel for CBI of cognizance already taken and by a subsequent refusal of sanction by State Government; he cannot suspend the earlier sanction order by its review. **The Special Judge dismissed the petition of A.11-petitioner saying he cannot review the previous order. Here also the learned Special Judge went wrong in thinking it is a review, instead saying for want of sanction, no cognizance can be taken and even taken same later cannot continue and there is inherent defect to continue the proceedings and thereby liable to be closed for disability to proceed and is not a review but lack of power and authority to proceed.** Thus said order is also per-se unsustainable and liable to be set aside without going into other merits at the threshold to sub serve the ends of justice.

9. Leave it as it is even coming to the merits on sanction refusal and bar to proceed, a perusal of the sanction refusal order of the State Government supra reads with reference to the facts referred above of the PIL and order of High Court and CBI taken up investigation and filed final report and supplemental final reports and Special Judge taken cognizance on the final reports for offences; by referring to letter dated 31.01.2012 of the Joint Director, CBI, Hyd, letter dated 22.02.2012 of DoPT, Delhi, addressed to the Joint Director, CBI, Hyd, GoAP memo dated 16.03.2012, letter of Sri LVS dated 04.04.2012, GoAP letter dated 20.04.2012 to the Joint Director, CBI, Hyd and letter dated 24.04.2012 of the Joint Director, CBI, Hyd, to the GoAP; that the CBI in their report among others made certain allegations against Sri L.V.Subrahmanyam, IAS, former VC & MD, APIIC, presently EO, TTD, (petitioner-A.11) **to prosecute him for the offences punishable under Section 120-B IPC and under Sections 13(2) read with 13(1) (d) & 15 of the Act**, mainly alleging that:

i) During the year 2004 when the project was reviewed by the new Government, M/s. Emaar Properties, PJSC, Dubai submitted a revised proposal dated 23.09.2004 and 24.09.2004 proposing to revise the implementation structure of the project. While processing this proposal, the project wing of APIIC had recommended that the price of the land to be conveyed to SPV on free hold basis may be revised from Rs.29,00,000/- to Rs.40,00,000/-. However, Sri L.V.Subrahmanyam without proper justification turned down the said recommendation. It is pertinent to mention here that the Price Fixation Committee of APIIC had fixed the price of Rs.35 lakhs per acre in respect of the land at Manikonda Jagir (where the integrated project is located) for the year 2004 (which was applicable till 31.03.2005) and the said rate was accepted by Sri L.V.Subrahmanyam himself.

ii) On the request of M/s. Emaar Properties PJSC, Dubai to revise the G.O.Ms.No.14, Sri LVS while moving a proposal to Industries and Commerce Department recommended a lease rental of 2% from Golf Course though the GoAP while issuing G.O.Ms.No.14 had made a provision of increasing the lease rental from 2% to 3% after expiry of first phase of 33 years of lease period. In the absence of recommendation from APIIC, while issuing G.O.Ms.No.22, the GoAP did not approve for revising the lease rental from 2% to 3% after a lease period of 33 years. However, this issue was raised by the Minister for Major Industries,

subsequent to the issue of G.O.Ms.No.22 and finally as per the approval of the then Chief Minister a provision for increasing the lease rental from 2% to 3% was made in the Supplementary Agreement.

4. **As per the instructions of the Government of India, the version of Sri LVS was called for vide reference 3rd cited. In the reference 4th cited, the member of service has submitted his version.**

5. **In the reference 5th cited the version submitted by Sri LVS was referred to the investigating agency to rebut the contentions of the accused officers. In the reference 6th cited the CBI has furnished their rebuttal.**

6. **The version of the member of service and the rebuttal of the investigating agency were referred to the law department of the State Government for their opinion as per the instructions of the Government of India.**

7.A. **In respect of revision of land price the member of service has informed that**:

i) **The overall project cost has been revised from Rs.430 crores to Rs.630 crores and the equity share of APIIC has been reduced to 26% from 49% thereby reducing the investment by Government**.

ii) **the asset value of the project has been gone up the land value after adjustment for required equity was converted into debentures at nominal rate of interest**.

iii) **the lease rentals for the land given for Golf Course were revised to 2% on gross annual revenue for first 33 years and 3% for next 33 years.**

iv) **Thus the charge of land price has to be seen in proper perspective and dimension**.

B) **In respect of lease rentals the officer mentioned that the lease rentals for land given for the golf course of 235 acres is being revised to @ 2% on gross annual revenue for the first 33 years and 3% for further 33 years. The asset which is fully developed will revert to government after 66 years**.

The above note was approved by the Government. The Minister of Industries also signed on file. Hence there was no mistake that happened in recording the discussions that took place. The Finance Department mentioned that after the project turns viable the lease rentals issue needs a re-look. **Lease rentals only flows into the revenues of the concerned SPVs and cannot be taken as revenue to the Government.** This aspect has not been understood by the CBI and therefore they feared that the loss that is possible after 33 years by omitting this second slab of 3% of Gross Annual Revenue. This is a dangerous and a speculative charge. There is no separate advantage that has accrued to the developer. So this charge is not sustainable. In a long term infrastructure project spread over 66 years it can be

envisaged that a upward or downward revision of revenue stream is hypothetically possible. The member of service has therefore requested to drop the charge.

8. **The State Government after careful consideration of the report of the CBI and the version given by the member of service has come to the conclusion that the member of service has not taken any unilateral decision as he has forwarded his comments/observations to the State Government for orders on issues concerning APIIC and the Government. Hence, the GoAP decided to refuse sanction of prosecution in respect of Sri LV Subrahmanyam, IAS**, under Section 197(1) CrPC.

10. From the above, sanction to prosecute the officer sought, for the offences under IPC and PC Act and the State Government having consulted the union of India and get clarification from CBI on the Officer's version and having considered the entire material and found very clearly that the officer is not at all at fault and thereby not at all liable for prosecution in its decision of refusing to accord sanction to prosecute him.

11. Mere say of only Section 197 CrPC and mistake in non mention of Section 19 PC Act will not even to the advantage of the prosecution agency much less to apply for another according of sanction from the Central Government for not even a review by the same State Government by pointing out this aspect for any clarity and that too against a decision of the State Government when there is no provision for the Central Government to sit against or to give a fresh sanction by ignoring the sanction refused by the competent authority, the State Government way back in dt.05.06.2012.

12. However subsequently sanction order was obtained by CBI from the Government of India, vide F.No.107/2/2012-AVD.I, dt.19.05.2016 for the offences punishable under Sections 13(2) read with 13(1) (d) & 15 of the Act, that was also taken cognizance; which are now sought for quashing by impugning the same.

13(a). The sanction order of the Central Government speaks in nutshell that the CBI under Section 19 of the PC Act, by forwarded copy of investigation report, sought sanction to prosecute Sri LVS, IAS, (AP:83), for the offences punishable under Sections 13(2) read with 13(1)(d) & 15 of the Act, by referring to the PIL, registration of crime by CBI on court direction with reference to the facts against M/s. Emaar Properties etc., and the MOU between APIIC and M/s. Emaar Properties and SPVs 1 to 3; saying while LVS was working as VC&MD, APIIC, GoAP, during September 2003 to May 2005, modalities/implementation structure of the integrated project was finalized by GoAP on recommendation of APIIC and LVS was required to ensure the execution/implementation of the integrated project as per terms of GO.Ms.No.359 dated 04.09.2002, the collaboration agreement dated 19.08.2003, G.O.Ms.No.14 dt.11.01.2005 and G.O.Ms.No.22 dated 27.01.2005 issued by I&C Dept., GoAP and supplemental agreement dated 19.04.2005 executed between APIIC and M/s. Emaar Properties, PJSC, Dubai.

13(b). The sanction order so far as against him from Paras 8 to 18 reads as follows:

8. The Memorandum and Articles of Association in respect of M/s. EHTPL and Cyberabad Convention Centre were forwarded to Sri LVS on 15.11.2003. The Memorandum and Articles of Association so forwarded were not in conformity with the Collaboration Agreement but Sri LVS did not point it out and maintained a silence detrimental to the interest of APIIC.

9. During the year 2004 when the project was reviewed by the new Government M/s. Emaar Properties PJSC, Dubai submitted a proposal dated 23.09.2004 and 24.09.2004 to revise the implementation structure of the project. While processing the said proposal, Sri TL Ramachandran, Senior Manager (Projects), APIIC had recommended that the price of the land to be conveyed to SPV on free hold basis may be revised from Rs.29,00,000/- to Rs.40,00,000/- per acre in view of the developments taken place which resulted in appreciation of the land cost. However, Shri LV Subrahmanyam in his note dated 05.11.2004 made a recommendation to the Government not to enhance the price of

the land stating that the project would suffer double jeopardy of increased project cost and due to reduced Government equity an additional debt burden. That Shri LV Subrahmanyam himself had accepted the price of Rs.35 lakhs per acre fixed by the Price Fixation Committee of APIIC in respect of the land at Manikonda Jagir (where the integrated project is located) for the year 2004, which was valid till the 31.03.2005. In the same note in respect of the lease rentals of the Golf Course also Shri LV Subrahmanyam agreed to the request of the developer and recommended lease rentals as 2% of Gross Annual Revenue;

10.And whereas, that Shri K.Viswesvara Rao, the then Principal Secretary, Industries and Commerce Department, GoAP agreed with the recommendations of Sri LVS, except in respect of lease rentals, which he recommended negotiations with the Developer for 2% of Gross Annual Revenue for 33 years and 3% for further 33 years. Then the GoAP agreed for revision of the lease rentals to 2% on gross Annual Revenue for the first 33 years and 3% for further 33 years. However, in these discussions, Shri LV Subrahmanyam did not raise the issue of increasing the land cost from Rs.29,00,000/- to Rs.40,00,00/- per acre as proposed by the Project wing;

11. And whereas, there was a request from M/s Emaar Properties PJSC, Dubai to revise the G.O.Ms.No.14 in respect of lease rentals. As per G.O.Ms.No.14 issued on 11.01.2005 the lease rentals from the Golf Course was fixed at 2% on Gross Annual Revenue for the first 33 years and 3% for further 33 years. Shri LV Subrahmanyam in furtherance of the conspiracy with M/s Emaar properties PJSC, Dubai, while moving a proposal dated 19.01.2005 to the Industries and Commerce Department recommended a lease rentals of 2% from Golf Course confining to the period of initial 33 years and remained silent with regard to the lease rentals for the remaining 33 years, though the GoAP while issuing G.O.Ms.No.14 had made a provision for increasing the lease rental from 2% to 3% after expiry of initial lease period of 33 years. Shri K. Viswesvara Rao, the then Principal Secretary, Industries and Commerce (I&C), GoAP in furtherance of the conspiracy issued GO Ms No.22 dated 27.01.2005 in which the Developer was to pay lease rentals @ 2% for the period of 33 years and revert the assets to APIIC on expiry of the lease period of 66 years without making provision for payment of lease rentals of 3% for the remaining period of 33 years. However, this anomaly was raised by the Minister for Major Industries subsequent to the issuance of G.O.Ms.No.22 and finally as per the approval of the then Chief Minister a provision for increasing the lease rental from 2% to 3% for the further period of 33 years was made in the Supplementary Agreement;

12. And whereas, the Convention Centre and Business Hotel were also established on lease land of 15 acres at Izzatnagar. In the case also a provision should have been made for increasing the lease rental from 2% to 3% after expiry of lease period of 33 years on par with Golf Course (as it was also developed in lease land). However, Shri LV Subrahmanyam did not initiate any proposal to this effect. As the result, the GoAP did not look into this aspect and the lease rental from Convention Centre and Business Hotel remained fixed at 2% fro the entire lease period of 66 years. The Gross Annual Revenue accruing from the Convention Centre and Business Hotel are quite substantial

therefore, non revision of the lease rentals on par with the Golf Course component of the integrated project by Shri LV Subrahmanyam would result in substantial revenue loss to APIIC;

13. And whereas, M/s Emaar Properties entered into an agency agreement with M/s Stylish Holmes Real Estates Pvt. Ltd., represented by its Director Shri T Ranga Rao, on 29.01.2005, on behalf of M/s EHTPL for selling the plots/residential units in the township project @ Rs.5,000/- per sq. yd. for a period of 5 years. As per the agreement, M/s Stylish Holmes Real Estates Pvt. Ltd. was entitled to a commission of 4% on the sale value of the Villa Plots marked by it. The rate of 5,000/- was applicable for sale of first 100 Plots and subsequently the plots were to be sold on the basis of prevailing market rate. This agency agreement dated 29.01.2005 was executed by M/s Emaar Properties PJSC, Dubai, even though the land for the township project was conveyed by APIIC in favour of M/s EHTPL vide conveyance deed dated 28.12.2005. Further, APIIC was not consulted before executing this agreement, though it was proposed to hold 26% equity in the project land value;

14. And whereas, that during the month of March, 2005, Shri Vankina Chamundeswaranath approached Shri LV Subrahmanyam and requested him to arrange for the allotment of a villa plot in his name. Shri LV Subrahmanyam requested Shri Koneru Rajendra Prasad to allot a villa plot in the name of Shri Vankina Chamundeswaranath. Shri LV Subrahmanyam then directed Shri Vankina Chamundeswaranath to meet Shri T Ranga Rao in this connection. Accordingly, a villa plot was allotted to him. This clearly shows that Sri LVS was in the knowledge that the villa plots were sold by Shri Koneru Rajendra Prasad and Shri T Ranga Rao, Director of M/s Stylish Holmes Real Estates Pvt. Ltd. However, Shri LV Subrahmanyam did not object to the sale villa plots by Shri Koneru Rajendra Prasad;

15. And whereas, that in the proposal mooted to Municipal Administration & Urban Development (MA & UD) Department vide letter dated 31.03.2005, Shri LV Subrahmanyam mentioned that the Government (I&C Department) had agreed vide GO Ms No.14 dated 11.01.2005 for exemption from payment of conversion fee for change of land by APIIC/Emaar Properties, which was factually incorrect. The fact remains that while issuing GO Ms No.14 the GoAP had only agreed to look into the matter of exemption of conversion charges separately and not agreed for exemption per se as mentioned by Shri LV Subrahmanyam. Basing on the recommended made by Shri LV Subrahmanyam, the MA&UD Department, GoAP granted exemption of conversion charges resulting in loss of revenue to the Government exchequer;

16. And whereas, that M/s Emaar Properties PJSC, Dubai vide reference dated 02.05.2005 had mooted a proposal to the VC & MD, APIIC and marked a copy to the Principal Secretary, Industries and Commerce Department to bring in its subsidiary M/s Fairbridge Holdings as Co-Developer for the Integrated Project. Shri LV Subrahmanyam while dealing with the said proposal called for further details of M/s Fairbridge Holdings from M/s Emaar Properties though the Principal Secretary, Industries and Commerce Department had categorically instructed not to entertain any change in equity structure till the project was fully implemented;

17. And whereas, the Central Government, after carefully considering the facts as emanating from records, as assimilated and placed by the investigating Agency before the competent authority, is fully satisfied that a prima facie case has been made out for prosecution of Shri LV Subrahmanyam, IAS (AP:83), for offences under section 13(2) r/w section 13(1)(d) and section 15 of the Prevention of Corruption Act, 1988 and substantive offences there under and that he should be prosecuted before the Court of Law for the aforesaid offences in the interest of office;

18.Now therefore, in exercise of the power conferred u/s 19(1) of the Prevention of Corruption Act, 1988, the Central Government hereby accords sanction for the prosecution of the said Shri LV Subrahmanyam, IAS (AP:83), the then Chairman & Managing Director of Andhra Pradesh Industrial Infrastructure Corporation Limited for the above said offences and for any other offences punishable under other provisions of the law in respect of acts aforesaid and for taking cognizance of the said offences by the Court of competent jurisdiction.

14. The contentions in the quash petition impugning the said cognizance orders of the learned Special Judge are that:

14(a). The police final report is filed without any basis and the cognizance taken is outcome of non-application of mind to the facts, apart from going beyond the scope of writ petition direction the investigation even went on and the proceedings are thereby liable to be quashed against the petitioner-A11 and despite the fact that neither in the writ petition nor in the vigilance report there is any allegation against the petitioner-A11. It is also contended that the allegation of project wing of APIIC recommended to revise from Rs.29,00,000/- to Rs.40,00,000/- per acre for price of land conveyed to SPV on free hold basis is not correct for the fact that developers advised to have re-look at the cost in view of the developments taken place and the same is not even a proposal. Further the price already fixed by the Government by its order way back in 2002 that continued without alteration and there was already an excess of equity with Rs.25,00,00/- per acre rate. The CBI and the learned Special Judge failed to see that the land value is of utmost relevance for the purpose of equity calculation and the actual

benefit from the development will accrue later with creation of project component when increase of the land value can be realized. It is also contended that the Government proposed to provide land to developers in mega project running into 100's of acres by fixing rates on acreage basis and in respect of allotment of plots in lay out on square yard or square meter basis and as such, the rate given to Industrial units at Manikonda and to Emaar Properties cannot be compared. In fact undeveloped lands are given to the developer, the developer is expected to incur infrastructure cost and APIIC usually incurs in providing internal roads, external road connectivity, power supply installations, power distribution systems, water supply storage and distribution, rain (storm) water drainage, waste water treatment plants and lack of said infrastructure in large tracts is a major reason for said dual pricing to be adopted by the Government. Further there is reduction of land available with the developer when these developments of infrastructure are undertaken by developer, which are considerations in practicing dual pricing of lands that was not properly appreciated.

14(b). The CBI and the learned Special Judge failed to appreciate the facts and the nature of duties of the petitioner and should have considered that there is no conspiracy between the petitioner with other accused much less to achieve any illegal goal and there is no even any allegation of petitioner joined hands with any persons to make a baseless allegation of conspiracy against the petitioner or any criminal misconduct on the part of the petitioner. The CBI and the learned Special Judge should have considered that in letter dated 31.03.2005 written by the petitioner to the Secretary, MA & UD mentioning Government in I & CD agreed vide G.O.Ms.No.14 dated 11.01.2005 of I & CD for exemption from payment of conversion fee for change of land

stating orders will be issued separately and Secretary of MA & UD did not make any comment on the file and simply forwarded to the Minister for MA & UD, who in turn marked the file to then Chief Minister and finally then Chief Minister approved proposal for waiving conversion charges in respect of 15 acres of land on 10.05.2005 after no objections received from any party to that waiver and after detailed examination in MA & UD, after issue of draft notification with no objections G.O.Ms.No.894 MA Department dated 02.11.2005 was issued confirming conversion in the land use pattern of 520 acres and APIIC exempted from payment of conversion charges where the MA & UD issued orders after due process under business rules and taking orders from appropriate authority after due publication and as such, the charge against the petitioner is baseless. The petitioner was VC & MD from September 2003 to May 2005 in which period there was no transaction of sale taken place bringing loss of revenue to the State and the allegation that due to action of misconduct on his part loss caused to the State is absolutely baseless. The sanction order of the Central Government dated 23.05.2016 was given without application of mind and mechanically reiterating the charges, which is contrary to law and outcome of non-application of mind and the learned Special Judge also should have considered the same apart from the fact that earlier already the State Government when not accorded sanction by its refusal, the proceedings against the petitioner will not survive much less to take cognizance from the subsequent proceedings of sanction by Central Government and the learned Special Judge also has no power of review for the earlier decision taken of sanction required on 16.03.2012 for subsequently taking of cognizance of IPC offence even apart from subsequent to refusal of sanction by the State Government to take cognizance again. It

is also contended that the CBI and the learned Special Judge were erred in saying that statement supposedly made by Chamundeswaranath about the advice received from petitioner about purchase of villa. As partners in the projects, the petitioner was aware of the development that was envisioned at the project place. Therefore, even assuming Chamundeswaranath was in fact advised to go and meet a concerned person, it was sharing of information which is in public domain and attributing criminal conspiracy from that incident is baseless and tainted by prejudice and the very CBI report states that Chamundeswaranath was not benefited when the 2 plots allotted to him were registered to him on 18.07.2009 where on the other hand it also states Chamundeswaranath was not favoured and more amount was collected than what was recorded on paper, which shows the investigation of CBI itself is contradictory in charging the petitioner without basis and for these reasons, the proceedings against the petitioner from the police final report and taking of cognizance by the learned Special Judge are liable to be quashed in Toto.

14(c). The learned counsel for the quash petitioner reiterated the same and in the further say that M/s. Emaar Properties' agreement with M/s. Stylish Homes dated 20.01.2005 on behalf of SPV-I selling 100 villa plots at an aggregate price of Rs.5,000/- per sq. yard for a period of five years prior to formation of SPV-I was as per the revised structure under the State policy and even before EHTPL was brought into picture. It is also contended that the conveyance deed under which APIIC transferred 258.36 acres of land to EHTPL was dated 28.12.2005, registered on 12.10.2006 for an aggregate value of Rs.74,92,44,000/-, which was even subsequent to the transfer of Shri LV Subrahmanyam in May, 2005 from APIIC and as per the sale consideration, 26% equity of Rs.1,70,03,070/-

in SPV-I was allotted to APIIC and out of the balance consideration, similar 26% equity was credited in SPVs – II & III.

15. The learned counsel for the quash petitioner is impugning the very final report against Shri LV Subrahmanyam as A.11 for the offences punishable under Section 120-B IPC and Sections 13(2) r/w.13(1)(d) & 15 of the Act, and despite earlier order of the predecessor Special Judge of March 2012 of requirement of sanction to take cognizance for all the offences, taking of cognizance for the offence under Section 120-B IPC by the successor Special Judge in June 2012 by sitting in review against earlier order and by wrongly mentioning as if earlier order not covered Section 120-B IPC but for PC Act offences; and even from State Government's refusal of sanction for all offences on the application of CBI to accord sanction, in saying to set aside the cognizance for want of sanction sought by him is review of the earlier cognizance order not permissible and also by impugning once the State Government being the competent authority rightly having considered refused sanction to prosecute him, the CBI applying again to the Central Government and obtaining of sanction is an abuse of process and uncalled for and the sanction accorded by the Central Government to prosecute him is without consideration of the material and even ignoring the sanction refusal by the State Government already and for no even any additional material by simply reproducing what the charge sheet contents against him speaks which investigation is lack of credibility and with no any basis to say he is liable for any offence for he did not act independently but for as per the decision taken by the Government headed by the Minister concerned and the Committee of Ministers and thereby the prosecution is unsustainable for want of valid sanction and also for lack of merits and the proceedings are liable to be quashed against him for

he was never a privy with any other accused much less to benefit any other accused to the loss of the Government dishonestly and there is no any misconduct on his part much less criminal misconduct to implicate him in any criminal case for any criminal offence and continuation of the proceedings are only abuse of process and mischievous and thus the proceedings are liable to be quashed to sub serve the ends of justice and to prevent abuse of process.

16. Whereas it is the submission of the learned Special Public Prosecutor for CBI that it is a clear case of criminal misconduct on the part of the public servant and the criminal conspiracy on his part with M/s. Emaar Properties to have their wrongful gain and there is valid sanction and the cognizance orders cannot be interfered and once there is a strong suspicion from the accusation which is suffice to frame a charge at the post cognizance and pre charge stage of the proceedings there is nothing to quash the proceedings; that too, for criminal conspiracy and criminal misconduct for the offences alleged against him it is an appreciation ultimately after trial with opportunity to the prosecution to let in evidence along with other accused to face the trial by him, for every conspiracy will be hatched in secrecy and direct evidence cannot be expected but for to infer and any defect or lack of valid sanction even the matters that can be gone into during trial and sought for dismissal of the quash petition.

17. Heard both sides and perused the material on record and the provisions and the propositions.

18(a) In deciding the quash of the proceedings sought, the factual background of the case is that, Expression of Interest (EOI) was issued way back by the APIIC in the year 2000 March for a Convention Centre/Golf Course and the two proposals were short listed from M/s.

ITC Ltd. and M/s. EIH Ltd. It was only M/s. ITC Ltd., that responded to the Request for Proposal (RFP) and the same was accepted by the State Government on 26.12.2000. The site was initially chosen at Hussain Sagar Lake, however a PIL was filed and pending by then and thereby Government changed the site to Manikonda, there after M/s. ITC Ltd. did not respond having gone back. **It is clear therefrom that the land value at Manikonda by then was not of much and thereby even the ITC went back from change of site from Hussian Sagar Lake area to Manikonda as not viable**.

18(b). It is therefrom a new development was constrained to be issued by the State Government in mentioning with change of site from Hussian Sagar Lake to Manikonda on 26.07.2001 by calling for EOI for the new site at Manikonda. The land extent underwent changes and agenda was published ultimately. In response to it, though M/s. Emaar Properties-Dubai, M/s. IOI Corporation, Berhand-Malasia, M/s. L&T-Chennai, M/s. Shapoorji & Palonji Co. Ltd-Mumbai and M/s. Som Asia Ltd-Hongkong came forward; among them, EOI of M/s. Emaar Properties-Dubai, M/s. IOI Corporation and M/s. L&T were short listed by a Committee for sending RFP and of whom **though the deadline was extended, only M/s. Emaar Properties-PJSC-Dubai has given the proposal and quoted price of Rs.29 lakhs per acre for outright purchase of the land from the Government. RFP for Convention Centre, Hotel, Golf Course and Villas were approved therefrom by the then Chief Minister of the State on 26.09.2001**. Thereafter Government issued orders vide G.O.Ms.No.359 Industries and Commerce (INF) Department, dated 04.09.2002, for establishing International Convention Centre and Golf Course along with multi-use land development and hotel at Manikonda with **APIIC** as **Nodal Agency**.

18(c). It is crystal clear from the above that the land by then no way costs even on outright sale in open market more than Rs.29 lakhs per acre, that too for such an undeveloped large extents and without providing internal roads, external road connectivity, power supply installations, power distribution systems, water supply storage and distribution, rain water and drainage and waste water treatment plants to developers in mega project running into 100's of acres by fixing rates on acreage basis and land area from such developments to utilize the resultant reduction in total land area. As such it cannot be compared with allotment of small extents or in plots in lay out after development as such, the rate given to Industrial units at Manikonda and to Emaar Properties cannot be compared from said dual pricing adopted by the Government, where in the policy decisions of the Govt. including from change in the Govt., there is nothing to find fault the petitioner-A11 or other officials of APIIC. Further from the project allotment under process gives rise to land cost in that area is not a consideration from later improvements of any land value appreciation.

18(d). Further the price already fixed by the Government by its order way back in 2002 that continued without alteration and there was already an excess of equity with Rs.25,00,00/- per acre rate. The comparison of values in 2004 for small extents with value at 2001-02 of large undeveloped extent is thus uncalled for. Further, the land value is of utmost relevance for the purpose of equity calculation and the actual benefit from the development will accrue only later with the creation of the project component when increase of the land value can be realized. **Apart from it the asset which is fully developed will revert to the Government after 66 years and not an absolute and outright sale as can be seen from the terms of G.O.M.S.No.359 so far as the lease of**

the land for Golf Course of 235 acres concerned. Once such is the case how the Petitioner-A11 can be found fault, that too when the Govt. approved having appreciated by taken the policy decision. The State Govt. was thereby right in its decision of the Petitioner is at no fault and the Central Govt. went wrong in ignoring the same and it shows lack of its understanding of the facts and developments from the beginning.

18(e). In this regard, a perusal of the G.O.Ms.No.359, dated 04.09.2002, supra shows only a single file No.81/APIIC/Projects/2000 was maintained. The G.O.Ms.No.359 speaks that:

> (1). Government of Andhra Pradesh had proposed to establish an integrated project which includes an International standard Convection Centre, a Star Hotel, Golf Course and Villas. Government of Andhra Pradesh has designated Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) as the nodal agency to develop and implement the integrated project. The new facility would cater to the potential tourist traffic arising from conventions and congresses. The Golf Course would also enhance the value proposition for Hyderabad as a tourist-cum-business. The Golf Course would also enhance the value proposition for Hyderabad as a tourist-cum-business designation for international and domestic travellers. The project would thus be a major tourist-cum-business infrastructure asset for the State.
>
> (2). The Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) has sent detailed proposals through the reference read above stating that it has received a bid from M/s Emaar Properties, PJSC, Dubai for development of the Integrated project. Under the directions of the Infrastructure Authority (IA), Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) has discussed the project with Emaar to bring it to a mutually agreeable structure.
>
> (3). The proposal has also been approved by the Board of Directors of the Corporation(APIIC).
>
> (4). The format proposes to use land at Manikonda for the Golf Course and Multiuse Development (Residential and Commercial use) and Convention Centre and Hotel at NAC grounds, to be leased by NAC/HITEX.
>
> *(5). Government after careful examination of the proposal of the Vice-Chairman and Managing Director, Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) hereby* **accord approval to this proposal***, as per the salient features listed in Annexure.*
>
> **(6). This integrated project is given the status of Tourism project and related eligible incentives**.
>
> (7). Funds required for the construction of the Cyberabad Development Authority Road abutting the proposed Golf course would be made available from the Industrial Infrastructure Development Fund (IIDF). Similarly, the cost of shifting of HT lines over the Manikonda land would also be met from the Industrial Infrastructure Development Fund.

(8). In the reference read above, the Vice-Chairman and Managing Director, Andhra Pradesh Industrial Infrastructure Corporation Limited (VC & MD, APIIC) has also sent a draft MOU to be entered into with M/s Emaar properties PSJC Dubai for implementation of the said project. **The Government after careful examination further authorizes the Vice-Chairman and Managing Director, Andhra Pradesh Industrial Infrastructure Corporation Limited (VC & MD, APIIC) to enter into such an MOU:**

a). after ensuring that the MOU is in conformity with the salient features of the proposal listed in Annexure; and
b). after getting the draft MOU legally vetted.

(9). Andhra Pradesh Industrial Infrastructure Corporation Limited **(**APIIC) is also authorized to take further necessary action to implement this project. It shall be the responsibility of Andhra Pradesh Industrial Infrastructure Corporation Limited **(APIIC) to closely monitor the implementation of this project** with reference to the time frames for the various components of the project.

10. This order issues with the concurrence of Finance (Exp. I&C) Dept., vide their U.O.No.4573/P.F.S./02, dt.02.09.2002.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)
Sd/-JAINDER SINGH
PRINICIPAL SECRETARY TO GOVERNMENT AND
COMMISSIONER FOR INDUSTRIAL PROMOTION

The annexure referred in para 5 of the G.O. supra speaks-the project comprises of Convection Center, Hotel, Golf Course, Multiuse Development and extent of land and location respectively is for Golf Course: 235 acres, multi-use: 285 acres and un-useable land: 15 acres including water bodies at Manikonda, **total 535 acres** and so far as Convention centre and hotel to set up at NAC grounds by lease and for that in Manikonda but for 80 to 90 acres of land required to be acquired by the APIIC, remaining is available.

The annexure clause 3(1) further reads that land for multiuse development for Villas, Housing, Commercial development including common areas for roads is on sale basis at Rs.29 lakhs per acre to Emaar concerned, it is on lease basis with up front cost of 1.45 lakhs per acre deposit capitalized as equity in the SPVs and an annuity as 2% of annual gross turn over on all Golf Course components for a period of 66 years and in order to provide and eventuality where the compensation value is increased, the amount to be paid for acquired land may be Rs.29 lakhs per acre or the cost of the land acquisition, which ever is higher. Annexure 3 clause (ii) in relation to land on lease speaks so far as Golf Course land of around 235 acres.

The **land for Convention Centre and Hotel at NAC/HITEX would be on lease from the NAC grounds**, on terms that are mutually acceptable to the developer.

Para 4 would read the I.P. shall be implemented through separate joint ventures **SPV1** and **SPV2** and of which SPV1 consists 18 hole Golf Course and Multi-use Development including Villas and Commercial Complexes at Manikonda; SPV2 consists of Convention Centre and Hotel at NAC grounds.

Para 5 speaks the equity structure of SPV1 for APIIC is 26% and to Emaar 74% and in SPV2 of 49% to APIIC and 51% to Emaar.

Para 6 reads all equity from APIIC is on land value basis alone. Above the relative proportion of equity, APIIC would receive cash from Emaar properties, PJSC, Dubai.

Para 7 speaks title of all saleable land would be transferred by APIIC in trenches.

Para 8 speaks Emaar properties shall form the SPVs and also establish a management team under its direct management for the overall project and would remain liable for operations and management of the integrated project for the term of concession. **SPVs could assign operator rights to reputed firms at the behest of Emaar properties**.

Para 9 speaks project development fees. Emaar properties, PJSC, Dubai, shall pay APIIC the project development fee of Rs.2.25 crores in four equal installments every quarter starting with signing of MOA.

Para 10 speaks Performance Security. Emaar properties, PJSC, Dubai, shall furnish a corporate guarantee of Rs.2 crores.

18(f). The APIIC Board authorized the VC &MD, APIIC, on 22.07.2002 to enter into MOU with Emaar properties, PJSC, Dubai Collaboration Agreement(CA), as approved by the Cabinet Sub-committee on 28.06.2003, was executed between APIIC and Emaar. Mr. B.P.Acharya, IAS, was on full additional charge as VC & MD of APIIC, when he was Secretary Industries and he worked in that capacity till May 2005.

18(g). The collaboration agreement executed on 19.08.2003, for the Integrated Project of Convention Centre Complex and Golf Course between APIIC and Emaar properties, PJSC, Dubai, speaks that - APIIC is the State Government owned undertaking with its objective as development of Industrial, Commercial and Social infrastructure projects in the State and the developer Emaar is a Government incorporated in Dubai engaged in development of large projects comprising of construction of residential and commercial properties, golf course,

hotels and management of convention centers and exhibition halls and both agreed to enter into collaboration/Joint Venture Agreement (JVA) in order to synergies their respective strengths to develop the city of Hyderabad in the State as a complete destination of choice of business in India and overseas. APIIC also desires to enhance and develop the city of Hyderabad is a tourist and leisure destination for resident and non-resident Indian tourists and for that purpose entered into MOU, dated 06.11.2002, where under parties reached an understanding that the JVA should be formalized. APIIC and Emaar reached an agreement in relation to the structure of JVA and the main terms and conditions relating thereto and consequently agreed to a broad frame-work to organize, promote and operate two JVCs and participate in their share capital contains in the terms of agreement.

18(h). The collaboration agreement contain terms agreed as requested 1 to 6 of which Article-I contains definitions, Article-II Collaboration and Integrated Project, Article-III Joint Venture Companies of which the activities of **SPV1**, **SPV2** and the share holding, Article-IV approvals and the developer to use best efforts, Article-V termination of JVCs and its consequences and Article-VI miscellaneous.

18(i). Among the six articles of the collaboration agreement supra mutually undertaken, coming to Article-II clause 2 sub-clause (2), it speaks of Integrated Project and for its development the APIIC agrees that it shall acquire 535 acres of land in any event the land shall not be less than 520 acres at Manikonda village in close proximity to the Indian Institute of Information Technology and the Indian School of Business and this land shall be allotted in favour of the JVCs in the manner and against consideration as hereinafter appearing, as and when the possession of balance area is taken over by APIIC, however, not later

than six months form the date of signing of the agreement and the parties agree that the Integrated Project comprise of the following in order of preference.

1. Golf Courses and mixed use–total acre is 535 acres (as referred supra). The parties agreed that the un-usable area not to be sold at any point of time by APIIC to any third party or be given for use to any third party.

2. Convention Centre-cum-Exhibition Complex with business Hotel- on the grounds of HITEX. Where up to three exhibition halls under construction of eight halls of 4000 sq.mts each, seating capacity of 3000 adults, with provision to expand to 5000 adults and the convention centre-cum-exhibition complex with business hotel shall be constructed on land of maximum 10-15 acres at HITEX with active assistance and support from APIIC. The agreement with HITEX stating the land lease terms is attached as Appendix-1 and Board investment plan and phasing of convention centre-cum-exhibition complex is attached as annexure A and the business hotel with a capacity of 300 rooms with provision to expand later, subject to availability of land at the site along with proposed convention centre-cum-exhibition complex site to the water bodies there in. It speaks of hotel operator of repute to manage the proposed hotel on terms to be decided by SPV2. The developer shall furnish a performance guarantee of 2 crores an unconditional and irrevocable in favour of APIIC and developer also pay Rs.2.25 lakhs to APIIC by bankers demand draft towards project development fee in four equal quarterly installments, first installment payable within 30 days from the agreement.

Clause 2.4 (v) speaks the developer shall at its description assign its rights towards development, management and operations of the integrated project to other parties through appropriate and suitable mechanism.

Clause 2.4 (vi) speaks the developer agrees to enter into a facility management agreement with SPV1 and SPV2 for the upkeep and maintenance of the GCMU until such time that the facility management service is financially viable for the developer.

Clause 2.4 (x) speaks the developer shall, at its discretion assigned its rights towards development, management and operations of the integrated project to other parties through appropriate and suitable mechanism with an in-principle approval by APIIC, not to be unreasonably with held. In Article-III joint venture companies, that 3.2 SPV-1 activities shall be as described in article 2.2.1 and SPV2 activities shall be described as 2.2.2 referred supra. The initial equity share capital of SPV1 so far as APIIC is 26% and developer is 74%, whereas in SPV2, APIIC is 49% and developer is 51% as

> referred supra. Article VI clause 2(f) speaks the developer will operate and maintain the Integrate Project in accordance with the industry norms and practice. In the event of developer appoints a third party for maintain and operating the integrated project it can ensure that it binds the third parties to this condition. Article VI clause (3) speaks arbitration; Article VI clause (4) speaks the laws of India and Andhra Pradesh state Government.

18(j). The collaboration agreement of the integrated project supra on behalf of APIIC signed by Sri R.M.Gonela, IAS, Executive Director (P&F) APIIC and one A.J.Jaganathan, Chief Executive Officer of Emaar properties, PJSC.

18(k). The appendix-A of the Collaboration Agreement speaks equity levels of APIIC capitalized into SPV1 and SPV2 in the event of developer bringing in additional security, allotment of land will be guided by terms of the agreement and the developer should be able to sell more land up-front, it will be allotted additional land, provided the mile stones as above is achieved to the satisfaction of APIIC. Initial 50 acres of land sold by APIIC and the land of approximate 90 acres acquired by developer directly or not subject to the above mile stones and time lines in the attached chart are based on the developer obtaining all statutory/regulatory projects, which are subject to change.

18(l). Undisputedly, the petitioner-A.11-Sri LV Subrahmanyam was posted for the first time as VC & MD of APIIC only in September 2003 and in that capacity he worked only till May 2005. Thus, he was not there either by the time the expression of interest under single file moved from 2000 March of the original proposal accepted with M/s. ITC Ltd., on 26.12.2000 for allotment of site near Hussain Sagar lake that was covered by PIL, that was later changed to Manikonda and M/s. ITC Ltd., withdrawn from the expression of interest and a new site by fresh advertisement proposed at Manikonda on 26.07.2001, where under out

of five participants referred supra showing expression of interest, it is finalized with Emaar, which quoted the higher prize of Rs.29 lakhs per acre for out right sale from the Government for the proposal of Convention Centre, Hotel, Gold Course and Villas that were approved by the then Chief Minister on 26.09.2001.

18(m). The APIIC only as "Nodal Agency" was circulating the files to the Government for favour of orders and after elaborate discussions with the developer (Emaar), the Cabinet Sub-committee decided the way forward of the project and some recommendations were conveyed to the Government by the VC & MD of APIIC in July 2002 to enter into MOU with Emaar-PJSC-Dubai, by the then Sri K.V.S.Prasad, VC & MD of APIIC.

18(n). The file notings were continued to the earlier single file Note No.81(of 2000), dated 10.07.2002 and the subsequent authorization, dated 22.07.2002 supra, by Principal Secretary-cum-Commissioner of Industries Sri Jainder Singh, IAS, having raised queries on Note No.81, dated 10.07.2002 and marked it to Sri M.V.Prasad.

18(o). Later G.O.Ms.No.359 issued dated 04.09.2002, where under the APIIC is authorized only to act as a "Nodal Agency" by fixing the land cost at Rs.29 lakhs per acre of the existing land of the Government and for acquisition of the additional extent at such rate or actual cost of acquisition, as the case may be, and the Government authorized APIIC to enter into MOU with Emaar, dated 22.07.2002, and the Collaboration Agreement to enter with Emaar and APIIC was approved by the Cabinet Sub-committee on 28.06.2003 and the Collaboration Agreement was consequently entered between the APIIC and Emaar on 19.08.2003 as referred supra.

18(p). Undisputedly, the petitioner-A.11-Sri LV Subrahmanyam was no way concerned with any of the transactions. In fact, within few months after the petitioner-A.11 taken charge as VC & MD of APIIC in September 2003, there is a change of Government from Telugudesam lead by Chandrababu Naidu to Congress lead by Y.S. Rajashekara Reddy.

18(q). After the congress party came into power lead by Sri **Y.S.Rajashekara Reddy** as Chief Minister in May 2004, a Cabinet Sub-committee was constituted under the then Chairmanship of Sri **K.Rosaiah**, then Finance Minister, to review the, original single file system in vogue in APIIC, implementation of these crucial infrastructure projects.

18(r). It is consequently another G.O.Ms.No.14; dated 11.01.2005 came into force that was also issued under the Single File System. It is in this context to say the processing for issuance of the G.O.Ms.No.14, on the Single File Note No.81, dt.10.07.2002, it is subsequent to the G.O.Ms.No.359, dt.04.09.2002, supra, that was issued by Principal Secretary of Commerce and Industries supra, and marked back to Sri M.V.Prasad, IAS supra.

18(s). Before coming to G.O.Ms.No.14, dt.11.01.2005 referred supra, on the Single File Notings running from 2000-2001 as Note No.81(referred supra), coming to the note initiated by office of APIIC (during tenure of Shri LV Subrahmanyam, the petitioner-accused No.11, as VC & MD of APIIC in 2004-05) concerned:

Subject:- Integrated Township with Golf Course and Convention Centre Project–Meeting held on 6th September 2004 by Hon'ble Chief Minister (Sri Y.S.Rajasekhara Reddy) with the Chairman, Emaar Properties – revised proposal received from Emaar Properties.

Ref:-1.letter received from Emaar Properties, dated 23.09.2004,
2.letter received from Emaar Properties, dated 24.09.2004.

Hon'ble Chief Minister along with Hon'ble Minister for Major Industries held a meeting on 06.09.2004 with the Chairman of Emaar-------; during the discussions it was suggested that APIIC should limit its Equity in all the projects to 26% with the result, the Equity contribution by Emaar Properties in all the Projects increased proportionately.

In SPV 1 (Golf Course and Multi-use project in 535 acres at Manikonda) 74% to the developer and 26% equity to APIIC and in SPV 2 (Convention Centre and Hotel in HITEX) was ……acres, equity of 49% on APIIC by reducing in Convention Centre and Hotel also of APIIC from 49% to 26% and increased with Emaar from 51% equity to 74%)

Accordingly, Emaar furnished the revised proposals in the letters, dated 23.09.2004 and 24.09.2004 referred supra for confirmation of the same by APIIC to ensure that the work at Project is not delayed.

The note further speaks that some of the terms indicated in the revised proposal requires specific approval/consent of Government viz., 100% exemption from payment of Stamp Duty and Registration Fees for all lands; APIIC has to ensure that all the lands transferred to the SPVs and the Project was declared as Tourism Project vide G.O.Ms.No.359 supra, dated 04.09.2002, and the incentives announced for Tourism Projects, vide G.O.Ms.No.34, dated 09.02.2001, are applicable for exemption from 70% of Stamp Duty and Registration Fees.

However, sought to provide 100% exemption by issuing necessary G.O. as point No.1 and the Point No.2 speaks for transfer of allotment of land that Urdu University land of 47 acres to be transferred by October 2004 and patta land of 81.55 acres to be transferred by December 2004, whereas, acquisition of patta land is under Court litigation. However, APIIC has already filed Expedite Petition for early disposal of the Court case and the land under Urdu University is expected to be taken over by 30.11.2004 and in the event, APIIC could not hand over 535 acres of land to Emaar and the short fall more than 25.30 acres, APIIC shall make up for such shortfall by allotting equal extent of land at a different site near HITEC City at the similar terms as the Integrated Project. The Government already committed to provide 535 acres of land for Township and Golf Course Project at Manikonda and if any short fall more than 25 acres, the same will be compensated at IT Park sought by duly adding shortfall to 100 acres of IT Park land agreed for allocation near by this Project.

Point No.3 speaks Accounting Treatment for transfer of land by APIIC. The land value consideration, remaining as excess over the quantum of APIIC's Equity requirements in the 3 SPVs (as referred supra of two made into three) at each and every point in time will be treated as Debentures by APIIC, in any one of the 3 SPVs and the Debentures could earn a nominal interest for APIIC. It is indicated by Emaar Properties that the nominal rate of interest on Debentures is 2% per annum. This rate is very low. The Debentures could be for prescribed period of years to be decided between the parties and it is indicated

that redemption of debentures is after 8 years and the date of redemption is to be specified.

Point No.4 speaks Land Conversion Charges concerned APIIC shall ensure that the Government of Andhra Pradesh approves exemption from payment of Land Use Conversion charges. So, the Government of Andhra Pradesh may consider issuing necessary G.O.

Point No.5 speaks Development of IT Park concerned, Emaar commits to convert about 20 to 30 acres of land from out of residential project for development of IT park, but subject to avail all the benefits and subsidies offered for IT sector by Government and exemption from payment of conversion charges. Emaar Properties (developer) is eligible for all the benefits or subsidies announced for IT parks, if so a specific G.O. is required, may be considered to be issued by the Government of Andhra Pradesh in favour of Emaar Properties.

Point No.6 speaks SPV Structure concerned Emaar Properties for three (3) SPVs instead of two (2) SPVs as indicated in the Collaboration Agreement dated 19.08.2003 supra viz., SPV-1: Emaar Hills Township Pvt. Ltd. (EHTPL) for development Township project at Manikonda; SPV-2: Boulder Hills Leisure Pvt. Ltd. (BHLPL) and newly added SPV for development of Golf Course and Boutique Resort Hotel at Manikonda; and SPV-3: Cyberabad Convention Centre Pvt. Ltd. (CCCPL) for development of Convention Centre and Business Hotel at NAC grounds. In view of above changes, the Collaboration Agreement executed on 09.08.2003 is proposed to be rescinded.

Point No.7 speaks shifting of HT lines. APIIC shall be responsible for shifting IIT lines from both the Projects i.e., Manikonda and NAC grounds. APIIC has already requested Government of Andhra Pradesh to provide funds from IIDF for shifting of HT lines from project site at Manikonda. There is a requisite of shifting of IIT lines at NAC grounds also for which Government has to provide funds under IIDF or any other source to APIIC.

It is submitted for kind perusal and for necessary orders by the Executive Director-I of APIIC and Senior Personal Manager and MD of APIIC.

Above Note was put up by Senior Personal Manager on 05.10.2004.

There is a written note underneath the above by the VC & MD on 05.10.2004, which reads:

> 1. It is submitted that on the "nominal rate of interest" for the debentures, clarification has been sought on the exact rate of interest. So also the period for redemption for the debentures has also not been specified. A written communication has been sought from M/s. Emaar by APIIC.
>
> 2. M/s. Emaar consented about acceptance of the revised contents and conditions of MOU as mentioned in pages 1, 2 and 3 (i.e. points 1-7 supra)
>
> 3. APIIC has been informed of the visit of the President of ADB on the 15th and 16th of October (2004) to Hyderabad. It

is informed by the Finance department that the visit of ADB President and his team is in connection with the allotted ADB Finance Ministers' conference.

4. An early confirmation from government would enable M/s. Emaar to place details of the project particularly convention centre before the President ADB visiting the proposed site on 15.10.2004. Hence, confirmation orders are solicited from government on the revised conditions and terms of MOU to enable APIIC to take necessary action.

Submitted for orders-by VC & MD on 05.10.2004.

Underneath the above, the Principal Secretary on even date endorsed as 'we may confirm as proposed by APIIC. The proposal is in accordance with our discussions'.

It is later the file went to the Minister for Major Industries and Minister for Finance. The Minister for Major Industries endorsed 'to discuss along with MD/APIIC' and Minister for Major Industries endorsement to that effect was signed on 07.10.2004. The note file further speaks MD/APIIC to discuss on 11.10.2004

Underneath it (pursuant to the discussion and from their directions) there is a note put up by the VC & MD of APIIC on 18.10.2004, which shows:

1). these three issues were singled for mention by Minister, Major Industries where there is need for clarity on 14.10.2004.

(a) Lease rentals of golf land to be enhanced and the possibilities for achieving.

(b) When IT infrastructure is now being considered to freeze either investment proposed or area proposed be specified in the agreement.

(c) If the developer is not handed 535 acres of land, then suitable land has been sought in Madhapur by developer by ---- mention by Emaar.

The note of the VC underneath dated 18.10.2004 speaks:

2). these issues and some more issues were discussed with Mr. A.J.Jagannathan on 16.10.2004. Mr.Jagannathan was again reminded today on telephone to send his staff to discuss the above mentioned issues in para 1 supra.

3). ED II, SM (D) will discuss on 25th and 26th on these issues with Emaar representatives and bring to record clarifications needed. Clarifications were already sought from Emaar on debentures.

4). It is important that all the terms in M.O.U be gone through meticulously and closed by APIIC and Emaar in the near future.

After signature of VC and MD dated 18.10.2004, there is a note of ED-I that - we prepare accordingly on the issues raised. It was signed on 19.10.2004.

It is submitted there from as follows:

Submitted:

As scheduled, discussions have taken place with Emaar Properties representatives on 25th and 26th October 2004. Consequent to the discussions, Emaar Properties have furnished certain clarifications on the issues raised during the discussions.

1). It is stated that the project cost has been revised due to escalation in the cost of material and also due to changes in specifications. The details of changes in specification and appropriate revision in the project cost have been furnished.

2). Financial out lay & Means of finances

a) Convention Centre Project:

Convention Centre	Rs.158.20 Crores
Convention Hotel	Rs.155.06 "
Total	Rs.313.26 "
Debt/Equity ratio: 1:1- Debt	Rs.156.63 Crores
Equity	
Emaar 115.90 Cr@74%}	
APIIC 40.72 Cr@26%}	Rs.156.63 Crores
	Rs.313.23 Crores

b) Township Project (with Golf + Leisure Facilities):

Total Cost of the Project	Rs.317.19 Crores
Internal accruals @ 30%	Rs.095.16 Crores
	Rs.222.03 Crores
Debt/Equity ratio 1:1- Debt	Rs.111.02 Crores
Equity	
Emaar 82.15 Cr@ 74%}	
APIIC 28.86 Cr@ 26%}	Rs.111.02 Crores
	Rs.222.03 Crores

c) Total Outlay of the Projects:

Convection Centre	313.26 Cr.}	
Golf Course	317.19 Cr.}	Rs.630.45 Crores
Debt:Convention Centre-	156.63 Cr.	
Golf Course	111.02 Cr.=	Rs.267.65 Crores
Equity of Emaar:		
Convention Centre-	115.90 Cr.	
Golf Course	082.15 Cr.=	Rs.198.05 Crores
Equity of APIIC:		
Convention Centre	40.72 Cr.	
Golf Course	28.87 Cr.	Rs.069.16 Crores
Internal Accruals		Rs.095.16 Crores
		Rs.630.45 Crores

d) **Value of the Land :**
a).Ac.285 of land @ Rs.29 lakhs per acre Rs.082.65 Crores
b).Ac.235 of land upfront cost as equity
@ 4.45 lakhs per acre Rs.003.41 Crores

Rs.086.06 ,,
----

3). **Amount apportioned towards equity is Rs.69.59 Crores. Surplus of Rs.16.47 Crores=land cost of Rs.86.06 Crores (-) Equity of Rs.69.59 is liable to be paid by Developer to APIIC/Government by way of Secured Debentures.**

4). **For Golf Course, the land to an extent of 235 acres is to be given on lease. As per G.O.Ms.No.359, a rate of Rs.1.45 lakhs per acre as upfront deposit (non-refundable) is to be valued and taken to equity in SPV. An Annuity @ of 2% Gross Annual Revenue shall be paid by the Developer over a period of 66 years of lease.**

Tentatively an amount of Rs.9.00 lakhs per year was indicated as 2% Gross Annual Revenue after stabilization period which is almost 5 years.

5).Emaar has also agreed to convert about 20 to 25 acres of land towards IT Infrastructure.

6).**During the discussions it was deliberated on the issue of Secured Debentures for the surplus amount payable by Emaar to APIIC and also paying nominal interest on Debentures at 2% p.a. and payment being subordinate to lender's interest.**

7).It was also discussed that APIIC may consider to enter into tripartite Agreement with Developer and Lender for creation "*pari-passu*" charges on land.

8).**The developer was advised to may have a re-look on the cost of land in view of the developments taken place which resulted in appreciation of land cost. A rate of Rs.40.00 lakhs per acre was indicated. However, the developer has stated that any revision of land cost would enhance the overall outlay of the project, thereby making it less viable as it affects cash flow.**

The Government may consider to give directions to APIIC for execution of supplementary Agreement accordingly.

Sd/-
SPM ED-II V&MD

Underneath the above note put up, the noting of the VC&MD-APIIC reads that:

1. It is submitted that all the pending issues have been addressed by Emaar and discussions on the final offer, to date, have been held.

2. As suggested by APIIC, housing financing has been taken out of the project funding and met from internal accruals. **Thereby, the equity of Government is secured and there is a return to Government at a value.**

3. **Since actual construction costs are terribly higher than before, it is in the fitness of things that the land price explanation is not rigidity argued by APIIC/Government. Hence, the land price is not enhanced as the project would suffer a doubly jeopardy of increased project cost and due to reduced government equality an additional debt burden. Favourable orders from Government on this price of a land at Rs.29 lakhs an acre are recommended**.

4. **Even on lease rentals, the issue has been discussed and 2% of Gross Annual Revenue and other details as at para 4 on page 8 of note file be perused. The developer expressed his inability to increase thus any further**.

5. Emaar are incorporating these principles into a supplementary memorandum of understanding and sending to APIIC by 8.11.2004. Today Mr. Essam Galadari, ED (Projects) Emaar called on VC and MD and explained that the contracts have to be awarded for both convention centre and township project to meet the stiff deadlines. He was also worried about the increasing project cost due to this delay. He was once again assured, as was done before, to go ahead with awarding works as the convection centre is an absolute necessity for the upcoming Annual Finance Ministers conference thus the two works will be awarded by Emaar. Lands will be handed to them to facilitate early commencement of works.

6. On approval of the issues here, a revised MOU can be closed/ (obtained) between APIIC on behalf of GOAP and Emaar properties.

7. Confirmation orders solicited to this proposal on above paras.

8. Land acquisition is also being perused by APIIC to take over those lands expeditiously. Land acquisition cost will be our equity again upto Rs 29 lakhs. This issue will be discussed again.

Sd/- (VC & MD APIIC)
5.11.2004
Principal Secretary (Industries & Commerce):
As proposed----------sd.----

The further note of (VC & MD APIIC)-09.11.2004, reads that:

This issue was discussed today i.e., on 09.11.2004 by Hon'ble M(MI) with Prl. Secy & CIP and VC & MD-APIIC. As desired by Hon'ble M(MI), a summary note of improvements brought into the projects as a result of discussion is mentioned below:

a).**The overall projects cost has been revised from Rs.430.00 crores to Rs.630.00 crores [excluding the proposed I.T. Projects].**

b).**The Equity Share of APIIC in the convection project was reduced from 49% to 26% thereby reducing the investment by the Government in the project**.

c).**The asset value of the project has gone up**.

d).**The land value after adjusting into the equity shall be paid by the EMAAR Properties to APIIC by way of secured Debentures with 2% interest**.

e).**The lease rentals for land given for the Golf Course of 235 Ac. is being revised to @ 2% on Gross Annual Revenue for the first 33**

years and 3% for further 33 years. The asset which is fully developed will revert to Government after 66 years.

f).An I.T. Project with proposed built up area of 10,00,000 sq.ft. has been included in the over all project.

Submitted for favour of approved and necessary orders.

Sd/-VC&MD-APIIC;
Dt.09.11.2004

PRL.SECY & CIP- Sd/-
MIN (MAJ.INDS)- Sd/-Botsa Satyanarayana, Dt.09.11.2004
MIN (FIN)- Prl. Sec. R&E may please see-
Sd/-K.Rosaiah
C.M.- Sd/- Dr.Y.S.Reddy

Finance Department-querry-Dt.16.11.2004-

The usual lease rent collected on government lands leased out is 10% of the market value. However, at 'c' of page-13, it is proposed that the lease rent would be 2% on Gross Annual Revenue for the first 33 years and 3% for the next 33 years which has been worked out as around Rs.9.00 lakhs at 2% of the Gross Annual Revenue. This revenue appears to be very small and a higher percentage may be fixed at lease after the project has achieved viability.

At 'd' of page-13 n.f. **it is proposed to adjust the excess land value as secured Debentures carrying 2% interest. Here also the prevailing market interest on debentures may be adopted after the project achieves viability. As already indicated by the APIIC, it should be made very clear that the government would not be participating in the housing project as this point has not been mentioned in page-14 while summarizing the improvements brought into the project.**

Sd/- (T.S. APPA RAO)
PRL.FINANCE SECRETARY(R&E)

The clarification given by Prl.Sec.(I&C), Dt.18.11.2004 is that:

Regarding A above: **As per the collaboration agreement, the SPV will pay to APIIC amount equal to 2% of gross annual revenue generated not including life membership and other long term and academy memberships. We have improved it to 3% during second half of lease period.** *It is classified that the revenues of SPV are not going to be represented to his company. These will be utilized solely for improvement of the facilities and this maintenance. Hence should not be seen as a source of revenue to Government.*

Regarding 'B' The total extent of land earmarked for the project is proposed to be developed at one go and on fast track. If the land is handed over in trenches there is

added responsibility and cost to APIIC by way of protecting the land.

C above: Confirmed. Equity of Government is secured and return on equity is value addition.
As the work has to commence expeditiously Fin. May kindly considered.

Sd/-Prl.Sec.(I&C), Dt.18.11.2004
Prl.Finance Secretary(R&E), Sd/-Dt.18.11.2004

MIN (FIN) querry-Dt.20.11.2004

During discussions in one of the meetings consider, it was mentioned that there is a court case with regard to acquisition of private land. What has happened to it? we to wait for the outcome or we can proceed further. However to M may see and decide

Sd/-K.Rosaiah- dt.20-11-04

MD APIIC may clarify the above point before file is circulated to C.M.
Sd/- Prl.Sec.(I&C), Dt.24.11.2004

The clarification given by VC&MD APIIC, Dt.26.11.2004 is that:

Total (11) nos. of W.Ps. were filed challenging DN and DD got published for acquisition of lands in Nanakramguda Village, near Hyderabad for development of this project. Out of these (11) W.Ps., one W.P. was disposed of on 25.4.2003, another W.P. was disposed of on 25.10.2004, rest of (9) W.Ps. were disposed of on 4.11.2004 by the Hon'ble High Court. In all the W.Ps., the Hon'ble High Court set aside the DD u/s. 6 of the LA Act and directed for conducting 5-A enquiry following the procedure under the LA Act and to make DD afresh. However, the DN u/s.4(a) of the LA Act was not interfered with by the Hon'ble High Court. The District Collector, RR District and Special Deputy Collector, Land Acquisition (Industries) Hyderabad were already requested by APIC to take suitable steps for conducting 5-A enquiry in all the W.Ps.

Submitted for information.
Sd/-VC & MD APIIC, Dt.26.11.04

Prl.Sec. to Govt.&CIP: X on prepage may be seen. There is no legal impediment to proceed further. Sd/-Dt.27.11.2004

MIN (FIN)- Sd/-K.Rosaiah, Dt.01.12.2004

Please refer to Page Number (13) for C.M. approval.
Sd/-J.S. to C.M.,Dt.03.12.2004

Revised Supp. Agreement may be prepared….Sd/-Dt.04.12.2004

Submitted:

Basing on the approvals accorded by Government, a draft Supplementary Agreement to be executed between APIIC and Emaar Properties is prepared and placed below for approval.

Further, as instructed a draft Amendment G.O. is also put up for approval.

Sd/- DPM(D); Sd/- Sd/- Sd/-

Dt.07.12.2004, SPM i/c, 07.12, M (Law),dt.08.12, F.D-

Submitted for approval. All the important aspects of this P & P Partnership have since been incorporated.

Sd/-(VC & MD APIIC), Dt.13.12.2004
Sd/- Prl.Secy. (I & C)

PFS (R&E):- Law Dept. may be consulted in first place. Sd/-DT.14.12

M(MI) Sd/- Prl.Secy. (I & C)

As stated in Clause 8 (iii) (c) site map may be annexed to the draft supplementary agreement.

Subject to above, the draft supplementary agreement as agreed by the VC & MD APIIC is formally in order subject to slight altercations indicated in pencil thereon.

The draft supplementary agreement may also be shown to Finance Department

23.12.2004
Secretary Legal Affairs
Prl. Secretary (Ind. & Com.)

Law U.O.No.8948/LSP/2004
Dt.23.12.2004
PFS (R & E)
Finance(ExPV.I&C) Dept- The Draft supplementary Agreement placed below is agreeing in Finance Dept. This has got the approval of PFS (R & E). Sd/-dt.05.01.2005

Pl. see the order in circulation on prepage. The draft notification and supplementary agreement as agreed in circulation and wetted by law dept. and Fin. Dept. may now be approved and the draft G.O. placed below may now be issued.

Sd/-B.Chandrasekhar, Dt.11.01.2005
Sd/- Prl.Sec. to Govt. & CIP, Dt.11.01.2005

18(t). The notings initiated by the petitioner-A.11-Sri LV Subrahmanyam as VC & MD of APIIC on 05.10.2004, contains the recording discussions of the Cabinet Sub-Committee in the Single File. Consequently, Sri LV Subrahmanyam as VC & MD of APIIC marked the file to the then Principal Secretary Sri K.V.Rao, IAS, who in turn marked to then Minister, Major Industries, Sri Botsa Satyanarayana on the even date of the notings initiated by him on 05.10.2004. It is there the changed Government headed by Sri Y.S.Rajasekhara Reddy of Congress Party as Chief Minister and the Cabinet Committee

constituted that revised the original structure equities SPV1 and SPV2 and the development.

18(u). In this regard, it is relevant to refer G.O.Ms.No.14, dt.11.01.2005, from the recommendations of the new Government constituted Cabinet Sub-Committee referred supra in reviewing the project and its implementations, leave about other projects, where for more clarity to say Sri LV Subrahmanyam as VC & MD, as authorized has acted as a Nodal Agency in circulating the files to the Government and after discussions with the developer it is the Cabinet Sub-Committee that was deciding the way forward of the projects and conveyed their recommendations to the VC & MD of the APIIC to implement as the Nodal Agency. It is pursuant to which, G.O.Ms.No.14, Industries & Commerce (IP) Department, dated 11.01.2005, was issued on dt.19.01.2005. The G.O.Ms.No.14, dt.11.01.2005 (referring to G.O.Ms.No.359 and the single note file No.81//APIIC/Projects/2001-dt.05.10.2004) reads as follows:

The Government of Andhra Pradesh vide G.O. first read above notified M/s.Emaar Properties PJSC, Dubai as the Developer for the proposed Integrated Project, which includes International standard Convention Centre, a Star Hotel, Township with Golf Course and, for which the AP Industrial Infrastructure Corporation Ltd (APIIC) is nodal Agency for implementation of the Project and guidelines were issued in the Annexure of the first read above. The APIIC was instructed to take necessary action to implement the project.

2. In the reference 2nd read above the VC & MD, APIIC Ltd., while submitting a proposal under SFS, in regard to setting up an Integrated Project including an International Convention Centre and business Hotel in NAC grounds and Township projects with Golf Course & Multi use development in Manikonda, Ranga Reddy District and requested to issue suitable orders on the following issues.

a) Implementation structure of the Integrated Project:

I. Development of Township Project at Manikonda Emaar Hills Township Private Limited (EHTPL) **as SPV-1**.

II. Development of Golf Course, Golf Club, resort hotel etc. at Manikonda Boulder Hills Leisure Private Ltd (BHPL) **as SPV-2**.

III. Development of Convention Centre (6,000 Seating) and Business Hotel at NAC Grounds, Izzatnagar

Cyberabad Convention Centre Private Ltd (CCCPL) **as SPV-3.**

b) Equity Structure:

SPV-1:	Emaar Properties	74%
	APIIC	26%
SPV-2:	Emaar Properties	74%
	APIIC	26%
SPV-3:	Emaar Properties	74%
	APIIC	26%

c) All Equity from APIIC is on land value basis alone @ Rs.29.00 lakhs (Rupees Twenty nine lakhs only) per acre for the saleable land for the Township project, i.e., 285 acres of land. The land cost remaining as excess over the Equity of APIIC in the three (3) SPVs as above at each and every point of time will be treated as Secured Debentures with 2% interest per annum and redeemed for a period of eight (8) years from the date of issuance.

d) The lease rentals for land given for the Golf Course of 235 acres at Manikonda is fixed at 2% of the Gross Annual Revenue on all Golf Course components for period of 33 years and at 3% for further period of 33 years. The gross annual revenue generated not including Life Membership and other long term and academy memberships. The revenues of SPV are not going to be repatriated to the Developer. These revenues shall be utilized solely for improvement of the facilities and maintenance.

e) On expiry of 66 years lease period for the Golf land of 235 acres, land and all other immovable assets like improvements, structures, buildings at the site whether permanent or semi permanent, constructed by or belonging to the project or their sub-contractors, sub-lessees and assignees shall be reverted to Government of Andhra Pradesh free from all encumbrances and liabilities and shall have no claim on the assets.

f) Emaar has agreed for reduction of APIICs' Equity share in SPV-3 from forty nine percent (49%) to twenty six percent (26%) and increase in equity of Emaar from fifty one percentage (51%) to seventy four percent (74%) share in SPV-e.

g) Emaar has agreed to develop an IT Infrastructure in 20 to 30 acres of land from out of the land designated for development of residential project with a built up area of 10,00,000/-sq.feet. The IT park would avail of all benefits and subsidies offered by Government of Andhra Pradesh to other similar IT Infrastructure.

h) The total extent of land earmarked for the project is to be developed at one go and on Fast Track instead

of trenches in accordance with the achievements of mile stones as original envisaged.

j) The cost of shifting of HT lines from Convention Centre Project site at NAC grounds would also be met from the Industrial Infrastructure Development Fund.

3. **Government, after careful examination, decides to consider the above improvements brought into the Integrated Project including an International Convention Centre and Business Hotel in NAC grounds and Township project with Golf Course & Multi use development in Manikonda, Ranga Reddy District, duly modifying the orders issued in the 1st read above to the extent of the above improvements and approve a Draft Supplementary Agreement to be executed between the APIIC and Emaar Properties, PJSC, UAE.**

4. The Vice-Chairman and Managing Director, Andhra Pradesh Industrial Infrastructure Corporation Ltd., Hyderabad is authorized to enter into a Supplementary Agreement to the Collaboration Agreement, executed on 19th August 2003. Copy of the agreement may be sent to Government for record.

5. Andhra Pradesh Industrial Infrastructure Corporation Ltd., should closely monitor the development of above three (3) projects and see that the developer should adhere with the schedule for completion of Convention Centre Project by the end of December 2005 as agreed by Emaar.

6. All other features of the Project notified in the G.O.Ms.No.359 Industries & Commerce (INF) Department dated 04.09.2002 remains un-altered and holds good.

7. This order issues with the concurrence of Finance (Exp. I & C) Dept. vide their U.O.No.9432/10/Exp.I&C/2005, Dt.6-1-2005.

18(v). A note put up by AS© on Dt.27.01.2005, which speaks: **The VC&MD informed that orders were issued in G.O.Ms.No.14, Industries & Commerce (IP) Department, dated 11.01.2005, duly modifying the G.O.Ms.No.359, dt.04.09.2002 to bring the latest improvements /changes taken place in implementing the integrated township --------. The approved draft supplementary agreement was also sent along with the GO for execution. On furnishing the draft supplementary agreement to Emaar properties-Dubai for execution of the same at their end, they have proposed some modifications to the agreement on the grounds that these modifications do not confirm with the earlier discussions held in the Ministers Chambers during November, 2004.**

18(w). The VC&MD has informed that subsequently M/s. Emaar properties has desired to set up the Boutique Hotel, which is a component of Golf course project in the free hold land of 285 acres allotted for township project, instead of setting up at lease hold land of 235 acres. It is stated that the net profits generated by SPV-2/BHLPL, excluding any and all profit generated by the Boutique hotel, will be retained in its entirety within the said company in the form of reserves. These reserves shall be utilized solely of improvements of the facilities and maintenance of Golf Course facilities (including the club house) and M/s. Emaar Properties have also sought modification to the Clause 2(e)

stating Access to the site will remain restricted and controlled even after acquisition of the site by Government until such time a mutually acceptable solution is agreed between the Government and housing Associations comprising residents of the proposed Boulder Hills community. It is contended that Golf Club and Leisure activities are integral part of Township.

The VC & MD, APIIC Limited has further informed that the modifications/suggestions made by the Emaar properties are appropriate and it will not affect any of the terms and conditions mentioned in the GO and the same can be approved by Government. If approved the clauses of the Supplementary Agreement will suitable be modified and executed.

The VC & MD, APIIC Ltd. has requested the Government to issue necessary modifications orders duly effecting the modifications to the clause No.2 (d) & (e) of the G.O.Ms.No.14 Ind. & Com. (IP) Department, dated 11.01.2005.

In this connection, it is submitted that Government have issued orders in G.O.Ms.No.14 dated 11.01.2005, duly modifying the orders issued in the G.O.Ms.No.359 Industries & Commerce (INF) Department dated 04.09.2002 to bring in the latest improvements/changes taken place in implementing the Integrated Township with Golf Course project at Manikonda and Convention Centre with Business hotel project at NAC grounds.

In view of the above and in the light of the request of the VC & MD, APIIC Ltd., it is submitted for orders whether the amendment to the G.O.Ms.No.14 dated 11.01.2005 may be issued.

Subject to orders a draft amendment to the clause of 2 (d) & (e) of G.O.Ms.No.14 dated 11.01.2005 is put up below for approval.

18(x). The Minister of Major Industries on 21.03.2005 endorsed on the issues and references that the issues are discussed in the meeting taken by Hon'ble CM. Minutes circulated for approval of CM the approved minutes may be added to the file and the action be taken accordingly.

The Supplemental agreement dated 19.04.2005 was entered pursuant to the above by changing the SPV 1 & 2 into SPVs 1, 2 and 3 consequent to cyber convention centre (CCCPL) . The request from payment of 100% stamp duty transfer duty and required charges in regard to land transfer between APIIC and SPV-1&2 and APIIC/any other party and SPV-3 shall be pursued by APIIC with GoAP for obtaining necessary orders as per clause 12 of it development of IT park within the integrated township concerned Emaar commits to convert

approximately 20 to 30 acres of freehold land currently designed for the development of residential projects to IT Parks subject to receiving requisite regulatory approvals and IT park would avail benefits and subsidies offered by GoAP to other similar IT parks and would not entail any land conversion charges. As per Clause 13 the land shall be transferred by APIIC to EHPTL in lieu of equity and debenture considerations.

18(y). Upon infusion of additional equity by Emaar from time to time, the debentures would be converted into equity in the respective SPVs to the proportionate extent required such that APIIC's equity stake always remain at 26% in all the three SPVs

18(z). In fact, Mohd.Alabbar Chairman proposed of Emaar bringing Fairbridge holdings as shareholder at Emaar Holding Mauritius level such as Emaar Projects, PJSU, Dubai would dilute its ownership in Hyderabad project through each of the three SPVs at Emaar 40%, Fairbridge 34% and APIIC 26% as it is. The same was in fact refused from the note by the petitioner as VC & MD saying till project is duly implemented it may not be correct to change equity structure. Another letter of even date addressed by Mohd.Alabbar to the VC & MD , APIIC, that was also not accepted by the petitioner being VC&MD and for another letter of even date. It is crystal clear from the above that the petitioner did not act detrimental to the interest of the State at his own much less in privy with any others, but for as nodal agency being VC&MD of APIIC implemented the government's decisions.

19. From the above, it is clear that the CBI and the learned Special Judge and the Central Govt., in according of sanction failed to appreciate the facts and the nature of duties of the VC & MD, APIIC and should have considered that there is no conspiracy between the

petitioner with other accused much less to achieve any illegal gain and there is no even any allegation of petitioner joined hands with any persons and if so on what basis, to make a baseless allegation of conspiracy against the petitioner or any criminal misconduct on the part of the petitioner-A11.

20. The CBI and the learned Special Judge should have considered that in the letter dated 31.03.2005 written by the petitioner-A11 to the Secretary, MA & UD, mentioning Government in I & CD agreed, vide-G.O.Ms.No.14 dated 11.01.2005 of I & CD, for exemption from payment of conversion fee for change of land stating orders will be issued separately. Further the Secretary of MA & UD did not make any comment on the file and simply forwarded to the Minister for MA & UD, who in turn marked the file to then Chief Minister and finally then Chief Minister approved proposal for waiving conversion charges in respect of 15 acres of land on 10.05.2005 after no objections received from any party to that waiver and after detailed examination in MA & UD, after issue of draft notification with no objections G.O.Ms.No.894 MA Department dated 02.11.2005 was issued confirming conversion in the land use pattern of 520 acres and APIIC exempted from payment of conversion charges where the MA & UD issued orders after due process under business rules and taking orders from appropriate authority after due publication and as such, the charge against the petitioner is baseless.

21. SPVs could assign operator rights to reputed firms at the behest of Emaar properties is one of the conditions in G.O.M.S. No.359 of 2002 and as such there is nothing to find fault with petitioner-A11, who was not there by then.

The petitioner-A11 was VC & MD from September 2003 to May 2005 in which period there was no transaction of sale taken place bringing loss of revenue to the State and the allegation that due to action of misconduct on his part loss caused to the State is with no basis. The Committee of Ministers decided about lease rentals and the APIIC reported the same to GoAP to the pattern of 2% for the initial period of 33 years and 3% for the further period of 33 years. However what draft was being prepared, a mistake was occurred in the subsequent period was not mentioned and same was rectified while finalizing the draft. Likewise in respect of convention centre and business hotel established on leased land of 15 acres of APIIC at Izzatnagar, (which is by taking back by APIIC from Ac.167.30 cents of land) as per G.O.Ms.No.133, dt.22.06.2005, no lease rate suggested by the Committee of Ministers and the petitioner has no role in setting of the agenda of the Ministers according to his contention.

22. That too when lease rentals only flows into the revenues of the concerned SPVs and cannot be taken as revenue to the Government. Suffice to say from the above that the sanction order of the Central Government dated 23.05.2016 was given without application of mind to any of the above crucial facts and without even referring to the State Government sanction refusal order, by its mechanically reiterating the charge sheet contents, which is contrary to law and outcome of non-application of mind and the learned Special Judge also should have considered the same which is when part of the prosecution material of the final report, apart from the fact that earlier already the State Government when not accorded sanction by its refusal on 05.06.2012, the proceedings against the petitioner will not survive much less to take

cognizance from the subsequent proceedings of sanction by Central Government.

23. Even coming to M/s. Emaar Properties' agreement with M/s. Stylish Homes dated 20.01.2005, on behalf of SPV-I selling 100 villa plots at an aggregate price of Rs.5,000/- per sq. yard for a period of five years prior to formation of SPV-I was as per the revised structure under the State policy and even before EHTPL was brought into picture, leave apart the clauses in G.O.M.S.No.359 supra. Apart from it, the conveyance deed under which APIIC transferred 258.36 acres of land to EHTPL was dated 28.12.2005 and registered on 12.10.2006 for an aggregate value of Rs.74,92,44,000/-, which was even subsequent to the transfer of the petitioner-A11-Shri LV Subrahmanyam in May, 2005 from APIIC and as per the sale consideration, 26% equity of Rs.1,70,03,070/- in SPV-I was allotted to APIIC and out of the balance consideration, similar 26% equity was credited in SPVs – II & III.

24. Even coming to the statement supposedly made by Chamundeswaranath about the advice received from petitioner-A11 about purchase of villa, as partners in the projects, the petitioner was aware of the development that was envisioned at the project place. What Chamundeswaranath stated is it is in March 2005, he came to know about the integrated project of International Standard Golf, Residential Villa and Apartment in joint venture with APIIC and as he knows the petitioner is VC&MD of APIIC and as he intended to buy a plot and construct a villa, he enquired him about the modalities for allotment and he was informed by the petitioner LVS that M/s. Stylish Homes rep. by one Sri T.Ranga Rao is the agent of EHTPL and he may approach them. He also informed that plots were being sold at Rs.5,000/- per sq. yd. He accordingly met Sri T.Ranga Rao and referred name of Sri LVS

and requested for allotment of villa plot ----------. Even from the above, there is nothing against the petitioner-A.11 to say he is in any way privy with said Ranga Rao or others. Further, any sharing of information in public domain does not attract to attribute any criminal conspiracy from that as contended by the learned counsel for the petitioner-A.11.

25. The Joint Venture Company by name M/s Emaar Hills Township Private Limited (EHTPL-A3) was formed in 2003 between Emaar Properties PJSC, Dubai(Emaar-A2) and M/s APIIC to develop 353 acres of land in Gachibowli in the ratio of 74:26 in profits in 2006. M/s Emaar, the partner of M/s EHTPL entered into partnership with another sister company known as M/s EMAAR MGF(A4) to develop the same piece of land in Gachibowli in the ratio of 75:25 in revenue i.e. M/s EMAAR MGF-A4 will hold 75% interest and M/s EHTPL-A3 will hold 25%. M/s Emaar MGF sold the plots for the villas at Rs.5,000/- per yard from 2006 onwards. It is alleged that M/s Emaar MGF collected another Rs.25,000/- per yard from the buyers at the time of selling these plots. Total land for 134 villas sold so far 1,71,559 sq. yards (36 acres approx). There is nothing to show how the petitioner-A.11 is anyway party to it. When such is the case, how the petitioner-A11 could be find fault for any negligence or dereliction of duty, much less to attribute any criminal misconduct or criminal conspiracy with Emaar or Stylish Homes.

26. In this regard before proceeding further, it is necessary to keep in mind the precautions to be taken from the guidelines to be followed in case of a public servant before registration of crime as per the expressions of the Apex Court. In **P. Sirajuddin Etc. Vs. State of Madras**[8] the Apex Court held that before a public servant, whatever be his status, is publicly charged with acts, of dishonesty which amount to

[8] AIR 1971 SC 520

serious misdemeanor or misconduct of the type alleged in the case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the, Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any pre-conceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. **The means adopted no less than the end to be achieved must be impeccable.** The constitution Bench of the Apex Court in **Lalitha Kumari vs. Govt. of U.P.[9],** also issued directions in this regard referring to the guidelines of CVC and the guidelines in CBI Manual. The vigilance report referred in the writ petition from which direction the crime registered no way reflected any role of the petitioner for any criminal conspiracy or criminal misconduct and it was not even referred in the investigation and in filing the final report.

27. To understand the above with reference to the facts investigated as to whether it makes out any offence or not from acts alleged for any IPC and PC Act offences, for which cognizance was

[9] (2014) 2 SCC 1

taken, the Code of Criminal Procedure is an enactment designed *interalia* not only to ensure a fair investigation of the allegations against a person accused of criminal misconduct, but also from that and on filing final report for taking cognizance or not for any offence with application of mind judiciously from facts with reference to law only on any accusation shown with sustainability and then from the material, hearing of prosecution and accused for framing of charges if there is material to face trial and for fair trial, besides the Code of Criminal Procedure, the Evidence Act also provides safeguards on admissibility, relevancy and proof of facts during trial from real, oral and documentary-which include electronic evidence for judicial appreciation of evidence in arriving truth in the voyage of trial. **For that firstly to read any penal provision of offence made out or not, it has to be read with general exceptions, as per Section 6 IPC.**

28. On the scope of the above, the Larger Bench of this Court in *A.P.Civil Liberties Committee (APCLC), Vijayawada V. Government of Andhra Pradesh*[10], held on anatomy of defenses in criminal law, with reference to what defenses are entitled to accused and how to construe the penal provisions with reference to special exceptions and particularly of general exceptions as per Section 6 IPC as follows:

> "On a true and fair construction of the provisions of Sec. 6 IPC, considered in the context of the legislative scheme qua the several provisions of the IPC, *it is apparent that Section 6 explicates a convenient legislative formula to avoid reproduction of lengthy exceptions in the description of the each of the several offences. Consequently all offences enumerated in the Indian Penal Code must be read subject to the provisions in Chapter IV relating to General Exceptions (Sections 76 to 106 IPC). Therefore, when an act falls within any of these exceptions, by virtue of the provisions of Sec.6, the accused must be accorded the benefit of the appropriate General Exception even though such*

[10] 2009(2) ALD 1 (LB)(AP)

exception is not specifically indicated in the description of the offence elsewhere in the IPC.

In Seriyal Udayar vs State of Tamil Nadu (1987)2 SCC 359) (per Oza,J) the Supreme Court observed that even if on the basis of the material on record the right of private defence of the accused-appellant is not established, still the material produced in cross-examination and the circumstances discussed (by the court) do indicate that the incident might have happened in the manner in which it was suggested by the accused appellant and therefore it could not be said that the prosecution has been able to establish the offence against the appellant beyond reasonable doubt, the accused is entitled to acquittal.

It is therefore apparent that the provisions of the General Exceptions are implicated into the description and definition of all offences enumerated in the IPC. It is consequently the duty of all executors of the legislative obligations under the Penal Code, the recording officer in charge of a police station, the investigating officer or the appropriate Magistrate or Court of Session as the case may be, to consider every offence defined and sanctioned by the provisions of the IPC in the light and context of the General Exceptions set out in Chapter IV IPC.

Anatomy of defences in Criminal Law- The substantive provisions of Criminal Law indicate a general, internal structure of offences. These are:

(a) An offence is committed where an actor satisfies all the elements contained in the definition of that offence. There are 2 defining facets to an offence:

(i) *Actus reus* elements or the objective criteria of an offence which may consist of the conduct of the actor, the circumstances in which the conduct takes place and the results consequent on the conduct; and

(ii) The *mens rea* or the culpability element such as purpose or intention, knowledge, recklessness, negligence, or lack of culpability with regard to the engaging in the conduct, causing the result, or being aware of the circumstances specified in the objective element(s). Every offence must contain at least one objective element (actus reus element) consisting of the conduct of the actor.

Every actus reus element must have a corresponding mens rea element, which however may be different for each of the objective elements of the same offence. Sometimes, a culpability element may be required without a corresponding objective element – See **Sir Mathew Hale – Historia Placitorum Coronae (London-1736)**.

> **Justification Defences**: **In justification defences, the offence caused by the justified behavior remains a legally recognized harm.** Excusing conditions as defence constitute part of justification defences and are available so long as the condition has been caused by a disability, transient or permanent and is present at the time of the offence. Under the special justifying circumstances however that harm is outweighed by the need to avoid a greater harm or to further a larger societal interest. Self-defence or defensive force justifications are all based on a threat in response to which the defensive force is justified. They are often distinguished by one another by the nature of the interest threatened. Statutes too often make special alterations or exceptions to the basic principle of defensive force justification depending on the interests threatened. The general exceptions enumerated in Sections 96 to 106 in Chapter IV of the IPC fall within this category of defences.
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> *It requires to be noticed that Article 261 of the Constitution enjoins that Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State*. The appointment of a judge is a public act and the particulars and designation of appointment as a judge are matters of public record. Even if a mischievous complaint is made that a named individual masquerading as a judge had passed an order; whether the named individual is a judge is an easily discoverable public act and a matter of public record. Even the provisions of Section 81 of the Evidence Act enjoin that a Court shall presume the genuineness of any official gazette or government gazette.

At para No.146 in *A.P.Civil Liberties Committee* supra, it is observed that the provisions of CrPC must be understood and executed in conformity with the contemporaneous contours of Article 21 as by curial opinions expounded.

29. In *Shankar Narayan Bhadolkar V. State of Mharashtra*[11] **it was observed in para No.14 that the general exceptions contained in Section 76 to 106 IPC make an offence non-offence. The general exceptions enacted in IPC are of universal application and for the sake of brevity of explanation, in spite of repeating in every section that the definition is taken subject to the exceptions, the legislature**

[11] (2005) 9 SCC 71

by Section 6 IPC enacted that all the defence must be recorded as subject to general exceptions. Further on the scope of evaluation of the material in taking cognizance and in framing charges by Court, in *Chandra Deo Singh V. Prokash Chandra Bose@ Chabi Bose*[12](4JB) expression of the Apex Court at para No.12, relying upon *Vadilal Panchal V. Dattatraya Dulaji Gha Digaonkar*[13](3JB) of the Apex Court, it was held that if the Magistrate has not misdirected himself as to the scope of enquiry under Section 202 and has applied his mind judicially to the material before him, we think that it would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment, what bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses, all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions.

30. Undisputedly the offences taken cognizance involve to establish mensrea as a distinction between breach of contract or breach of trust makes civil liability different from criminal liability. It is also to mention in the context that with out mensrea no offence could make out either under the Indian penal code or under any other penal law unless the special law provides for an act itself is an offence without mensrea. In *Queen Vs. Tolson*[14] it was observed in this regard by accepting the view in *Reg. Vs Prince*[15], P.170-172 that:

> "The case of *Reg. Vs Prince*, when rightly considered, is in favour of prisoner. **The result of that decision is in no sense to displace the Doctrine of necessity for a mensrea as a general**

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[12] (1964)1 SCR 639
[13] AIR 1960 SC 1113
[14] Vol.13 Queens Bench Division page 168(1889)= 23 Q.B.D. 168.
[15] Law Rep. 2 C.C.R.154

proposition in criminal law, atleast in cases where the act is done under a belief of the existence of a state of facts which, if it really existed, would render the act not criminal nor immoral.....It is however undoubtedly a principle of English Criminal Law that ordinarily speaking **a crime is not committed if the mind of the person doing the act in question be innocent**. **It is a principle of natural justice and of our law- says Lord Kenyon CJ that** *actus non facit rem, nisi mens sit rea.* **The intent and act must both conqur to constitute the crime. The guilt intent is not necessarily that of intending the very act or thing done and prohibited by common or statute law, but it must at least be the intention to do something wrong**. That intention may belong to one or other of the two classes. It may be to do a thing wrong in itself and apart from positive law, or it may be to do a thing merely prohibited by statute or by common law, or both elements of intention may co-exist with respect to the same deed.----- knowingly or intentionally to break a statute, must, I think, from the judicial point of view, always be morally wrong in the absence of special circumstances applicable to the particular instance and excusing the breach of the law.---- Although prima facie and as a general rule **there must be a mind at fault before there can be a crime**, **it is not an inflexible rule, and a statute may relate to such a subject-matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not**."

31. In **Baliya alias Bal Kishan Vs. State of Madhya Pradesh**[16] the Apex Court held that proof or otherwise of conspiracy is usually though a matter of inference, the courts in drawing such any inference must consider whether the basic facts i.e. circumstances from which the inference is to be drawn have been made out beyond all reasonable doubt, and thereafter, whether from such established circumstances no other conclusion except that the accused had agreed to commit an offence can be drawn. **Naturally in evaluating the circumstances for**

[16] (2012) 9 SCC 696

the purposes of drawing any inference adverse to the accused, the benefit of any doubt that may creep in must go to the accused.

32. It is the settled law that at the stage of consideration of charge, the Court has to form a presumptive opinion about the involvement of an accused on the basis of such material which could lead to an inference of "grave suspicion" and not a "mere suspicion" in relation to the acts alleged. Such prima facie material should be capable of being converted into legally admissible evidence of such sterling quality which, without being tested on the touchstone of cross examination, would lead to only a hypothesis of the guilt of an accused. No such material has even been shown to be present by the Respondent against the petitioner-A.11 from the above referred material.

33. **From the above now to consider whether the petitioner-A11 is in any way can be held privy to any criminal conspiracy with any other accused and liable to face trial for the accusation of criminal conspiracy or criminal misconduct?**

33(a). In **State of Karnataka Vs. V.L. Munniswamy**[17], the Apex Court held that a few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime, howsoever skillfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any Tribunal could reasonably convict the respondents for any offence connected with the assault on the complainant.

33(b). In **PKM Selvam and Others Vs. State**[18], the Madras High Court by relying upon the expression of the Apex Court in **Central**

[17] (1977) 2 SCC 699
[18] MANU/TN/2746/2015

Bureau of Investigation, Hyderabad Vs. K.Narayana Rao[19] held that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence.

33(c). In **Ch. Laxminarayana Vs. The State of Telangana**[20], this Court held at Para 10 that, there has to be cogent and convincing evidence against each of the accused. It is one who commits an over act with knowledge of conspiracy is guilty and one who tacitly consents to the object of the conspiracy can also be made liable. The Court in appreciation must take care to see that the acts and conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability cannot be fastened by way of analogy or by extension of a common law principle. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another, and have made a partnership in crime. Beyond the mere fact of agreement, the necessary *mensrea* for proving that a person is guilty of conspiring to commit an offence be established.

33(d). In **the Additional Superintendent of Police v. G.B. Anbalagan**[21], the Madras High Court at Para 58 held that a complaint should make out a prima facie case against the accused persons. <u>One cannot have the construction of a fine superstructure without a foundation</u>. Merely leveling a charge of conspiracy without mentioning how, where, when and which of the conspirators hatched the conspiracy

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[19] 2012 (9) SCC 512
[20] MANU/AP/0303/2017
[21] 2014 (4) MLJ (Crl) 279

is not sufficient to mulct criminal liability. The purpose or circumstances warranting an inference of existence of a conspiracy should be stated so as to bring the Respondents to face the trial in criminal Court.

33(e). The Apex Court in **State of H.P. Vs Kishan Lal Pardhan**[22] held at para 8 **on the scope of Section 120-B IPC and Section 10 of the Evidence Act** that the offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or cause to be done an illegal act by illegal means, and the performance of an act in terms thereof. If pursuant to the conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of it.

33(f). In **State Of Tamilnadu vs J.Jayalalitha**[23] on the scope of charge or discharge for consideration, it was observed by the Apex Court from the facts on record placed by the prosecution that there is sufficient material against Smt.Jayalalitha making out the offences under Sections 120B & 409 IPC r/w. 13 of the PC Act in her insistence for the proposal and its ultimate approving the tenders to purchase and import coal for wrongful gain by causing loss to State exchequer even with no necessity that too for high price, despite the Secretary concerned of the State Govt. raised strong objection for the proposal and even Secretary, Ministry of Coal raised objection also on the poor quality by its ignorance and even by deviation of conditions of Central Government for rooting through it and the discharge by trial court held unsustainable, that too when all concerned officials were charged.

33(g). The scope of Section 10 Evidence Act considered is by relying upon the observations of the three Judge Bench of the Apex

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[22] AIR 1987 SC 773 = 1987 CrLJ 709
[23] 2000(5)SCC 440

Court in **State vs. Nalini**[24] that **the first condition which is almost the opening lock of that provision is the existence of 'reasonable ground to believe' that the conspirators have conspired together.** This condition will be satisfied even when there is some prima facie evidence to show that there was such a criminal conspiracy. **If the aforesaid preliminary condition is fulfilled then anything said by one of the conspirators becomes substantive evidence against the other, provided that should have been a statement in reference to their common intention`.**

33(h). In **Ram Narain Poply Vs. CBI**[25], the three Judge Bench of the Apex Court held on Section 120B IPC that the elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, (d) in the jurisdiction where the statute required an overt act.

33(i). In **State of Jharkhand Vs. Lalu Prasad Yadav**[26] the Apex Court held that a general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privy with each other each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The

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[24] 1999 (5) SCC 253
[25] 2003 CrLJ 4801
[26] 2017 (8) SCC 1

cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies.

33(j). The Apex Court in **V.C. Shukla v. State (Delhi Admn.)**[27], held that **to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence**. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. **However, a few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.**

33(k). In **Jayendra Saraswati Swamigal Vs. State of T.N.**[28] the three Judge Bench of the Apex Court held at Para 12 as follows:

> 12. …….. Therefore, there should first be a prima facie evidence that the person was a party to the conspiracy before

[27] [1980] 3 S.C.R. 500
[28] (2005) 2 SCC 13

his acts or statements can be used against his co-conspirators. ….. The correct import of Section 10 was explained by the Judicial Committee of the Privy Council in Mirza Akbar v. King Emperor AIR 1940 PC 176 as under:

"The words of S.10 are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The words "common intention" signifies a common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. **But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference."**

33(l). In State (N.C.T. of Delhi) Vs. Navjot Sandhu@ Afsan Guru[29] it was totally considered the scope of criminal conspiracy from Sections 120B & 43 IPC and Section 10 of the Evidence Act by quoting with approval the expression of the Privy Council in **Mirza Akbar** supra having observed from para 86, referring to aims and objects in introducing in IPC by 1913 amendment, with observation of similar to the definition in **Halsbury`s laws of England and American concept of criminal conspiracy, Russell on crimes, Harisngh Gour on Penal Law, some of the foreign expressions, besides that of the Apex Court earlier including from Sardar Singh Caveeshar**[30]**, Major E.G. Barsay**[31]**, Yash Pal Mittal**[32]**, V.C.Shukla supra, Mohd. Usman**[33]**, Kishan Lal Pardhan supra, Kehar Singh**[34]**, Ajay Agarwal**[35]**, Nalini supra, Ferozuddin**[36]**, Mohd. Khalid**[37], **that few bits here and there cannot be suffice, agreement can be inferred from any sold facts and**

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[29] 2005 SCC (Crl)1715
[30] AIR 1957 SC 747
[31] AIR 1961 SC 1762
[32] 1977 (4) SCC 540
[33] 1981 (2) SCC 443
[34] 1988 (3) SCC 609
[35] 1993 (3) SCC 609
[36] 2001 (7) SCC 596
[37] 2002 (7) SCC 334

circumstances to consider therefrom act of one as act of all, it requires some kind of physical manifestation of agreement like transmission of thoughts and sharing of unlawful design by meetings and communications to commit the act, prior to the act. For that, there has to be cogent and convincing evidence against each of the accused. It is one who commits an over act with knowledge of conspiracy is guilty and one who tacitly consents to the object of the conspiracy can also be made liable. The Court in appreciation must take care to see that the acts and conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability cannot be fastened by way of analogy or by extension of a common law principle. When men enter into an agreement for an unlawful end, they become ad-hoc agents for one another, and have made a partnership in crime. Beyond the mere fact of agreement, the necessary *mens rea* for proving that a person is guilty of conspiring to commit an offence be established.

33(m). The Apex Court in **Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd**[38] 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.

[38] 2010 (10) SCC 479

33(n). The Constitution Bench expression of the Apex Court in **Bhagwan Swarup Lal Bishan Lal V. State of Maharashtra**[39] way back observed that **the offence of conspiracy has to be established like any other offence**, but for Section 10 of the Indian Evidence Act introduces the doctrine of agency subject to conditions laid therein are satisfied for act done by one is admissible against co-conspirators. **But this Section will come into play only when the Court is satisfied that there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or the actionable wrong that is to say there should be a prima facie evidence that a person was party to the conspiracy before his acts can be used against his co-conspirators.**

33(o). In **Abuthagir Vs State**[40] referring to **Mohd.Khalid, Devander Pal Singh** and **Kehar Singh** supra, it was held that the elements of conspiracy to be (a). an object to be accomplished, (b). a plan or scheme embodying means to accomplish that object, (c). an agreement or understanding between two or more of the accused whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement or by any effectual means, and (d). in the jurisdiction where the statute required an overt act. The Court must enquire whether the two or persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the later does.

33(p). In **Mir Nagvi Askari vs CBI**[41] it was held on requirements and proof of Criminal conspiracy that it is an independent offence. It is

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[39] AIR 1965 SC 682
[40] 2009 CrLJ 3987
[41] 2009 15 SCC 643

punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal, by illegal means, then even if nothing further is done, the agreement would give rise to a criminal conspiracy.……Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means…….. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication-[See **Mohammad Usman** supra].

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

> "The gist of the offence of conspiracy then lies, not in doing the act, or affecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement

between the parties. **Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough**"

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

33(r). This Court in **Maharashtra v. Som Nath Thapa**[42] supra opined that it is necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."-[See also **K.R.Purushothaman v. State of Kerala**[43]. Since we have dealt with the law with respect to criminal conspiracy in detail in **R. Venkatkrishnan v. Central**

[42] [(1996) 4 SCC 659]
[43]2005 12 SCC 631

> **Bureau of Investigation**-(Criminal Appeal 76 of 2004 decided today) we need not deal with it here at once again."

33(s). We may however notice that this court(Apex Court) most recently in **Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh and Anr. v. C.B.I. through its Director**[44], after taking recourse to law governing the field noted thus:

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

33(t). In Ajay Agarwal vs Union Of India[45]**,** it was held that **(**2.03) Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy.(2.05)An agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. **If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement.**

33(u). In Pramatha Nath Taluqdar vs Saroj Ranjan Sarkar[46] **, the Apex Court Constitution Bench held that:** Under Section 107(2), a person abets the doing of a thing, who engages with one or more other

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[44] 2008 (14) SCALE 240
[45] AIR 1993 SC 1637
[46] AIR 1962 SC 876

person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and an order to the doing of that thing. Therefore, in order to constitute the offence of abetment by conspiracy, there must first be a combining together of two or more persons in the conspiracy; secondly, an act or illegal omission must take place in pursuance of that conspiracy, and in order to the doing of that thing.

34. It is worthy of note that a mere conspiracy or a combination of persons for the doing of a thing does not amount to an abetment. Something more is necessary; namely, an act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing for which the conspiracy was made.

35. The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. **Where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary.**

36. In **State of M.P vs Sheetla Sahai & Ors.**[47]**,** it was held from paras 44 to 59 while dismissing the appeal of the prosecution agency holding nothing to incriminate the official respondents 1-7 as held by the High Court under Section 120B IPC and Section 13 PC Act as follows:

> ”44. The intra-departmental and inter-departmental correspondences and note sheets to which we have adverted to hereto before clearly go to show that the authorities incharge of construction of the dam were aware of the difficulties which were being faced by the contractors. Their apprehension was

[47] (2009) 8 SCC 617

that in the event the contractors were not permitted to mine stones from Katghora Quarry and other Quarries, they may leave the job as a result whereof the entire project might come to a stand-still.

45. The representations made by the contractors for the aforementioned purpose, even if to be ignored, the intra-departmental and inter-departmental correspondences cannot be. They clearly point out a clear picture as regards necessity for explaining the possibilities of extracting stones from some other mines for being used in the construction of dam.

46. We would proceed on the basis that two divergent opinions on the construction of the contract in the light of the stand taken by the World Bank as also the earlier decision taken by the State was possible. That, however, would not mean that a fresh decision could not have been taken keeping in view the exigencies of the situation. **A decision to that effect was not taken only by one officer or one authority. Each one of the authorities was ad idem in their view in the decision making process. Even the Financial Adviser who was an independent person and who had nothing to do with the implementation of the project made recommendations in favour of the contractors stating that if not in law but in equity they were entitled to the additional amount.**

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

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

less than one year but which may extend to seven years and shall also be liable to fine.

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

"When two or more persons agree to do, or cause to be done,--(1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

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

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

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

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

Its ingredients are

(i) an agreement between two or more persons;

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

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

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

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

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

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

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

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

"...Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment..."

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

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

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

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

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

decision. Such a decision was required to be taken on the basis of the materials available……..".

54. ------

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

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

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

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

whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy."

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

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

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

The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can

> **be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial. {See State of Maharashtra and Others v. Som Nath Thapa and Others [(1996) 4 SCC 659]}."**

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

36(a). In Kehar Singh and Ors. V. State (Delhi Administration), [1988 (3) SCC 609 at P.731], it was held that:

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

36(b). In R. v. Griffith[48], it has been observed of the Court of Appeal in England has laid down thus:

> "9. **The practice of adding what may be called a rolled up conspiracy charge to a number of counts of substantive offences has become common. We express the very strong hope that this practice will now cease** and that the courts will never again have to struggle with this type of case, where it becomes almost impossible to explain to a jury that evidence

[48] 1965 (2) AER 448

inadmissible against the accused on the substantive count may be admissible against him on the conspiracy count once he is shown to be a conspirator.

36(c). It is worthy of note that a mere conspiracy or a combination of persons for the doing of a thing does not amount to an abetment. Something more is necessary; namely, an act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing for which the conspiracy was made.

36(d). As held in **Pramathanath** supra, once the gist of the offence of **crimin**al conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means and **where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary. Further, mere knowledge, or even discussion, of the plan is not, per se enough. Thus, Ex facie, there is no material to show that a conspiracy had been hatched by the Petitioner-A11**.

36(e). From the above, when it is not a case of the Petitioner-A11 was privy to any conspiracy with M/s. Emaar properties, Public Joint Stock Company (PJSC), Dubai, from the time of their entering the MOU. In fact the M/s. Emaar Properties-PJSC-Dubai has only given the proposal and quoted price of Rs.29 lakhs per acre for outright purchase of the land from the Government. RFP for Convention Centre, Hotel, Golf Course and Villas were approved therefrom by the then Chief Minister of the State on 26.09.2001 itself. Thereafter Government even issued orders vide G.O.Ms.No.359 Industries and Commerce (INF) Department, dated 04.09.2002, for establishing International Convention Centre and Golf Course along with multi-use land development and hotel at Manikonda with **APIIC** as **Nodal Agency**. **It is crystal clear from the**

above that the land by then no way costs even on outright sale in open market more than Rs.29 lakhs per acre, that too for such a large extent, leave about the lease land after 66 years to be given back to the Govt. and the petitioner was VC & MD, APIIC only from September, 2003 to May, 2005 and not concerned with earlier period to it. Whatever the proposals were even approved by the APIIC Board and not his unilateral decisions ignoring the Board and further what ever the changes the Govt. or the Emaar sought were, the **petitioner** being the VC & MD of the APIIC-the Nodal agency brought on record in the notes placed for approval and once approved by the Minister concerned and he took no decision ignoring the authorities and what ever he bonafide believed put up on note and implemented what ever the decisions taken by the Government rep. by committee of Ministers and after routing through even other departmental heads like finance and Industries etc.,

36(f). Thus there is nothing for that to find him fault much less to implicate with criminal liability, for there is nothing to show any circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence; leave apart a few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy as held by the Apex Court in the decisions supra, for nothing that can be shown even of all means adopted and illegal acts done in furtherance of the object of conspiracy hatched from any circumstances relating to the period prior in time than the notes put up by him that is stated as actual commission of the alleged offence much less to say same in furtherance of the alleged conspiracy to draw any inference of the alleged conspiracy. Undisputedly from the settled legal position,

there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. For that the acts and conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. what is essential of the Agreement as a primary fact is proved from the prosecution material on record, for mere knowledge, or even discussion, of the plan is not, per se enough. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

37. The respondent-CBI loosely alleged in the charge sheet that there is criminal conspiracy and dishonest intention, but on plain reading of the entire subject matter, there is nothing. It is very unfortunate that very grave sections under both IPC and PC Act, were cited against the petitioner-A11 by the respondent-CBI in a slipshod manner without bestowing proper care and application of mind, for what is discussed supra and the learned special judge also did not go through and evaluate

the prosecution material covered by the final report in taking cognizance for respective offences.

38. In this regard even from the decisions placed reliance by the learned special Public Prosecutor for CBI, in **Umesh Kumar** supra, what was held is that the High Court in exercise of the inherent powers under Section 482 CrPC can only evaluate the material on record to the prima facie satisfaction of existence of ground for framing charges and proceeding with trial or not. Same is also held at para 10 of **Kishan Lal Pardhan** supra and at para 55 of **Mariya Anton Vijay** supra, that Court in a quash proceeding under Section 482 CrPC, is required to evaluate the material and documents on record, with a view to find out from its face value whether disclosing existence of ingredients of the alleged offence or not. Further from the expression in *Raj Kapoor* supra, it clearly speaks that the general expressions under Section 76 to 79 can be considered from the material at the pre-charge stage in the post-cognizance enquiry even and the subsequent expressions to *Sewakram* in *Rajendra Kumar Sitaram Pande* also speaks the same principle laid down in *Vadilal* and *Chandra Deo Singh* supra. Therefrom suffice to say that when the material itself before the Court shows the accused is entitled to the protection from prosecution for the alleged offences from the case falls under any of the general or special exceptions provided in law in saying no offence made out, same can be considered within its scope as laid down by the expressions supra. Apart from it **in** *Rukmini Narvekar vs Vijay Sataredkar*[49] by explaining the earlier 3JB expression in *State of Orissa Vs Devenranath Pathi*[50] it was held that where some defence material when shown to the trial court would

[49] (2008) 14 SCC 1
[50] (2005) 1 SCC 568

convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

39. From the above, apart from Section 120B IPC has not been made out, even coming to any attracting of the offence punishable under section 13(2) r/w 13(1)(c) & (d) and/or section 15 of the PC Act against the petitioner-A11 and whether there is any valid sanction of the competent authority produced for the cognizance taken and its sustainability as to whether the materials brought on record form sufficient basis for framing of charge under Section 13(1)(c)&(d) read with Section 13(2) of the PC Act concerned, section 13(1)(d) of the PC Act covers a public servant who obtains for himself or for ay other person, any valuable thing or pecuniary advantage, by corrupt or illegal means or by abusing his official position or while holding office - as a public servant. section 13(1)(d) of the PC Act covers if a public servant *dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do*. There can be no crime without a guilty mind from reading of the above.

40. For more clarity it is needful to reproduce Section 13 of the PC Act, with title "*Criminal misconduct by a public servant*" reads that:

> (1) A public servant is said to commit the offence of criminal misconduct,—
>
> (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person *any gratification other than legal remuneration as a motive or reward* such as is mentioned in section 7; or
>
> (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, *any*

valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he *dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do*; or

(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 or for any other 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

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

In the case of *State v. A. Parthiban*[51]**,** the Supreme Court held as under: Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the

[51] (2006) 11 SCC 473

public servant, then it would also fall under Section 13(1)(*d*) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Sections 7&13(1)(*d*) of the Act. This judgment has no relevance here.

41. Importantly, in **S.P. Bhatnagar Vs State**[52]**,** it was held that **it is for the prosecution to prove affirmatively that the accused acted dishonestly by corrupt or illegal means or by abusing his position and obtained any pecuniary advantage for some other person and deliberately caused loss to the department** as held in **S.K.Kale vs State**[53] **and M.N.Nambiar Vs State**[54]**.**

42. In **Sheetla Sahai supra from middle of para 53 to paras 61, on the scope of section 13(2) r/w 13(1)(c) & (d) and 15 of the PC Act r/w. 120-B IPC to make out prima-facie, it was observed** referring to **Bharat Petroleum Corp. Ltd. vs. T.K. Raju**[55] that: **In Inspector Prem Chand v. Govt. of N.C.T. of Delhi & Ors.**[56], this Court observed: "**In State of Punjab and Ors. Vs. Ram Singh Ex. Constable**[57], it was stated:

> "**Misconduct has been defined** in Black's Law Dictionary, Sixth Edition at page 999, thus: 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, **unlawful behaviour, willful in character**, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, **but not negligence or carelessness**.'
>
> Misconduct in office has been defined as: "**Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character**. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

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[52] AIR 1979 SC 826
[53] AIR 1977 SC 822
[54] AIR 1963 SC 1116
[55] [2006 (3) SCC 143]
[56] [2007 AIR SCW 2532]
[57] [1992 (4) SCC 54]

In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:

"**The term `misconduct' implies, a wrongful intention, and not a mere error of judgment**.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word `misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."-[See also Bharat Petroleum Corp. Ltd. vs. T.K. Raju, [2006 (3) SCC 143]."

54. **Even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a sine qua non. The materials brought on record do not suggest in any manner whatsoever that the respondent Nos. 1 to 7 either had abused their position or had obtained pecuniary advantage for the respondent Nos. 8, 9 and 10, which was without any public interest.**

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

56. It is also interesting to notice that the prosecution had proceeded against the officials in a pick and choose manner. ----

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

"23. In a case of this nature, the learned Special Judge also should have considered the question having regard to the "**doctrine of parity**" in mind. An accused similarly situated has

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

43. From the above, no offence of criminal conspiracy or criminal misconduct made out against the Petitioner-A11 under sections 13(2) r/w 13(1)(c)&(d) and 15 of the PC Act r/w. 120-B IPC.

44. Leave it as it is, even coming to the requirement of Sanction and validity of sanction and scope of interference by High Court to decide otherwise sustainable or not of the proceedings against the Petitioner-A11:

44(a). In *State of Bihar Vs. Rajmangal Ram*[58] the Apex Court held that the object behind the requirement of grant of sanction to prosecute a public servant need not detain the court save and except to reiterate that **the provisions in this regard either under the Code of Criminal Procedure or the Prevention of Corruption Act, 1988 are designed as a check on frivolous, mischievous and unscrupulous attempts to prosecute a honest public servant for acts arising out of due discharge of duty and also to enable him to efficiently perform the wide range of duties cast on him by virtue of his office**. The **test, therefore, always is—whether the act complained of has a reasonable**

[58] (2014) 11 SCC 388

connection with the discharge of official duties by the government or the public servant. If such connection exists and the discharge or exercise of the governmental function is, prima facie, founded on the bonafide judgment of the public servant, the requirement of sanction will be insisted upon so as to act as a filter to keep at bay any motivated, ill-founded and frivolous prosecution against the public servant.

44(b). In **State of H.P. Vs. M.P. Gupta**[59] the Apex Court held that **bar under law regarding Court's power to take cognizance as absolute and complete. Hence, court cannot take cognizance of complaint against a public servant unless sanction is obtained from the appropriate authority, if the offence alleged to have been committed was in discharge of official duty. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred**.

44(c). In **Sheetla Sahai supra on the requirement of sanction, distinction between Section 197 CrPC and Section 19 PC Act and the difference between criminal conspiracy covered by Section 120B and Section 107 IPC, it held from para 60 onwards that:**

> 60. This leaves us with the question as to whether an order of sanction was required to be obtained. **There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in**

[59] (2004) 2 SCC 349

terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants.

61. Strong reliance has been placed by Mr. Tulsi on a judgment of this Court in Centre for Public Interest Litigation and Another v. Union of India and Another [(2005) 8 SCC 202]. In that case, it was held:

"9. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution.

This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such

act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

10. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

62. Were they required to act in the matter as a part of official duty?

Indisputably, they were required to do so. Be he an Executive Engineer, Superintending Engineer, Chief Engineer, Engineer-in-Chief, Secretary or Deputy Secretary, matters were placed before them by their subordinate officers. They were required to take action thereupon. They were required to apply their own mind. A decision on their part was required to be taken so as to enable them to oversee supervision and completion of a government project. The Minister having regard to the provisions of the Rules of Executive Business was required to take a decision for and on behalf of the State. Some of the respondents, as noticed hereinbefore, were required to render their individual opinion required by their superiors. They were members of the Committee constituted by the authorities, viz., the Minister or the Secretary. At that stage, it was not possible for them to refuse to be a Member of the Committee and/ or not to render any opinion at all when they were asked to perform their duties. They were required to do the same and, thus, there cannot be any doubt whatsoever that each one of them was performing his official duties.

63. For the purpose of attracting the provisions of Section 197 of the Code of Criminal Procedure, **it is not necessary that they must act in their official capacity but even where a public servant purports to act in their official capacity, the same would attract the provisions** of Section 197 of the Code of Criminal Procedure. **It was so held by this Court in Sankaran Moitra v. Sadhna Das and Another [(2006) 4 SCC 584]**.

The question came up for consideration before this Court in Matajog Dobey v. H.C. Bhari[AIR 1956 SC 44 : 1955 (2) SCR 925] wherein it was held:

"17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance.

The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

In Hori Barn Singh v. Crown Sulaiman, J. observes:

"**The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction**." The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at p. 187: "**There must be something in the nature of the act complained of that attaches it to the official character of the person doing it**." In **affirming this view, the Judicial Committee of the Privy Council observe in Gill case: "A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty ... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office**." **Hori Ram case is referred to with approval in the later case of Lieutenant Hector Thomas Huntley v. King-Emperor**, but the test laid down that it must be established that the act complained of was an official act appears to us unduly to narrow down the scope of the protection afforded by Section 197 of the Criminal Procedure Code as defined and

understood in the earlier case. **The decision in Meads v. King does not carry us any further; it adopts the reasoning in Gill's case**."

The said principle has been reiterated by this Court in B. Saha v. M.S. Kochar [(1979) 4 SCC 177] in the following terms:

"17. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision. **As pointed out by Ramaswami, J., in Baijnath v. State of M.P., "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted**".

18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him."

[See also **R.Balakrishna Pillai v. State of Kerala and Another [(1996) 1 SCC 478] In Rakesh Kumar Mishra v. State of Bihar and Others [(2006) 1 SCC 557], this Court held**:

"12. **It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty; that is under the colour of office. Official duty, therefore, implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned**.

For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that an act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in the discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in the discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted..."

64. Reliance has been placed by Mr. Tulsi on **Parkash Singh Badal v. State of Punjab and Others** [(2007) 1 SCC 1] wherein this Court held:

"38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

In that case, the appellant therein was charged for commission of an offence of cheating under Sections 420, 467, 468, 471 and 120B IPC.

In the factual matrix involved therein, it was held:

"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the court". In sub-section (4), the stress is on raising the plea at the appropriate time. **Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction**. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of Narasimha Rao case. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

65. **In State of Karnataka v. Ameerjan [(2007) 11 SCC 273], it was held that an order of sanction is required to be passed on due application of mind**.

66. Thus, in this case, sanction for prosecution of the Respondents 1-7 public servants was required to obtain.

67. For the reasons aforementioned, there is no merit in this appeal by Prosecution agency which is dismissed accordingly."

44(d). On plain reading of *Section 197 CrPC & 19 PC Act*, no public servant can be prosecuted except with the sanction of the Government, if the alleged offence is said to have been committed by him/her during the course of discharge of his official functions. To substantiate the same, the petitioner relies on the decision of the Apex Court in **Anil Kumar and others Vs. M.K. Ayyappa and another[60],** where it was held that the public servant should be protected and his/her acts done in good faith in implementation of the decisions of the Cabinet and thus cannot be taken cognizance of any offence by any Court without sanction obtained from the concerned Department. It is also held by the Apex Court that if law requires sanction and if the Court proceeds against a public servant without sanction, the said public servant has a right to raise the issue of jurisdiction as the entire action may be rendered *void abinitio* but there is no sanction accorded by the concerned Government and in the absence of sanction, therefrom the cognizance order is illegal.

44(e). The similar view is found in various decisions including **Dilwar Singh Vs. Parvinder Singh @ Iqbal Singh[61], CBI Vs. Raj Kumar Jain[62] so also in the State of Madhya Pradesh Vs. M.V.Narasimhan[63], Prakash Singh Badal and another Vs. The State of Punjab and others[64]**. The purport of said judgments is that the requirement of sanction is a pre-condition even at pre-cognizance state for the Magistrate to take cognizance of the alleged offences against a public

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[60] 2014 CrLJ 1
[61] 2005 (12) SCC 709
[62] (1998) 6 SCC 551
[63] 1998(6) SCC page 551
[64] (2007) 1 SCC 1

servant and said permission sought for under Section 197 CrPC & 19 PC Act was not given by the State, the charge sheet is liable to be quashed on said requirement of law.

44(f). In this regard for more clarity to substantiate the conclusion it is needful to reproduce Section 197 CrPC and Section 19 PC Act with relevant case law.

44(g). Section 197 CrPC with title 'Prosecution of Judges and public servants' reads as follows:-

> "(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: 1 Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.
>
> (2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.
>
> (3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the

maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

(3A) 1 Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

44(h). Section 19 of the PC Act with title "Previous sanction necessary for prosecution" reads as follows:

"(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) **no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice**;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

44(i). From the above, the difference between the two provisions is that sanction under Section 197 CrPC is mandatory even to take cognizance after retirement of the public servant for the acts done in discharge of official duties for the IPC offences. Whereas under Section 19 of the PC Act, the emphasis is on the words "*who is employed*" in connection with the affairs of the Union or the State Government. If he is not employed, then Section 19 nowhere provides for obtaining such sanction. Further, under sub-section (2), the question of obtaining sanction and the competent authority to accord sanction is relatable to the time of holding the office when the offence was alleged to have been committed.

44(j). The Apex Court in **C.K. Jaffer Sharief v. State**[65], held that, **sanction under section 197 CrPC is actually not required when the offences committed are under the PC Act.....However, if the act complained of covered by the IPC offences is directly connected with his official duty, so that it could be claimed to have been done by virtue of his office, then the sanction would necessarily be required**.

44(k). As also held in **Subramanium Swamy v. Manmohan Singh and another**[66] in case where the person is not holding said office as he might have retired, superannuated, be discharged or dismissed then the question of removing would not arise.

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[65] (2013) 1 SCC 205
[66] (2012) 3 SCC 64

44(l). The same view was expressed in **Parkash Singh Badal** supra by negating the argument of even though some of the accused persons had ceased to be Ministers, they continued to be the Members of the Legislative Assembly and one of them was a Member of Parliament and as such cognizance could not be taken against them without prior sanction. **It was also held that the embargo contained in Section 19(1) of the PC Act operates only against the taking of cognizance by the Court in respect of the offences punishable under Sections 7, 10, 11, 13 and 15 of the PC Act committed by a public servant**.

44(m). In **Subramanium Swamy** supra**,** it was held therefrom that there is no bar to the filing of a private complaint for prosecution of the concerned public servant and for that grant of sanction by the Competent Authority.

44(n). In **Kalicharan Mahapatra vs. State of Orissa**[67], the **Court compared Section 19 of P.C. Act with Section 197 of the Code**. After considering several decisions on the point and also considering Section 6 of the old P.C. Act, 1947 which is almost identical with Section 19 of the P.C. Act, 1988 and also noting Law Commission's Report, at paragraph 13 of **Kalicharan** (supra) came to the following conclusions:

> "13. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

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[67] (1998) 6 SCC 411

44(o). The above passage in **Kalicharan** (supra) has been quoted with approval in **Lalu Prasad vs. State of Bihar**[68] at paragraph 9, page 54. In paragraph 10, (page 54) it was held in **Lalu Prasad** (supra) that "**Section 197 of the Code and Section 19 of the Act operate in conceptually different fields**".

44(p). In **Rakesh Kumar Mishra** supra it was held in this regard and on the scope of Section 197 CrPC that the policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties, without sanction. Further, the words "when any person who is or was a public servant" employed in 197 CrPC were based on the observation at paragraph 15.123 of the 41st Report of the Law Commission of "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant".

44(q). Above position was also highlighted in **R.Balakrishna Pillai** supra of 1996 and reiterated in the later expressions in **State of M.P. vs. M.P. Gupta**[69], **State of Orissa through Kumar Raghvendra Singh and**

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[68] 2007 (1) SCC 49
[69] [2004] 2 SCC 349

Ors. vs. Ganesh Chandra Jew[70] **and Shri S.K. Lutshi and Anr. vs. Shri Primal Debnath**[71].

44(r). On the scope of sanction whether required or not to decide for prosecution on the acts alleged as offence committed by a public servant and the stage when to raise and the way how to understand the expressions with reference to facts, the Apex Court in **N.K.Ganguly Vs. CBI,New Delhi**[72], while saying a decision is an authority for what it actually decides and reference to a particular sentence in the context of the factual scenario cannot be read out of context, held referring to the earlier expressions right from that of Federal Court in **Hori Ram Singh**[73], of Privy Council in **H.H.B. Gill**[74], of Calcutta High Court in **Abani Kumar Benarji**[75], of the Apex Court in **R.R.Chari-I**[76], also of the Apex Court in **Sreekantaiah**[77], also of the Apex Court in **Amrit Singh**[78], also of the Apex Court in **Matajog Dobey**[79], also of the Apex Court in **K.Satwanth Singh**[80], also of the Apex Court in **R.R.Chari-II**[81], also of the Apex Court in **Bajnath**[82], also of the Apex Court in **B.Saha**[83], also of the Apex Court in **R.S.Nayak**[84], also of the Apex Court in **R.Balakrishna pillai**[85], also of the Apex Court in **Abdul Wahab Ansari**[86], also of the Apex Court in **Rakesh Kumar Mishra**[87], also of the Apex Court in **Sankaran Moitra**[88],

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[70] [2004] 8 SCC 40
[71] [2004] 8 SCC 31
[72] 2016(2)SCC 143
[73] AIR 1939 43
[74] AIR 1948 128
[75] AIR 1950 437
[76] AIR 1951 207
[77] AIR 1955 287
[78] AIR 1955 309
[79] AIR 1956 44
[80] AIR 1960 266
[81] AIR 1962 1573
[82] AIR 1966 220
[83] 1979 (4) SCC 177
[84] 1984 (2) SCC 183
[85] 1996 (1) SCC 478
[86] 2000 (8) SCC 500
[87] 2006 (1) SCC 557
[88] 2006 (4) SCC 584

also of the Apex Court in **Prakash Singh Badal**[89] and also of the Apex Court in **Sheetla Sahai**[90] and by quoted with approval **Hori Ram Singh** supra among other including the three judge bench of this Court in the case of **Amrik Singh** supra and of the Constitution Bench in **B.Saha** supra that **the issue of requirement of prior sanction under Section 197 of CrPC can be raised at any stage of the proceedings**.

44(s). It was also held referring to the above among other including **H.H.B.Gill** supra, three judge bench in **Baijnath** supra and another Constitution bench in **Matajog Dobey** supra, that Prior sanction for taking cognizance is required in the three situations of, a) the act complained of attached to the official character of the person doing it; b) cases in which the official character of the person gave him an opportunity for the commission of the crime; and c)the offence was committed while the accused was actually engaged in the performance of official duties. It can be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. No doubt, there must be a reasonable connection between the act and the discharge of official duty to have the protection. If the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

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[89] 2007 (1) SCC 1
[90] 2009 (8) SCC 617

44(t). The three judge Bench expression of Apex Court in **P.K.Pradhan Vs. State of Sikkam Rep. by the CBI**[91] held at paras-5 to 16 by referring to several of the earlier expressions right from **Hori Ramsingh, HHB Gill, Amrik Singh, Sreekantiah Ramayya Munipalli, Matajog Dobey, Omprakash Gupta, B.Saha, Baijnath Gupta, Abdul Vahab Ansari, K.Satwant Singh**, at para- 5 held that the legislative mandate engrafted in sub section(1) of Section 197 CrPC debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself.

44(u). It is a prohibition imposed by the Statute from taking cognizance. It is well settled that the question of sanction u/sec. 197 of CrPC can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, any appeal.

44(v). In **Rajib Ranjan Vs. R.Vijakumar** (supra) at paras 14 to 18, it is observed that sanction is necessary if the offence alleged against the public servant is committed by him after acting or purporting to act in the discharge of his official duties as held in **Buddi Kota Subbar Rao Vs. K.Prakasham** (supra) para-6 of the act or omission on facts found a

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[91] AIR 2001 SC 2547

reasonable connection to the discharge of his duty by the accused, sanction is required.

44(w). As held in **Anil Kumar vs M.K. Aiyappa** supra, referring to **Subramanium Swamy** supra that referred the expression of the three-Judge Bench in **State of Uttar Pradesh v. Paras Nath Singh**[92], that:

> "6.....So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

44(x). In the case of General Officer, Commanding v. CBI[93], the Apex Court held that-If the law requires sanction and the court proceeds against a public servant without sanction; the public servant

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[92] (2009) 6 SCC 372
[93] [2012] 5 SCR 599

has a right to raise the issue of jurisdiction as the entire action may be rendered void abinitio.

44(y). Thus from the competent authorities concerned either separate sanctions or common sanction for PC Act offences and IPC/other penal law offences and by specifically referring to it are to be applied and sanction therefrom is required.

45. Coming to facts in the instant case, since the allegations made against the Petitioner-A11 in the final report filed by the respondent-CBI that the alleged offences were committed by him in discharge of his official duties by alleged abuse of his position and office as VC&MD of APIIC, previous sanction from the Government under Section 197 of CrPC for the offence under Section 120-B IPC and under Section 19 of PC Act for the offence under Section 13(1)(d) r/w.13(2) & 15 PC Act was required to be taken by the respondent-CBI, before taking cognizance and passing an order by the learned Special Judge in issuing summons to him for his appearance. Rightly the Special Judge in March, 2012 held sanction is required to take cognizance for the IPC and PC Act offences. Once such is the case, the CBI has no right to ask to take cognizance for even IPC offence. Said order of June,2012 by the Special Judge by review of earlier decision of his predecessor is barred by law and the cognizance taken for IPC offence is unsustainable. Further once applied to sanction and refused by State Govt., under Section 197 of CrPC for the offence under Section 120-B IPC and under Section 19 of PC Act for the offence under Section 13(1)(d) r/w.13(2) & 15 PC Act, that too when the officer has been admittedly working in the State Govt., and same also after consultation and instructions of Central Govt., the CBI has no right to apply to Central Govt., and sanction by Central Govt., ignoring earlier sanction refusal order of State Govt., is bad in law, which goes to

the root of the matter and not a mere defect in the process of according sanction. In this regard coming to the legal position:

45(a). In State of Punjab Vs. Labh Singh it was held that, though by the time cognizance of the offence under PC Act was taken, the public servant was retired and thereby no sanction under Section 19 of the PC Act is required; however, cognizance taken for the IPC offences is bad without sanction. Unlike section 19 of the PC Act, the protection under Section 197 of CrPC is available to the concerned public servant even after retirement. **Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected, the Court could not have taken cognizance insofar as the offences punishable under the Indian Penal Code are concerned, even no bar from retirement for the PC Act offences**.

45(b). As laid down by this Court in State of Himachal Pradesh v. Nishant Sareen, the recourse in such cases for the prosecuting agency is either to challenge the rejection order of the Sanctioning Authority or to approach it again if there is any fresh material for reconsideration and not otherwise.

45(c). In a very recent Division Bench expression of the **Bombay High Court dated 22.12.2017 in Ashok Chavan Vs. State of Maharashtra** on a petition filed by former CM Ashok Chavan challenging the sanction order, held by its allowing that Successor Governor had no jurisdiction to review the earlier order by his predecessor, who had refused sanction sought by the Central Bureau of Investigation.

45(d). In fact in **Bhajan Lal** supra one of the guidelines for quashing of the proceedings speaks (No. 6 of the 7 guidelines) from any

legal bar engrafted by any provision of the Code or other Act concerned to the institution or cognizance or continuation of the proceedings.

45(e). It was on considering the same the State Govt. refused sanction to prosecute the petitioner-A11 for all the offences covered by the final report, though loosely for Section 19 PC Act also only referred Section 197 CrPC. Once such is the case whether central Govt. again can accord sanction and what is its sanctity concerned;

45(f). In the case of **Louis Peter Surin v. State of Jharkhand**[94] the facts were that the investigating agencies moved the State of Bihar for sanction to prosecute the appellant but the same was declined by the Governor on the premise that no prima facie case was made out against any of the accused. A review of the order of the Governor was again sought which too was rejected for the same reason and thereafter the appellant superannuated from service and the cognizance had been taken by the Special Judge four years thereafter. It was observed that the initiation of proceedings against the appellant even after superannuation was not justified where the sanction had been rejected by the State Government on earlier occasion/s.

45(g). In the case of **Chittaranjan Das v. State of Orissa**[95] it was found that while the appellant was in service sanction sought for his prosecution was declined by the State Government. Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was refused. **It was observed by the Hon"ble Apex Court that in a case in which sanction sought is refused by the competent authority, while**

[94](2010) 12 SCC 497
[95] (2011) 7 SCC 176

the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of public servant.

45(h). On similar point, the Apex Court judgment in the case of **Mahesh Kumar Thapar v. State of Jharkhand**[96] has been relied upon.

45(i). In **T.Gopala Rao Vs. State of A.P.**[97] it was held by this Court that s**ince A-2 and A-3, the then Collector and Joint Collector, serving All India Service Officers in Indian Administrative Service, have been employed in connection with the affairs of the State of Andhra Pradesh, sanction of the State Government is thus required for their prosecution not only under** section 197(1)(b) Cr.P.C, **but also under** section 19(1)(b) of the P.C.Act**.** Having applied to obtain sanction for prosecution from the Government, it is not open to the prosecution to contend that no such sanction is necessary for prosecuting A-2 and A-3. Secondly, having applied for sanction for prosecution of A-2 and A-3 and failed in their attempt to obtain such sanction, it is not open to the CBI to contend that no sanction either under **section 197 CrPC** or under **section 19 PC Act** is required for prosecution of A-2 and A-3. **The CBI cannot be permitted to take inconsistent stands at different stages. The prosecution cannot blow hot and cold in the same breath. Therefore, this Court is of the opinion that prosecution of A-2 and A-3 is impermissible.**

45(j). This Court even earlier to the above in **Municipal Corporation of Visakhapatnam v. State of Andhra Pradesh**[98] held that sanction for prosecution under **section 197 Cr.P.C** has to be previous in

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[96] (Crl.L.A. 1599/2009 decided by Supreme Court on 23.05.2014)
[97] 2011 (1) ALD (Crl.) 324 (AP)
[98] 2010(1)ALD(Crl.)419 **(AP)**

point of time and should be previous to the taking cognizance of the offences by the court. The lower court totally failed to address this point not only at the time of taking cognizance of the charge sheet for the above offences, but also in the impugned dismissal orders while disposing of petitions filed by A-2 and A-3 for their discharge.

45(k). The Apex court way back in this regard in **R.R. Chari Vs. State of U.P.**[99] referring to Section 197 CrPC for the IPC offences and Section 6 of old PC Act for the offences under Sections 161 to 165 IPC observed that **what is relevant for the purpose of deciding as to who should give the sanction under Section 197** and Section 6 of PC Act 2 of **1947, is to ask the question: Where is the public servant employed at the relevant time? If he is employed in the affairs of the State, the State Government and if he is employed in the affairs of the Federation, it must be the Governor General, in spite of the fact that such employment may be temporary and may be the result of the fact that the services of the public servant have been loaned by the State Government to the Government of India. Therefore, having regard to the fact that at the relevant time the appellant was employed in connection with the affairs of the federation, it was the Governor General alone, who was competent to accord sanction.**

45(l). Thus, so far as the petitioner/A.11 concerned at the time of the act and even date he is employed in the affairs of the State of Andhra Pradesh, even hailed from the All India Administrative Service, thereby it is the State Government of Andhra Pradesh and not the Central Government of India that can accord sanction to prosecute him.

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[99] AIR 1962 SC 1573

45(m). It is the well settled proposition of law that Court cannot ignore while taking cognizance any non-compliance with any of the mandatory requirements.

45(n). In fact, in dealing with the offence under Section 7 of the P.C.Act, the Apex Court in **State of Karnataka through CBI Vs. C.Nagarajaswamy**[100], held that "Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence alleged against a public servant in discharge of or in connection with his duties. Once it is mandatory for taking cognizance sanction as required under law by a statutory provision, ordinarily, the question has to be dealt with at the stage of taking cognizance. Even cognizance was taken in ignorance of it or erroneously, once the same comes to the Court's notice at any later stage, a finding to that effect has to be given by the Court and the accused is also entitled to take such plea at any point of time including, even in hearing the appeal before the appellate Court once sanction from competent authority is required under law. When all the mandatory requirements of the statutory formalities not complied with, the cognizance cannot be taken by the Court practically and as such **for the non-compliance the entire proceedings vitiate to revert the clock back to pre cognizance stage, if at all to proceed therefrom further. Even a sanction is granted by a person not authorized in law, the same being without jurisdiction and would be a nullity**.

45(o). Same is the conclusion from **State of Goa Vs. Babu Thomas**[101] holding that when sanction is required from the act connected with the duty of the public servant, taking cognizance by a

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[100] 2005(8)SCC 37
[101] 2015 (3) ALT (Crl.) 143 SC

Court without sanction is incompetent and the error was so fundamental that invalidates the proceedings right from the stage of cognizance.

45(p). Same is quoted with approval in **State, Inspector of Police, Visakhapatnam V/s. Surva Sankaram Karri**[102].

45(q). Thus, whatever the bar under Section 19(3) of PC Act no way comes in the way to impugn the sanction, if not validly granted by a competent authority.

45(r). The Apex Court in *P. K. Pradhan v. State of Sikkim*[103] **held that the question of lack of sanction can be raised at any time including during trial and after judgment**.

45(s). The Apex Court for that matter way back in *Amrik Singh Vs State of Pepsu*[104] **held that the question of lack of sanction can be raised at any time including during trial and after judgment** in appeal.

45(t). Leave about the sanction order of Central Govt. is unsustainable in its granting by ignoring the earlier sanction refusal order of the State Govt., which goes to the root of the matter to raise objection to the prosecution to continue for no valid sanction and not mere irregularity, even the State Govt., and not the Central Govt., that is competent to sanction, at best in consultation of the Central Govt., by the State Govt., as was done in this case in refusal by State Govt., for that coming to the legal position:

The petitioner is undisputedly a member of Indian Administrative Service which is governed by the provisions of All India Service Act, 1951 and the Rules framed there under-known as All India Services(Discipline and Appeal) Rules, 1969.

Section 2 expressed that "an All India Service" means the service known as the Indian Administrative Service.

Rule 2(b) speaks that "Government" means-

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[102] (2006) 7 SCC 172
[103] (AIR 2001 SC 2547)
[104] (AIR 1955 SC 309)

(i) **in the case of a member of the service serving in connection with the affairs of a State, or who is deputed for service in any company, association or body of individual whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of a State**, **the Government of that State**;

(ii) **in any other case, the Central Government**.

Rule 2(b) speaks that "Disciplinary authority" means the authority competent under these rules to impose on a member of the service any of the penalties specified in Rule 6.

Rule 2(e) defines "State Government concerned".

Rule 6 deals with the "penalties".

All India service members can be put under suspension as per Rule 3 by the government of State where such member is serving. The State Government is empowered to suspend and initiate an enquiry as per the provisions of law and file complaint and lodge FIR also against such person.

The accused 1 to 3 who were public servants committed criminal misconduct punishable under Sections 13(2) read with 13(1)(f) of the P.C. Act, 1988 and Section 120B of Indian Penal Code. In the final report it is admitted that the Government of India refused to grant sanction to prosecute the petitioner for the offence punishable under the provisions of Prevention of Corruption Act. The petitioner was charge sheeted for the offence punishable under Section 120B IPC alone.

Further, Section 197(1) provides that "when any person who is or was a Judge or Magistrate or Public Servant not removable from his office save by or with the sanction of the Government is accused of an offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty no court shall take cognizance of such offence except with previous sanction of the Competent Authority. If the accused is employed in connection with affairs of the Union, the Central Government is the Competent Authority. If he is employed in connection with the affairs of the State Government, the State Government is the Competent Authority. In view of the definition of the word offence under Section 2(n) of the Code of Criminal Procedure, it would appear that Section 197 CrPC not only applies to offence punishable under the provisions of the Indian Penal Code, but to any offence punishable under any law for the time being. Section 197 CrPC is a general provision. The object of this section is to guard Public Servants against vexatious proceedings. It has been considered proper that the well considered opinion of superior authority is obtained before launching a criminal prosecution against the public servant. The purpose of the section is to enable a public servant to perform their duties fearlessly by protecting them from vexatious, malafide or false prosecution for acts done in the performance of their duties.

45(u). In Ramesh Lal Jain v. Nagunder Singh Rana[105], it was held that- sanction required under Section 197 Cr.P.C. and sanction required under section 19 of the 1988 PC Act stand on different footings. Whereas sanction under the Indian Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State

[105] 2005 AIR SCW 5875

and under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof.

45(v). In Dilawar Singh v. Parvinder Singh[106] it was held as follows:

...The Prevention of Corruption Act is a special statute and as the preamble shows this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim generalia specialibus non derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. Therefore, the provisions of Section 19 PC Act will have an overriding effect over the general provisions contained in Sections 190 or 319 CrPC. It was also held that the Special Judge cannot proceed against a person for an offence under the PC Act if no sanction has been granted by the appropriate authority for prosecution of such person as the existence of sanction is sine qua non for taking cognizance of the offence qua that person.

45(w). So, the sanction required under Section 197 CrPC and the sanction required under Section 19 PC Act, 1988 are different and distinct. In some cases, the Competent Authority may be one and the same. As to who is the Competent Authority to grant sanction under Section 19 of the PC Act, so far as an I.A.S. Officer is concerned as to it the State Government or the Central Government; Section 19 of the 1988 Act itself provides the answer to the above stated questions.

45(x). The Supreme Court in Mohandas v. State of Kerala[107] **held that**:

"Under Section 19 of the Act no Court can take cognizance of an offence punishable under Sections 7,10,11,13 & 15 alleged to have been committed by a public servant, except with the previous sanction of the Authority competent to remove the person concerned. In the case in hand, the Secretary (Vigilance) appears to have accorded sanction to prosecute. The appellant's case is that the Secretary (Vigilance) was

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[106] 2005 AIR SCW 6021
[107] (2002 (2) KLT 251 (SC)

authorized to grant sanction only on 23rd April, 1994 and there is no order of the State Government making the Secretary (Vigilance) competent to accord sanction prior to the said date. The learned Counsel appearing for the State is not in a position to refute the aforesaid contention and, in fact, is not able to produce any document which confers power on the Secretary (Vigilance) to accord sanction prior to 23rd April, 1994. The sanction in the present case being prior to the aforesaid date, the date on which the sanction appears to have been given, the concerned Authority had no jurisdiction and, therefore, there is an embargo on the court's power to take cognizance for non-compliance of Section 19 of the Act. We accordingly quash the proceeding."

Review Petition filed before the Apex Court against the above order was also dismissed as can be seen from the decision reported in State of Kerala v. Mohan Das[108] .

45(y). In **P.L. Tatwal Vs. State of Madhya Pradesh**[109] the Apex Court held that the grant of sanction is a serious exercise of power by competent authority which has to take a conscious decision on basis of relevant materials. Elaborate discussion in sanction order however is not necessary, but either decision making on relevant materials should be reflected in the order or it should be capable of proof before the Court.

45(z). In **Chittaranjan Das Vs. State of Orissa**[110] the Apex Court held that when sanction sought was rejected by competent authority while public servant was in service, he cannot be prosecuted later after his retirement despite the fact that no sanction for prosecution is required under relevant law after retirement. Any other view will render the protection under Section 6 illusory. It is a weapon in hands of sanctioning authority to protect innocent public servants from uncalled-for prosecution but not intended to shield the guilty. It is further held that when competent authority denied sanction while public servant was in service, subsequently, public servant cannot be prosecuted after

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[108] (2004 (1) KLT 402 (SC))
[109] (2014) 11 SCC 431
[110] (2011) 7 SCC 167

retirement despite fact that no sanction is necessary under PC Act. Moreover, rejection was not challenged by Vigilance Department. Further, State Government while rejected sanction for prosecution observed that no prima facie case was made out. Hence, prosecution of appellant quashed as it was abuse of process of law.

46. **From the above, the sanction accorded by the Central Govt. is otherwise unsustainable and the cognizance for the offences against the petitioner-A11 are liable to be quashed not only for want of valid sanction, but also for no merits in the accusations against the petitioner to implicate him as A11 in the criminal case from the final report of CBI and cognizance order of the Special Judge to ask him to face pre-charge enquiry and trial.**

47. **In this regard, coming to the contention of the learned Special Public Prosecutor for CBI of any validity or otherwise of the sanction is a matter to consider during trial and premature to go into at this stage, so also for the offences cognizance already taken by the Special Judge and but for leaving to the trial court if at all to frame charges or to discharge, now this court cannot quash the proceedings at this stage for the inherent powers are to be exercised very sparingly and not as a matter of course concerned to consider said powers and limitations in exercise of the inherent powers under section 482 CrPC**:

48. The answer to said contention is available from the expression in **Ashok Chaturvedi and Others Vs. Shitul H.Chanchani and Another,**[111] where the Apex Court held that merely because the accused has a right to plead before the trail court at the time of framing of charges that there is no material for framing of charges he is not

[111] (1987) 7 SCC 698

debarred from invoking the inherent jurisdiction of the Court at the earliest point of time when the Magistrate has taken cognizance.

49. **The Inherent powers of the High Court under Section 482 CrPC are undisputedly available to evaluate the material and documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceeding against the accused or not. Undisputedly the inherent power in the very constitution of the High Court exists in it under Section 482 CrPC to do the right and undo a wrong in the course of administration of justice on the principle-** *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest-(***when the law gives a person anything it gives him that without which it cannot exist)**.

49(a). Apart from it, from the decision placed reliance by both sides of the Apex Court in *Amit Kapoor V. Ramesh Chander*[112] at para No.27 it was observed that in exercising the powers under Section 482 CrPC the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not is to decide and for that the Court should apply the test and if shows the basic ingredients of the offence not satisfied the Court may interfere. It is also observed that the process of the Court cannot be permitted to be used as an oblique or ultimate/ulterior purpose. **The Court where finds it would amount to abuse of process or interest of Justice favors otherwise it may quash the proceedings. The power is to be exercised** *ex debito justitiae* **that is to do real and substantial justice (as held in** *Munniswamy supra***) for administration of which alone the Courts exercise**.

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[112] (2012)9 SCC 460

49(b). The Apex Court in **Amit Kapoor (supra)** referring to **State of Bihar Vs. Ramesh Singh**[113], held that the presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. --."

49(c). In **Varala Bharath Kumar Vs. State of Telangana**[114], it is held at Para 7 that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.------ Of course, no hard and fast rule can be laid in regard to cases in which Court will exercise its extraordinary jurisdiction of quashing proceedings at any stage.

49(d). In **Dinesh Dutt Joshi Vs. State of Rajasthan and Another**[115], the Apex Court held that Section 482 does not confer any power but only declares that the High Court possesses inherent powers for the purposes specified in the Section. The powers of the High Court under this Section 482 CrPC are very wide powers to do justice and to ensure that the process of the Court is not permitted to be abused.

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[113] (1977) 4 SCC 39
[114] 2017 SAR (Cri) 975 = 2017 (9) SCC 413
[115] (2001) 8 SCC 570

49(e). In **Janata Dal Vs. H.S. Chowdhary & Others**[116], the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercise in appropriate cases *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extra ordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.

49(f). The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the Section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice

[116] (1992) 4 SCC 305

and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favors, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist.

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

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

49(i). Apart from several expressions on the above scope referred supra, the other expression of the Apex Court in the case of

B.S.Joshi vs. State of Haryana[117] **speaks that it would not be expedient to allow a lame prosecution to continue and the ends of justice are higher than the ends of mere law.**

49(j). It was also way back laid down by the Apex Court in *Narshi Thakershi Vs. Pradyuman Singhji Arjun Singhji*[118] that '**it cannot be denied that justice is a virtue which transcends all barriers and the rules of procedure or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice**'.

49(k). In *Jawarlal Darda V. Manoharrao Ganpatrao Kapsikar*[119] in a defamation case against accurate news item published of the statement of Minister disclosing misappropriation of Government funds and the Complainant is mentioned as one of the persons involved therein, it was held by the Apex Court that: If the accused bona fide believing the version of the Minister to be true in published the report in good faith it cannot be said that they intended to harm the reputation of the complainant.

49(l). In *Padal Venkata Rama Reddy @ Ramu V. Kovvuri Satyanarayana Reddy*[120] referring to several expressions including *Indian Oil Corporation, Zandu Pharma, Ganesh Narayan, Bhajanlal, Madhavarao Jivajirao, L.Muniswamy, R.P.Kapoor etc.*, it was observed that exercise of inherent powers to quash the proceedings is called for in a case of which complaint does not disclose any offence or is frivolous, vexatious or oppressive and the like for exhaustive list of grounds cannot be laid down but for to decide each case on own facts.

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[117] 2003 CBC 393(SC)
[118] (1971)3 SCC 844
[119] (1998)4 SCC 112
[120] (2011)12 SCC 437

49(m). In **Inder Mohan Goswami V. State of Uttaranchal[121](3JB)** it was observed that the inherent powers of the High Court under Section 482 CrPC are though wide that has to be exercised sparingly with great caution and to exercise *ex-debito justitiae* that is to do real and substantial justice for the administration of which the Courts exist, and for not to allow to use the prosecution is an instrument of harassment or private vendetta or with a motive to pressurize the accused to terms and the powers too could not be exercised to stifle a legitimate prosecution and Court should refrain from giving prima facie decision in a case where entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issue involved are of such a magnitude that they cannot be seen in the true perspective without sufficient material, though no hard and fast rule can be laid down for exercise of the extraordinary jurisdiction. It is observed that Court should balance with personal liberty, the societical interest and a warrant for arrest of accused should not be issued without proper scrutiny of facts from complaint or F.I.R in application of judicial mind and where dispute is a pure civil in nature or from reading of F.I.R the ingredients of offence are absent, the proceedings can be quashed.

49(n). As held by the Apex Court in **Preeti Gupta Vs. State of Jharkhand[122]** inherent powers are meant to do substantial justice and to prevent abuse of process and in saying the proceedings in complaint taken at their face value do not constitute offence, no way be allowed to continue as allowing it tantamounts to abuse of process or otherwise not meant to secure ends of justice and for that even referring to the

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[121] (2007) 12 SCC 1
[122] AIR 2010 SC 3363

State of Karnataka Vs. L.Muniswamy[123] and also referring to the three judge expression of Apex Court in **Madhu Limaye Vs. State of Maharashtra**[124] that the impugned order would brings out a situation which is an abuse of process of the Court, or for the purpose of securing ends of justice; interference by the High Court is absolutely necessary, then nothing against maintainability of revision will limit or affect the exercise of the inherent power of High Court.

49(o). It is also referred to the expression of Apex Court in **Zandu Pharmaceutical Works Ltd Vs. Mohd. Sharaful Haque**[125] and **Inder Mohan Goswami Vs. State of Uttaranchal**[126] in saying the authority of Courts enable for the advancement of justice. **If any abuse of process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute**.

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

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[123] (1977) 2 SCC 699
[124] (1977) 4 SCC 551
[125] (2005) 1 SCC 122
[126] (2007) 12 SCC 1

49(q). It also observed in **Madhu Limaye** (supra) that the High Court alone can pass such orders *ex debito justitiae*- to do real and substantial justice in the lis. It was also observed referring to Section 151 C.P.C. and the earlier expressions of the Apex Court in **Padamsen Vs. State of Uttar Pradesh**[127] & **Manoharlal Chopra Vs. Rai Bahadur**[128] that it is well recognized that the High Court is vested with inherent power, however, said inherent power is not to be exercised contrary to any express provision that being the intention of legislature in enacting the civil & criminal procedure codes vis-à-vis the law laid down by the Apex Court.

49(r). It was also held by the Apex Court in **Popular Muthaiah Vs State rep. by Inspector of Police**[129] that the inherent power is not confined to procedural or adjectival law but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts *ex debito justitiae*-to mean to do real and substantial justice in the lis for which alone the power exists inherently.

49(s). The Apex Court in **Popular Muthaiah** (supra) referred the earlier expressions in 1) **Nawabganj Sugar Mills Vs. Union of India**[130] holding that, though there are limitations on the powers of the Court, it cannot abandon its inherent powers. **The inherent power has its roots in necessity and its breadth is coextensive with the necessity** and in 2) **South Eastern Coal Fields Ltd. Vs State of M.P.**[131] holding that **act of**

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[127] AIR 1961 SC 218
[128] AIR 1962 SC 527
[129] 2006(3) SCC-245 at paras-30&31 page-260
[130] 1976-1-SCR-803
[131] 2003(8) SCC-648 at paras-27&28 page-664

court does not confine to act of primary court, but even appellate or revisional or other superior court as it is an act of court as a whole.

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

49(u). **In South Eastern Coal Fields (supra)** it was held that **the Maxim-** *actus curiae neminem gravabit*- **is not confined to erroneous act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and law.**

49(v). In **Merla Veera Venkata Satyanarayana Chowdary Vs. State of Andhra Pradesh**[132] a Division Bench of this Court held that remedies are the life of rights, it is incumbent upon the Court to apply rule of law which could be derived from general principles in furtherance of justice.

49(w). In **Jaipur Mineral Development Syndicate Vs Commissioner of Income Tax, New Delhi**[133] it was held that every Court is constituted for the purpose of rendering justice according to law and must be deemed to possess necessary and inherent power that of elasticity in its very constitution in exercise of or, as may be necessary, to do a right or undo a wrong in the course of administration of justice.

49(x). In **Popular Muthaiah** (supra) it was also held that the inherent power is not confined to procedural or adjectival law but even extending to determine substantial rights of the parties and it can be

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[132] AIR 1980 AP 154
[133] AIR 1977 SC 1348

exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts *ex debito justitiae*- to mean to do real and substantial justice in the lis for which alone the power exists inherently.

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

49(z). In *Chandran Ratnaswami V. K.C.Palanisamy*[134] it was held on abuse of process and duty of the Court to quash the proceedings in such case that:

> "29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of Connelly vs. Director of Public Prosecutions, (1964) 2 All ER 401 (HL) observed: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process". "The power (which is inherent in a court's jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal

[134] (2013)6 SCC 740

proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

30. In Hui Chi-Ming vs. The Queen [(1992) 1 AC 34 (PC)], the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

31. In the leading case of Bennett vs. Horseferry Road Magistrates' Court, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

(i) where it would be impossible to give the accused a fair trial; or

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

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

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

34. The Apex Court three Judge Bench in **State of Karnataka Vs. L. Muniswamy and Others**[135] observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash

[135] (1977) 2 SCC 699

a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case (at p.703, para 7 of SCC):

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

35. The Apex Court in **State of Harayana and Others Vs. Bhajan Lal and Others**[136], in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers

[136] 1992 Supp.(1) SCC 335

under Section 482 CrPC gave (SCC pp. 378-79, at para 102) seven categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Apex Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised.

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

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

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

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

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

"46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is

neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

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50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

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

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

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

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

"7. ….. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been

committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer malafide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code."

In the case of State of West Bengal and Others vs. Swapan Kumar Guha and Others, AIR 1982 SC 949 while examining the power of a police officer in the field of investigation of a cognizable offence, Chandrachud, C.J. has affirmed the view expressed by Mathew, J. and observed as follows: (at p.958 of AIR) "22. …. There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. …."

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

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

later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

50(a). In *CBI v. Ravi Shankar Srivastava*[137], the Apex Court held that the High Court under Section 482 of the Code exercise its jurisdiction to quash the proceedings if it would be an abuse of the process of the court to allow any such action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, have inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle

[137] (2006) 7 SCC 188

"*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

50(b). The Apex Court in **Punjab National Bank & Others Vs. Surendra Prasad Sinha**[138] held that it is salutary to note that judicial process should not be an instrument of oppression or needless harassment. **Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice.**

50(c). In **Madhavrao Jiwajirao Scindia & Others Vs. Sambhajirao Chandrojirao Angre & Others**[139], the Apex Court (3JB) has stated that - **the legal position is well settled that where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. The High Court may while taking into**

[138] [1993] Supp. (1) SCC 499
[139] [1988] 1 SCC 692

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

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

50(e). The Apex Court in **Union of India Vs. Prafulla Kumar Samal and Another**[140] it is observed that the test to determine prima facie case could naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. **By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, the Judge will be fully within his right to discharge the accused.** Even where the material placed discloses a grave suspicion, which has not been properly explained the Court will be justified in framing a charge. **Thus, even where there is grave suspicion if explained the same by accused the court cannot frame charge, but for discharge leave about a mere suspicion cannot be a ground to frame charge, but for discharge**.

50(f). In **L. Krishna Reddy Vs. State**[141], the Apex Court held that **where evidence justifying prosecution is not available, the accused has to be discharged otherwise the prosecution would be an exercise of futility**.

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[140] AIR 1979 SC 366(1)
[141] (2014) 14 SCC 401

50(g). The Apex Court in **Common Cause Vs. Union of India**[142] while interpreting the doctrine of Public Trust, explained the aspects of 'entrustment' 'domain' of property 'Trust' 'Trustee' etc., which are the essential ingredients in the alleged offences punishable u/sections 409 & 420 of IPC and Section 13 of the PC Act.

50(h). The Apex Court in **Rishipal v. State of Uttar Pradesh**[143], **held that mere dereliction of duty does not attract any penal consequences and continuation of the criminal proceedings is a pure abuse of process of law and deserved to be quashed the proceedings**.

50(i). In **State of Bihar and Others Vs. Rajmangal Ram**[144] the Apex Court held that power in High Court under Section 482 CrPC to interdict the criminal proceedings against respondent public servant on ground of defects in sanction order is not available, unless the High Court reaches the conclusion of irregularity in sanction.

50(j). The Apex Court in **Binod Kumar Vs. State of Bihar**[145] held on the scope of Section 482 CrPC in quashing the proceedings as abuse of process for its continuation for the offences under Sections 405, 420 & 120-B IPC no way attracts, by saying parties are at liberty to workout the civil remedies and particularly at Para 18 held that looking from the allegations of the complaint no offence attracts for nothing to show the appellants-Assistant Professors of the College have any dishonest intention in retaining the money either to have wrongful gain to themselves or other persons or to cause wrongful loss to the complainant and mere bald allegations are not sufficient to rope with criminal

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142 (1999) 6 SCC 667
143 2014 (7) SCC 215
144 2014 (11) SCC 388
145 2014 (10) SCC 663

liability in the absence of showing dishonest intention and mens rea in their such act or omission.

50(k). **In Connelly v. DPP**[146], Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

50(l). **Lord Salmon in DPP v. Humphrys**[147]**,** stressed the importance of the inherent power where he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the judge has the power to intervene as the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

50(m). It is settled law that the policy decisions of the State cannot be opposed by the Secretaries to the Government working in the State and they can at best only express their demur against the decisions of the Council of Ministers. Therefore the act of the CBI which culminated in the impugned charge sheet is liable to be quashed, so also the cognizance order of the learned Special Judge.

51. Having regard to all the above, the very cognizance order against the Petitioner-A11 in its entirety since unsustainable as concluded supra for various reasons from consideration of the material on record is liable to be quashed by allowing the quash petition within the scope of the inherent powers of the High Court under Section 482 CrPC.

52. Accordingly and in the result the Criminal Petition No.2345 of 2017 is allowed and the proceedings of the calendar case in C.C.No.6 of

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[146] 1964 AC 1254
[147] 1977 AC 1

2012 is quashed so far as the petitioner-A11 and he is acquitted and his bail bonds stand cancelled.

Miscellaneous petitions pending, if any, shall stand dismissed.

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Dr. B. SIVA SANKARA RAO, J

Date: 04.01.2018
Note: L.R. Copy to be marked
(B/o)
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