

(2016) 03 DEL CK 0080

In the Delhi High Court

Case No : Crl. M.C. 456 and 3325/2012

Alok Ranjan and Others

APPELLANT

Vs

CBI and Others

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, Section 195(1)(b), Section 195(1)(c), Section 196(1)(c), Section 197, Section 204, Section 340, Section 476, Section 482

Penal Code, 1860 (IPC) — Section 120A, Section 120-A, Section 120-B, S

Citation : (2016) 230 DLT 6

Hon'ble Judges : V.P. Vaish, J.

Bench : Single Bench

Advocate : Vishwajit Singh, Ridhima Singh and Piyush Vatsa, Advocates, for the Appellant; Sonia Mathur and Sushil Kumar Dubey, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Vaish, J.—1. These two petitions have been filed by petitioner, Mr. Alok Ranjan (Crl. M.C. No. 456/2012) and petitioner, Homi Rajvansh (Crl. M.C. No. 3325/2015) seeking quashing of the charge-sheet in case FIR No. RC-EOU-1-2007-E0002 dated 10.12.2007 registered under Section 120-B read with Sections 405/408/420/467/468 and 471 of the Indian Penal Code and to quash summoning order dated 07.06.2010 passed by learned Special Judge, CBI, Delhi in charge-sheet No. 03/2010/EOU-1.

2. Since both the petitions arose out of the same charge-sheet, therefore both the petitions are being disposed of by this common order.

3. The facts emerging from the charge-sheet which are necessary for disposal of these petitions are as under:--

"(a) Pursuant to complaint dated 15.12.2007, instituted by Alok Ranjan (petitioner in Criminal M.C. No. 456/12), the then Managing Director of NAFED,

on 19.12.2007, CBI registered a formal RCEOU-1/2007-E0002, under sections 120-B read with sections 405, 409, 420, 467, 468 & 471 of the Indian Penal Code. In the said complaint it was stated that Homi Rajvansh (petitioner in Criminal M.C. No. 3325/12), in conspiracy with accused O.P. Agarwal, Chairman of Earthtech Enterprises Ltd. (hereinafter referred to as EEL) made NAFED to enter into a tie-up business with M/s. EEL for import of Superior Kerosene Oil, Heavy Melting Scrap (HMS) etc. in terms of MOU dated 16.10.2003 followed by an addendum dated 12.02.2004. As per the First Information Report, on the strength of the aforesaid agreement and addendum, 15 Letters of Credit (LCs) were opened by NAFED on behalf of EEL for import of HMS. Out of the 15 LCs import was made against 6 LCs only for 85000/- MTs of HMS. As against these 6 transactions, M/s. EEL had made payments against the first 4 LCs whereas payment in respect of remaining 2 LCs was not made by M/s. EEL to NAFED resulting in a loss of Rs. 80 Crores to NAFED. In the FIR the petitioner is also accused of antedated High Sea sale agreements to favour M/s. EEL. With regard to remaining 9 Lcs opened by NAFED on behalf of M/s. EEL, no supplies were effected which resulted in additional loss of Rs. 2,19,87403/- to NAFED towards LCs opening as well as service charges against the said 9 LCs. In the said Complaint, Alok Ranjan has taken specific plea of ignorance about the transactions pursuant whereunto disbursements were made to the tie-up associate M/s. EEL. It is worthy to take note of that in the chargesheet, no mala-fide with respect to these has been attributed to the petitioner Homi Rajvansh.

(b) After concluding investigation in the aforesaid FIR, CBI filed charge sheet under sections 120-B read with sections 409, 420, 468 & 471 of the Indian Penal Code eventually arraying Homi Rajvansh (petitioner in Criminal M.C. No. 3325/12) as one of the accused alongwith Alok Ranjan (petitioner in Criminal M.C. No. 456/12) i.e., informant himself alongwith beneficiaries of the transactions i.e., M/s. EEL and its self-styled Chairman of M/s. EEL O.P. Aggarwal. As per the chargesheet, investigation agency has imputed Homi Rajvansh (petitioner in Criminal M.C. No. 3325/12) on following counts:--

(i) Even prior to joining NAFED, petitioner entered into a conspiracy with one O.P. Agarwal, the self-styled Chairman of M/s. Earthtech Enterprises Ltd. (EEL) alongwith one Mr. Ajit Singh, Chairman NAFED, and in furtherance of said conspiracy, the primary business of NAFED got diversified in defiance of bye laws of NAFED. It is further the case of the investigating agency that pursuant to the conspiracy one trial run of import of approximately 5000 MTs of SKO was carried out. Further on 01.10.2003, Alok Ranjan, Managing Director of NAFED joined the conspiracy and subsequently on 13.10.2003 approved the terms of Memorandum of Understanding (MOU) in respect of diversified business entered into between NAFED & M/s. EEL on tie-up basis.

(ii) After approval of the Managing Director, on 16.10.2003, a formal MOU was entered into between NAFED & M/s. EEL. followed by an addendum dated 22.02.2004. As per the chargesheet submitted by the CBI, the petitioner

permitted release of funds to M/s. EEL in defiance of the Office Order HQ/AD/8/276/2003-2004 dated 15.10.2003 whereby the Managing Director had delegated powers to the petitioner to remit upto Rs. 20 Crores at a time to the branches.

(iii) In furtherance of conspiracy, petitioner made recommendations in defiance of Business Circular No. 93 of 2003, which was approved by the Alok Ranjan, the then Managing Director NAFED as well as Ajit Kumar Singh, Chairman NAFED.

(iv) In furtherance of the conspiracy, petitioner executed antedated high sea sale agreement without obtaining 100% payment for the value of the material alongwith cost and expenses, bank charges, and NAFED's service charges.

(v) Interests of NAFED were not preserved as the petitioner did not execute Tripartite agreement.

(c) Whereas the role assigned to the petitioner Alok Ranjan (petitioner in Criminal M.C. No. 456/12) in the chargesheet may be segregated as under:--

(i) After joining NAFED, petitioner Alok Ranjan joined the ongoing conspiracy and in furtherance thereof, Alok Ranjan approved the recommended terms and conditions in respect of diversified business of NAFED pursuant whereto MOU dated 16.10.2003 was entered into between NAFED & M/s. EEL, followed with approval for addendum, pursuant whereto other items such as Heavy Metal Scrap (HMS) were incorporated in terms of addendum dated 12.02.2004.

(ii) The approval accorded by Alok Ranjan in furtherance of conspiracy was in fact, in defiance of the Bye-laws of NAFED resulting in utilization of borrowing of NAFED for Agricultural products in unapproved diversified business of non-agricultural commodity business.

(iii) In capacity of Managing Director, petitioner Alok Ranjan was Chief Executive officer, responsible for day to day business of NAFED and was responsible for safe custody of all money received by NAFED. In furtherance of the conspiracy, Alok Ranjan, did not take adequate steps to protect interest of NAFED.

(iv) In furtherance of the conspiracy, petitioner Alok Ranjan approved recommendations made by Homi Rajvansh in defiance of Business Circular No. 93 of 2003.

(v) In furtherance of the conspiracy, petitioner Alok Ranjan vide his letter dated 20.06.2005, forwarded misleading and factual incorrect report to the Ministry of Agriculture.

(vi) In furtherance of the conspiracy, petitioner Alok Ranjan exceeded the limit of 200 Crores exposure fixed by the Board of Directors in meeting dated 22.11.2003. Further, despite knowing that the exposure of NAFED with M/s. EEL had exceeded Rs. 1300 crores, he on 14.07.2005, approved opening of fresh L.Cs. worth U.S. \$ 20 million for Third Country Export for M/s. EEL.

(vii) Petitioner Alok Ranjan has falsely claimed in his complaint dated 15.10.2007 (which culminated in registration of the Impugned FIR), that terms and conditions of MOU dated 16.10.2003 were kept secret from the Managing Director and other key officials.

4. On an application bearing CrI. M.A. No. 12730/2014 filed by Mr. Homi Rajvansh, he was impleaded as respondent No. 2 in CrI. M.C. No. 456/2012 vide order dated 21.08.2014.

5. During the course of arguments, learned counsels for both the petitioners have questioned legality of the order of taking cognizance of offences for want of sanction under Section 197 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."). Both the petitioners have claimed that since the petitioners were Government servants at the relevant time and the charge-sheet has been filed without obtaining sanction from the competent authority, order of taking cognizance is bad. The plea of the petitioners has been opposed by the Respondent State as the same is not tenable.

6. Before dealing with the matter on merits, it is necessary to consider legal plea of the petitioners questioning validity of the "cognizance" taken by the Trial Court for want of sanction under section 197 of the Code of Criminal Procedure. In my considered opinion this plea of the petitioners is liable to be rejected for the simple reason that admittedly, NAFED is an autonomous co-operative society/ Federation registered under the Multi-State Co-operative Act 2002 engaged in commercial activities for the benefit of its members. Further, the Federation does not get any funding from the government to impart its employee's status of "Public Servants". It is also the admitted position that during tenure of the petitioners with NAFED on deputation, petitioners were drawing all their salaries from the funds of NAFED. Since the prosecution of the petitioners pertains to the acts performed by them during their tenure with NAFED, in order to claim shield of section 197 of Cr.P.C, the petitioners are required to qualify definition of "Public Servant." This issue has been put at rest by the Hon"ble Supreme Court in the cases of "State of Maharashtra v. Laljit Rajshi & Ors.", , (2000) 2 SCC 699"; "S.S. Dhanoa v. Delhi Municipality", , AIR 1981 SC 1655 and "N.K. Sharma v. Abhimanyu", , AIR 2005 SC 4303. In view thereof, petitioners are not entitled to benefit of Section 197 of the Code of Criminal Procedure, as such, the plea in this regard is rejected.

7. Since, as per the Chargesheet, the case of the prosecution is originating from Homi Rajvansh (petitioner in Criminal M.C. No. 3325/12) and the prima facie sanctity of imputations qua him would have direct bearings on the case of Alok Ranjan (petitioner in Criminal M.C. No. 456/12), I am first dealing with the merits of the case of petitioner Homi Rajvansh.

(Criminal M.C. No. 3325/12)

8. The petitioner has claimed innocence and sought his exoneration from the imputations made by the investigating agency. It was submitted by learned

senior counsel for the petitioner that the petitioner is an Indian Revenue Services Officer of 1985 batch, who joined NAFED on deputation in July, 2003 and repatriated back to his parent department in July 2006, when the petitioner was promoted in his parent cadre to the post of Commissioner of Income Tax.

9. It was argued on behalf of the petitioner that during his tenure with NAFED, he has worked under the dictates of the Management and none of his acts spell out any malafide on his part. Based upon various documents, it has been stressed upon that the business in the "Non-Agricultural" commodities was new line of business undertaken by NAFED and the guidelines framed by Dr. S.N. Pandey, an expert hired by NAFED even prior to the petitioner's joining NAFED, during the first successful trial run of import of 5000 MTs of Superior Kerosene Oil (SKO), were duly communicated to the branches. It was further argued that likewise M/s. EEL, NAFED had entered into total 62 Tie-up agreements with different entities in respect of "Non-Agricultural" commodities and the same procedure was followed in all the sixty two cases. It was also argued on behalf of the petitioner that merely because M/s. EEL has fraudulently caused wrongful loss to NAFED, motives cannot be assigned to the petitioner. It was further argued on behalf of the petitioner that being Executive Director or Additional Managing Director of NAFED, he did not have powers to take decisions in the Federation and each act of his division was subject to quarterly check by "Executive Committee," "Business Committee," "Audit Committee" and "Board of Directors besides scrutiny by Statutory Auditors and all through tenure of the petitioner with NAFED, none of the aforesaid bodies found any irregularity in the business undertaken by NAFED under diversified head. It has further been argued before this Court that M/s. EEL was introduced to NAFED by Dr. S.N. Pandey and the petitioner had no acquaintance with any of the officials of M/s. EEL to sustain charge of the investigating agency regarding pre-existing conspiracy. It has further been stressed upon that till the year 2006 management of NAFED was defending diversified business of Tie-Up in non-agricultural commodities but after Union of India recommending CBI investigation in the year 2006, taking advantage of the fact about repatriation of the petitioner to his parent department, he has been made the scapegoat by imputing him with motives

10. In this backdrop of factual matrix, Mr. Mohit Mathur, learned Senior Counsel for the petitioner contended that perusal of the charge sheet along with the supporting documents does not make out any case to sustain prosecution of the petitioner under Sections 120-B read with sections 409, 420, 468 and 471 of the Indian Penal Code. It was argued that the conclusion arrived at by the investigating agency about complicity of the petitioner in the aforesaid case, is unfounded and defies principles of Criminal Jurisprudence.

11. Learned Senior Counsel for the petitioner has strenuously argued that in light of the documents placed on record, the circumstances attributed to the petitioner do not meet out basic ingredients of Section 120-A of I.P.C. to sustain his

prosecution in the present case and the summoning order has been passed in a cryptic manner, without application of judicial mind.

12. In order to strengthen his contentions, learned senior counsel for the petitioner has placed reliance upon P.K. Narayanan v. State of Kerala", , (1995) 1 SCC 142; "Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.", , AIR 1988 SC 709; "State of Kerala v. P. Sugathan & Another", , (2000) 8 SCC 203; "Central Bureau of Investigation, Hyderabad v. K. Narayana Rao", , (2012) 9 SCC 512; Subramanian Swamy v. A. Raja", , (2012) 9 SCC 257; Pratapbhai Hamirbhai Solanki v. State of Gujrat & Anr.", , (2013) 1 SCC 613; "Sherimon v. State of Kerala", , AIR 2012 SC 493; "Satish Mehra v. State of N.C.T. of Delhi & Another", , AIR 2013 Supreme Court 506; "Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.", , AIR 1998 SC 128; and Umesh Kumar v. State of Andhra Pradesh and Another", , (2013) 10 SCC 591.

13. Per contra, learned counsel for the respondent, CBI urged that the petitioner is raising disputed questions of facts which cannot be decided while exercising powers under section 482 of the Code of Criminal Procedure. It is further submitted that all submissions of the petitioner are his defenses which are required to be established during trial and while exercising powers under section 482 of the Code of Criminal procedure, this court shall not conduct a mini trial before commencement of the actual trial. Learned counsel for the respondent has supported the summoning order passed by the learned trial court. It was further urged on behalf of the respondents that the petitioner is facing a conspiracy charge and since conspiracy is hatched in secrecy, there cannot be direct evidence of meeting of mind and the circumstantial evidence procured by the investigating agency is sufficient enough, at least at this stage of the proceedings when the trial court was exercising power under section 204 of Cr.P.C. It was contended on behalf of the respondents that the investigation has brought sufficient evidence pointing towards complicity of the petitioner.

14. It was lastly urged by counsel for respondents that the inherent powers of this Court enshrined under section 482 of Cr. P.C. have to be exercised sparingly in exceptional circumstances. In support of her submissions learned counsel for CBI has relied upon a catena of judgments viz: "S. Krishnamoorthy v. Chellammal", , 2015 (4) SCALE 371; Dr. Avneesh Gupta, Dr M.G. Gupta & Anr. v. State of NCT, Delhi", , 2014 (1) JCC 90; "HMT Watches Ltd. v. M.A. Abida & Ors.", , 2015 (3) SCALE 832; Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd. & Ors.", , AIR 2006 Supreme Court 1288; Jagdish Ram v. State of Rajasthan and Another", , AIR 2004 Supreme Court 1734; "M/s. India Carat Pvt. Ltd. v. State of Karnataka and Another", , (1989) 2 Supreme Court Cases 132 and State of W.B. and Another v. Mohd. Khalid and Others", , (1995) 1 Supreme Court Cases 684.

15. I have bestowed my thoughtful consideration to the submissions made by learned counsel for the parties and also carefully perused the material on record.

16. It is well settled law that a conspiracy is hatched in secrecy and prosecution

cannot be burdened to establish the same with direct piece of evidence. The prosecution can discharge its onus by relying upon the circumstances to establish existence of conspiracy, however, the circumstances relied upon by the prosecution have to be of a definite character which unerringly pointing towards guilt of the accused. However, a charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.

17. The criminal conspiracy has been defined under Section 120A of Indian Penal Code, which reads as under:--

"120A. Definition of criminal conspiracy - 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."

18. On perusal of Section 120-A of IPC, it is manifestly clear that for imputing a person as a "conspirator" there has to be existence of "an agreement" between two or more persons either to do "an illegal act" or to do a "legal act through illegal means". Since, legislature has not provided any deeming provision to draw presumption in favour of existence of conspiracy, the prosecution cannot be absolved of the responsibility of bringing sufficient circumstances pointing towards existence of an agreement amongst the conspirators to do an "illegal act" or "a legal act through illegal means". Apart from commission of "acts", prosecution is also vested with a responsibility to bring evidence on record of the crime committed in pursuance of "an agreement" made between the accused persons who were parties to the alleged conspiracy.

19. It is a well settled proposition of law that an offence of conspiracy cannot be

deemed to have been established on mere suspicion, surmises or inferences which are not supported by cogent or acceptable evidence. Reference is made to the judgment of the Hon"ble Supreme Court in P. Sugathan's case (supra), wherein it has been observed:--

"12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.) , (1980) 2 SCC 665 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 giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. 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. 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."

(emphasis supplied)

20. In the matter of "Central Bureau of Investigation, Hyderabad v. K. Narayana Rao", {, (2012) 9 SCC 512}, while dealing with the similar issue Hon"ble Apex Court has observed:--

"4. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved

circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

(emphasis supplied).

21. A similar view has been taken by the Hon"ble Supreme Court in Sherimon"s case (supra) and in the case of "Subramanian Swamy v. A. Raja", , (2012) 9 SCC 257 and "Pratapbhai Hamirbhai Solanki v. State of Gujrat & Anr.", , (2013) 1 SCC 613.

22. In this backdrop of the settled proposition of law, conclusion of the investigating agency regarding the petitioner being in conspiracy with Mr. O.P. Agarwal, self-styled Chairman of M/s. EEL prior to his joining NAFED, is examined on this touch stone. Learned counsel for the petitioner has drawn attention of this Court to the Official Noting from 09.09.2003 to 11.09.2003 to impress upon that NAFED being amateur in respect of SKO, it was completely relying upon the expertise of Dr. S.N. Pandey. Further, the note dated 11.09.2003 initiated by Dr. S.N. Pandey clearly reveals that M/s. EEL was introduced to NAFED by Dr. S.N. Pandey. Relevant extracts of the "Note" are reproduced as under:--

"ED(FA) may kindly find enclosed herewith offer dated 09th September received from M/s. EEL, New Delhi giving an offer to purchase SKO being imported by us on a net profit of Rs. 200/- PMT.

The material will be sold to them (ownership will be transferred on a highseas basis) which will be stored in the godowns taken by them."

Applying the aforesaid parameters in the factual matrix of the instant case, it is apparent that there is nothing on record to suggest acquaintance of the petitioner with accused O.P. Aggarwal prior to his joining NAFED. On the contrary, note dated 11.09.2003, initiated by Dr. S.N. Pandey clearly makes it apparent that M/s. EEL was introduced for the first time to the NAFED through Dr. S.N. Pandey. Admittedly, services of Dr. S.N. Pandey were already being received by NAFED in working out diversification of its business even prior to petitioner"s joining NAFED and further it is also not the case of the prosecution that Dr. S.N. Pandey was also in league with the petitioner to introduce M/s. EEL to NAFED, as such, it would not be safe to concur with the conclusion of the investigating agency.

23. Even after petitioner"s joining NAFED, there is nothing on record to draw an inference that petitioner tried to work in a clandestine manner for causing wrongful loss to NAFED. Petitioner has pointed out since tie-up business in Non-Agricultural commodities was a new line of business, there were no existing guidelines and the guidelines suggested by Dr. S.N. Pandey were duly communicated to the branches. A perusal of the guidelines communicated vide

Fax message dated 24.09.2003 clearly makes it apparent that branches were duly communicated that the imported goods would be sold to M/s. EEL on High sea Sale basis and to protect interest of NAFED, Branch Heads were directed not to permit release of any commodity without receiving 100% payment of the goods. Guidelines in respect of new business were in evolving stage and were being formulated as per suggestions received from the branches during execution of the respective transactions. The petitioner is further fortified in his abovementioned submissions as is apparent from the office order dated 26.03.2015, issued from the office of Managing Director. Relevant text of the same is reproduced herein below:--

"I would like to review the position of tie-ups. Kindly prepare a detailed statement on the same so that it can be reviewed on 07.04.04 at 11:00 AM in my office.

Also since it is a beginning of the New Year, kindly take opinion/suggestions of RMs/BMs whether any fresh guidelines or procedures needs to be formulated."

24. Further, the pace with which processing of the proposals was directed to be followed is also apparent in light of internal order dated 16.04.2004, issued from the office of the Managing Director. The relevant part of the same is being reproduced herein below:--

"2. In order to ensure that unnecessary delay in movement of the files is curtailed and timely decision as well as implementation thereof take place with utmost promptness, the following guidelines are hereby issued:--

- In head office, examination of a business proposal should be undertaken within a minimum period of one day by the concerned section and the file should be marked within or outside the Division, as the case may be, the same day. Any action called for subsequently on such a file should be carried out within a maximum of two days;

- In the event of any perceived delay in adhering to the above time frame, the matter should be immediately reported to the concerned Divisional Head and MD;"

25. The aforesaid documents clearly show that in order to meet out prevailing financial crunch, management of NAFED wanted to act with promptitude. In fact, the processing notes alongwith the minutes of meetings clearly point out that each and every disbursement has routed through official channel and was well within knowledge of the entire Federation. I find strength in the contentions of the petitioner that had there been any aspect of fraud attributable to the petitioner in respect of disbursal of funds to M/s. EEL or in handling transactions with it, the same would not have gone amiss from the eyes of Executive Committee, Business Committee or the Board of Directors, precisely when committees as well as Board of Directors were independently examining entire Tie-up business on quarterly basis and the petitioner was not even a member of

any of the aforesaid committees/Board of Director. Had it been the case of the prosecution that correct records were not placed by the petitioner before the respective committees or Board of Directors, the investigating agency would have been justified with the prosecution of the petitioner but when no such attributions are made, it cannot be believed that when no record has been concealed, the "Executive Committee" which was responsible for collection as well as disbursal of funds of NAFED and "Business Committee" which was taking decisions in respect of business policies of NAFED, would have missed out the irregularities during its periodic scrutiny. Had the officials of the respective committee been subordinate to the petitioner or were arrayed as an accused with the petitioner, it would have different connotations but when the members of respective committees are different individuals, holding senior positions than that of the petitioner, it is hard to digest that they would permit disbursal of the funds in contravention of the policies drawn by them. Merely because the recoveries have been stalled by the private partners, Federation is not justified in assigning attributions to its employee at belated stage, precisely when even the Statutory Auditors have not found any irregularity in respect of disbursements made by the NAFED. In view of the documentary evidence, it is amply clear that the conclusion of the investigating agency as to the petitioner being in conspiracy with M/s. EEL or any of its officials prior to his joining NAFED is merely a conjecture having no substance therein.

26. To falsify the charge of petitioner having acted against the bye laws of NAFED by initiating a note for diversification of business of NAFED from Agricultural Products (Agri) to Non-Agricultural Products (Non-Agri), the petitioner has drawn the attention of this Court on the Office noting dated 13.08.2003 to fortify his claim that prior to the date of his joining NAFED i.e., 15.07.2003, NAFED was already facing financial crunch owing to its traditional form of business and in order to generate additional funds, the agenda of diversification of the business of NAFED from "Agri" to "Non-Agri" was already under deliberation and services of one expert i.e., Dr. S.N. Pandey, former Director IFFCO were already being availed to explore possibility of import of SKO. Relevant extracts of the note is reproduced herein below:--

"During the review meeting of Regional Managers held by the Chairman on 7th August, 2003, Chairman categorically brought on the record the fact that NAFED is facing a severe financial crunch. On the basis of the first quarter it appears that huge losses are likely to be incurred with respect to commodities like Oilseed/pulses available with the Federation.....

During the course of meeting held in the chamber of Chairman, while discussing the need for diversification of NAFED, Chairman desired that the undersigned should examine the proposal for import of SKO submitted by Dr. S.N. Pandey, former Director of NAFED in view of the bleak business forecast based on prevailing market conditions."

27. Further, with regard to the approval of diversification of the business, the

petitioner has relied upon the bye laws of NAFED to portray that as per the bye laws of NAFED, Chairman NAFED was competent to take decision in respect of the business to be undertaken by NAFED subject to his subsequently getting approved/rectified by the business committee of NAFED. In this regard reference is made to the bye law No. 34 (IV). Infact, Business Committee of NAFED was the competent body to take appropriate decisions in this regard.

28. A perusal of the record makes it apparent that the decisions in respect of the trial import of 5000 MTs of SKO was approved by the then Chairman NAFED and was eventually rectified by the Business Committee NAFED in it's meeting dated 30.09.2003. Admittedly the charge sheet endorses that the petitioner as Additional Managing Director of NAFED did not have any power to take any policy decision in respect of the business of NAFED. Relevant extracts of the charge-sheet are reproduced herein below:--

"As per the bye laws of NAFED Additional Managing Director or Executive Director has not any power of its own and he enjoys only those powers which are delegated to him by the Managing Director."

29. The communication dated 23.09.2010 & 18.10.2010, issued by NAFED, clearly point out that the petitioner was not delegated any decision making power in respect of policy making decision of NAFED. Furthermore, this court cannot ignore the judgment in Criminal Writ Petition No. 220 of 2010 by Bombay High Court in the case of "Alok Ranjan v. State of Maharashtra & Ors.", decided on 05th May, 2015, wherein the same conclusion of the CBI has been dispelled by the Bombay High Court. Admittedly, the said finding inter se the same parties has not been subjected to challenge by the CBI and as such the same would be binding on the parties as having attained finality and thus the investigating agency cannot be permitted to re-agitate the same before this Court. In light of the aforesaid it can safely be inferred that diversification was need of NAFED which was facing acute financial crunch and for this no criminality can be attributed to the petitioner, precisely when admittedly, petitioner neither had powers nor done anything which could probablise assignment of malafide motives.

30. Learned counsel for respondent, CBI stressed upon that petitioner has been responsible for antedated execution of High Sea Sale Agreements executed by the petitioner without obtaining 100% payment for the full value of the material and further for failure of the petitioner in executing Tripartite Agreement. Though the plea of the prosecution is impressive but if examined in backdrop of the documentary evidence, no criminality can be attributed to the petitioner. As per MOU, on request of business associate M/s. EEL, NAFED was to open LCs for import of various commodities, sell them on High Seas to the business associate or his nominee on 100% payment either on high seas or goods sold on high seas were to be stored thereafter in bonded warehouses. On payment in full or parts, goods were to be released on receipt of full payment from the associate. Instructions to this effect were issued from Head Office to the concerned

branches for strict compliance.

31. Learned counsel for CBI has drawn the attention of this court on fax message dated 24.09.2003, wherein all these instructions are specifically mentioned. A perusal of record makes it apparent that prosecution is seeking to haul up the petitioner for defiance of the branches in adhering to aforesaid guidelines. It is apparent from the records that the factum of non-execution of Tripartite Agreement came to the notice of Head Office only in July 2005, when consultant R.P. Kesari surfaced the same. Relevant extracts of this communication are as under:--

"We have also observed that not a single tripartite agreement has been made by NAFED with the business associate and the Port Authority/bonded ware house authority before off loading of the vessels/import materials or even thereafter.....

The above matter had also come up for discussion in HO on 10.07.2005 in which in addition to Shri. B.P. Singh, Shri B.S.P. Remi and Shri Homi Rajvansh and other officers were also present when it was felt to execute the Tripartite Agreement immediately. Before that, business associates may be requested to issue directions to the Port Terminals in charge for delivery of stocks kept with them against NAFED D.O. only."

32. It was argued on behalf of the petitioner that branches were to execute "Tripartite Agreement" and when the fact about non-execution of "Tripartite Agreement" surfaced steps were initiated and Managing Director directed the consultant R. P Kesari to get the needful done. Relevant extracts of the minutes of Tie up meetings dated 02.08.2005 & 18.08.2005, are reproduced herein below:--

Extracts from meeting dated 02.08.2005:--

"Sh. S.K. Maggu, Dy. M. (FA & TU) was asked to transfer the vouchers to the immediately and further it was decided that all the relevant case in respect of this party should be handled at HO level and account may also be settled here in consultation with Sh. R.P. Kesari, Consultant(TU). Party may be asked to submit their Balance sheet for the past 3 years."

Extracts from meeting dated 18.08.2005:--

"MD desired that accounts of M/s. Earthtech Enterprises presently being maintained by the different Branches should be consolidated at HO level. This would enable to persuade the party from one place for repayment. Following actions are required to be taken on war footing basis:

a) Letter to be issued to party for submission of PDCs/payment Schedule/B.G./ tripartite agreement/collateral etc. within 3 days by the Consultant (RPR)...."

33. I find force in submissions made on behalf of the petitioner that had there been any negligence on the part of the petitioner, the official noting would have

borne some adverse remarks against the petitioner. It has been argued on behalf of the petitioner that the objective of executing Tripartite Agreement was to protect interest of NAFED by preventing M/s. EEL from selling the commodities without making due payment to the NAFED, which was even otherwise ensured by deputing one person at the warehouse, who used to issue delivery order only once 100% payment was received by NAFED. I find force in this argument of the petitioner as the same is borne out from the communication of the Branch Manager, dated 13.10.2005, addressed to the then Managing Director. Relevant extracts of the same are reproduced herein below:--

".....On receipt of full payment our representative posted at kandla used to issue delivery order in favour of M/s. Earthtech Enterprises Ltd. And as per their request the buyer was to take delivery from the storage tanks as per our delivery order.

.....The above procedure has recently been discontinued at HO and now-a-days the buyer is depositing the entire amount at HO only. In absence of any specific information from HO/Instructions to issue delivery order, we are not issuing any delivery order to the party for the past 3-4 months....."

34. I find force in the contentions of learned senior counsel for the petitioner that prior to appointment of R.P. Kesari and handing over charge to him by the management, there was no loss either in terms of stocks imported or in terms of receipt of payment by NAFED. Despite specific query, counsel for CBI could not show any irregularity in this regard. In fact, from a perusal of the Stock Valuation, which was carried out pursuant to the directions of the petitioner, till September, 2005, there was no difference between the payment received by NAFED and the goods sold by M/s. EEL. It is apparent that the situation changed after August, 2005, when management of NAFED deputed consultant R.P. Kesari assisted by one S.K. Maggu, for the purposes of recoveries of NAFED'S dues, when M/s. EEL started misappropriating import material. It can also not be lost sight of that even NAFED has sold the goods in auction to avail a price cheaper than its purchase value.

35. It was argued that High Sea Sale Agreements were entered into by NAFED as per MOU with the sole objective of saving NAFED from the customs duty, warehouse expenses and other ancillary liabilities and in this regard proposal used to be initiated by the subordinate officials. Petitioner has submitted that since it was new line of business and the Federation did not have requisite licenses nor had it proper know-how, as such, on advise of Dr. S.N. Pandey, the goods were directed to be sold out to the associate on High Sea Sale basis, with bona fide objective of saving NAFED from possible legal as well as practical hardships. Apparently, if the act has been done in the interest of NAFED to avoid the Federation from additional charges/implications, it can't be used for holding the petitioner criminally liable. It has been argued that between 2003 to 2005, NAFED has entered into 62 Tie Up Agreements and various LCs were opened in all the agreement with same modus. Even in the present case, same procedure

was followed in the transactions in relation to the first four LCs, where entire payment has been received by NAFED. On a specific query, counsel for CBI has failed to counter this proposition. If that be so, motive cannot be assigned to the petitioner, merely because M/s. EEL has fraudulently misappropriated funds due to NAFED. From the documents on record, it is apparent that NAFED has been standing by its Non-Agricultural Tie-up business till 2006, however, after Union of India's decision to direct C.B.I.'s investigation, apparently a safe mode has been adopted by the Management of NAFED by implicating the petitioner (who has already repatriated back to his parent department) as an accused with the beneficiaries.

36. With regard to defiance of Circular No. 93 and the Office Order HQ/AD/8/276/2003-2004 dated 15.10.2003, I find force in the submissions of counsel for the petitioner that both these were not applicable to the diversified business of "Non-Agricultural" tie-up business undertaken by the NAFED. A bare perusal of circular No. 93 shows that this was approved by the Business Committee of NAFED on 28.04.2003, much prior to the NAFED undertaking diversified business. Attention of this court has been drawn to circular no. 93. Relevant extracts of the same is reproduced herein below:--

"Meeting of the Business Committee

(28-Apr-03)

Agenda Item No. 7:--

Sub: Procurement of agricultural commodities by Nafed on Tie up/back to back business- reg."

A bare perusal of the subject of the aforesaid agenda approved by the Business Committee NAFED clearly nullifies charge of the Investigating Agency as apparently, Circular No. 93 had no application to the Diversified Business undertaken by NAFED at subsequent stage and thus none of the petitioners could be imputed for defiance thereof.

37. With regard to the petitioner's disbursing the funds beyond his powers of Rs. 20 Crores, it is apparent that the Office Order HQ/AD/8/276/2003-2004 dated 15.10.2003, pertained to the powers of the petitioner in respect of disbursal of funds to the branches, which to my thoughtful consideration was in respect of traditional business of NAFED pertaining to Agricultural Products and has no application to the diversified business. As converse to the traditional business in respect of "Agricultural Products" where the business was booked by the branches and disbursements to the associates were also made by the branches, in the business in respect of "Non Agricultural Products" the payments have been made by the Head Office. Since the office order had restriction in respect to single transaction to the branches and not against the tie-up associates, the same cannot be used to the detriment of the petitioner. Furthermore, had there been any such restriction, the bankers would not have released the payment

beyond the alleged outer restriction or even the organization would not have ignored the same, precisely when disbursal of funds has spread around one year. It appears to be a bleak effort on the part of investigating agency to target the petitioner, which cannot be permitted.

38. In the light of the aforesaid discussion, it is apparent that the conclusions arrived at by the investigating agency qua the petitioner, Homi Rajvansh in the impugned charge-sheet have been falsified in light of the documentary evidences.

(Criminal M.C. No. 456/12)

39. Undisputedly, the petitioner, Alok Ranjan joined NAFED on 01st October, 2003. In this backdrop of the matter when the imputations of the investigating agency regarding existence of conspiracy prior to 01.10.2003 have been falsified, it would not be apt to accept conclusion of the investigating agency regarding petitioner joining the ongoing conspiracy. Now allegations of the investigating agency, as carved out in para 2(c) are examined in the following part of this judgment.

40. In light of discussions in the earlier part of the judgment, it has eventually been concluded that no malafide can be assigned to the authorities responsible for taking decision in respect of diversification of the traditional business of NAFED. The petitioner is fortified in his plea of innocence on the strength of the findings given by the Bombay High Court in the Criminal Writ Petition No. 220/10 titled as "Alok Ranjan v. The State of Maharashtra and Ors." decided on 05th May, 2015. It is worthy to take note that same allegations were subject matter of the charge-sheet filed by CBI against the petitioner in respect of another tie-up associate. While brushing aside conclusion of the CBI, Bombay High Court has observed as under:--

"7. At the outset, it may be mentioned here that it is not denied by the petitioner that he in his capacity as Managing Director was over all in-charge of functioning of NAFED. However, the fact remains that there was business committee which held superior powers as compared to the petitioner. The business committee comprised of Chairman, two Vice Chairmen and the Managing Director. The NAFED had entered into non agricultural business before the transactions in question in the present petition. One such transaction had already taken place which did not pertain to agricultural produce. Though NAFED was set up with an object to promote cooperative marketing of the agricultural produce to benefit farmers, it appears that NAFED wanted to diversify the business activities due to shrinking income in marketing of agricultural commodities. The NAFED had decided to undertake tie up business under the public private partnership scheme for non-agricultural produce before the petitioner joined NAFED. The fact also remains that amended rule to allow NAFED to enter into Public Private Partnership Scheme for non agricultural produce was approved by the Central Registrar later than two transactions in question. The transactions in question involved in tie-up business of Rs. 235.59 Crores with Swrup Group. The fact also

remains that only Rs. 86.6 Crores were recovered and Rs. 149.53 Crores could not be recovered. The counsel appearing on behalf of NAFED has submitted that the properties of Swarup Group to the extent of outstanding amount have already been attached. As such the amount has been secured."

41. Further, while summing up the issues and quashing the proceedings qua the petitioner Alok Ranjan, the Bombay High Court has concluded in para 21 of the Judgment as under:

"21(11). The decision to enter into tie-up business in non agricultural commodities was due to shrinking business of NAFED."

42. The aforesaid findings between the same parties have not been challenged by the CBI. Even the counsel for the respondent has no instructions as to whether the CBI has taken decision to contest the same before the Hon"ble Apex Court. In light of the "Notes" preceding decision of diversification, even I do not find any defect with the conclusion arrived at by the Bombay High Court. In this view of the matter, the imputations of CBI that decision in respect of the diversification of the Business of NAFED was an outcome of conspiracy does not hold ground and the same is rejected.

43. In response to the allegations regarding petitioner"s failure in protecting financial interest of NAFED, in addition to the pleas taken by Homi Rajvansh (petitioner in Criminal M.C. No. 3325/12), the petitioner, Alok Ranjan has relied upon the Notes on Accounts to the Balance sheet, approved by the Annual General Body of NAFED, wherein Management has approved and concord with all the decisions taken in respect of diversified business. The Relevant extracts for the General Body Meeting held on 16.09.2005 are reproduced herein below:--

"Nafed, being conscious of the challenges thrown by the liberalization of economy, has taken a number of new initiatives for revenue generation to make the federation a self reliant while endeavouring to sustain its traditional business. The business under Tie-up/back to back is an attempt in this direction. The total turn-over of the Federation includes a turnover of Rs. 113840 lacs under this arrangement..... Appraisal sanctioning, disbursement and supervision of Tie-up advances are done at head- office..... The management has relied upon the physical verification stock reports of the business associates..... The management contends and takes the stand that assets/ outstandings, that have arisen during the course of business transactions under this arrangement and appearing under the head "Current Assets/Loans and advances," do not require any provisioning for doubtful debts....."

(emphasis supplied)

44. A bare perusal of the aforesaid makes it apparently clear that everything was duly accounted in the books of accounts. None of the auditors, including the "Statutory Auditors" found any irregularity in respect of the diversified business undertaken by the Federation and the true picture was presented in the General

Body Meeting. Merely because subsequently the tie-up associate committed fraud upon the Federation, petitioner cannot be imputed with charge of fraud or dishonesty. Infact, reading of the notes of meeting dated 16th April 2005 clearly makes it apparent that the Head office was entering into business on the recommendations of the branches. The said note reveals that Bangalore, Hyderabad and Delhi Branches of NAFED had recommended name of M/s. EEL for future business. When the approvals are accorded pursuant to the recommendations of the branches, and none from the branches is charged by CBI for having recommended at the instance of the petitioner, no fault can be attributed to the petitioner for permitting continuation of the business with M/s. EEL.

45. Regarding allegations in respect of approval accorded in defiance of Circular 93, it has already been dealt with in the preceding part of the judgment that the said Circular was in respect of the business in relation to the Agricultural commodity and had no application to the Non-Aggri business undertaken by NAFED as such, petitioner cannot be faulted for having defied the same.

46. This court was primarily impressed with the conclusion of the investigating agency that the petitioner Alok Ranjan vide his letter dated 20.06.2005, forwarded misleading and factual incorrect report to the Ministry of Agriculture and in fact exceeded his power of disbursal by disbursing beyond a sum of Rs. 200 Crores, a limit which was set up by the Board of Director in its meeting dated 22.11.2003. However, on close scrutiny of the documents, it is apparently a complete misreading of the document by the investigating agency. Apparently, in the Board meeting dated 22.11.2003, it was not the limit on the power of the Managing Director on the contrary; it was merely a target, that too for the said financial year only. CBI cannot be permitted to twist the facts to the detriment of the petitioner, precisely when none of the witness from the Board of Directors has been examined in this regard. The relevant extract of the meeting are reproduced herein below:--

"The target assigned for the financial year in this respect is to import petroleum products amounting to Rs. 200 Crores up to march, 2004....."

47. In this view of the matter when the note itself is self-explanatory, CBI's attempt to extend it as an embargo to the powers of petitioner in July 2005, is unjustified and does not hold ground. With respect to the allegations in respect of false and misleading communication dated 20.06.2005, it has been stressed upon before me that there is no irregularity with the contents of the aforesaid communication. It has further been pointed out that as per Statement of Accounts, as on 20.06.2005, M/s. EEL had no outstanding dues qua NAFED in respect of the diversified Tie-up Business. Learned counsel for the CBI could not counter it through any documentary evidence. In fact, as discussed herein above, even the stock statement of the relevant point make it clear that there was no irregularity with the stocks and NAFED had received 100% payments against goods released to M/s. EEL till July, 2005.

48. Although there is merit in the conclusion of the CBI that petitioner, Alok Ranjan had knowledge about the terms and conditions of MOU dated 16.10.2003 as well as disbursements made pursuant thereto however, this fact alone cannot make him amenable for his prosecution under the proposed penal provisions.

49. An effort has also been made by the CBI to question the maintainability of the instant petition in light of the order passed by the Session Court, Karkardooma, Delhi, directing clubbing of case RC-EOU-1-2007-E-2002 with RC No. BD 1/2006/E/0009, CBI/BS&FC/Delhi. This belated effort is not of much help to the respondent as I have gone through both the charge-sheets, as admittedly both the charge-sheets pertain to payments made by NAFED to M/s. EEL in terms of Agreement dated 16.10.2003 and addendum dated 12.02.2004. Both the cases emerge out of the common conspiracy and the role assigned to the petitioners in both the charge-sheets is identically same as such, even clubbing of the charge-sheet in both cases would not have any bearing on the maintainability of this petition.

50. While questioning maintainability of the present petition and supporting the summoning order passed by the Trial Court, counsel for respondent No. 1, CBI has contended that powers under section 482 Cr.P.C. should not be exercised by this court to quash the proceedings, when petitioners can raise all these pleas at the stage of charge. Undisputedly, the powers under section 482 have to be exercised sparingly and shall not be used in routine manner but simultaneously if a perusal of record makes out a case of false implication of the petitioners and if petitioners succeed in bringing its case in the stipulations carved out by the Hon"ble Apex Court in the case of "State of Haryana v. Bhajan Lal ", , 1992 Supp. (1) SCC 335, the court would be justified in invoking its inherent powers under section 482 of the Code of Criminal Procedure. Reliance can be safely made to the judgments of the Apex Court in the matter of Ramu v. Kovvuri Satyanarayana Reddy and Ors.", , (2011) 12 SCC 437; Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.", , AIR 1998 SC 128; Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.", , AIR 1988 SC 709; State of Karnataka v. L. Munniswamy", , AIR 1977 1489.

51. The scope of the inherent powers of this Court was further elaborately explained by the Apex Court in the case of Satish Mehra v. State of N.C.T. of Delhi & Another", , AIR 2013 SC 506, where while quashing proceedings qua one of the accused, the Hon"ble Court observed:

"21. A criminal trial cannot be allowed to assume the character of a fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading

unimpeachable and acceptable evidence in the course of the trial against the accused..... "

52. Applying the aforesaid legal principles to the facts of the present case, it is observed that there is no evidence collected by the prosecution even to prima facie infer that the petitioners were a part of any agreement with other accused persons either to do any illegal act or legal act through illegal means, to sustain criminal prosecution of the petitioners. From a bare perusal of the records it is apparent that the petitioners have been arrayed as an accused by the investigating agency in utter disregard of the Cardinal Principle of Criminal Jurisprudence enunciated by the Apex Court in the above discussed cases.

53. From a perusal of record it is apparent that decision of diversification was taken by NAFED to meet out its administrative costs and overcome the financial crunch. Discussions made herein above clearly show that the decision of diversification was taken by the Management and infact, petitioner Homi Rajvansh was never a part of management of Federation. This decision of the Management was to overcome the losses and there was no conspiracy to siphon off funds between the officers working in NAFED or between the officers and the business associates. Keeping this in mind it would be sufficient to say that it was an institutional failure and no mala fide can be attributed to the petitioners for this. The charge sheet has specifically stated that the business associate misappropriated the funds instead of returning them to NAFED. The health and well being of the institution was the need of the hour. The disbursements made, therefore, cannot be given the color of conspiracy being legitimate authorized transactions. However, though the funds were given with good intentions for making the institution robust and for specific business as per MOU, the diversion thereof by the business associates appears to be with mala-fide intentions. Apparently there were sufficient checks and balances to monitor and control the working of the organization. Complete details of borrowings and disbursements were made available to the Executive Committee, Business Committee and Board of Director. The bona fides of the petitioners are apparent from the facts that the periodic meetings that took place in NAFED in the form of Executive Committee, Business Committee and Board of Director besides and Audit Committees, examined each and every disbursement and none of these have ever imputed the role of the petitioners.

54. In light of the aforesaid discussion, the petitions are allowed and the proceedings emanating from RC-EOU-1-2007-E-2002 are quashed qua the petitioners, Alok Ranjan and Homi Rajvansh only. It is made clear that observation made herein above shall not be taken as finding of this Court qua the remaining accused and the trial court shall proceed against the remaining co accused uninfluenced from the aforesaid observations.

Crl. M.A. No. 15102/2014 in Crl. M.C. No. 456/2012

This is an application under section 482 read with Section 340 of the Code of

Criminal Procedure, 1973 filed on behalf of respondent No. 2 for imitating the inquiry against the petitioner.

It is settled law that provisions of Section 340 of Cr.P.C. are intended to provide safeguard against criminal prosecution on insufficient grounds filed against party by his opponent motivated by revengeful desire to harass the opponent. It is not the law that every false statement should attract provisions of Section 340 Cr.P.C. The power under Section 340 Cr.P.C. should be used with care and due consideration. As a general rule the courts consider it expedient in the interest of justice to initiate prosecutions as contemplated by Section 340 Cr.P.C. only if there is a reasonable foundation for the charge and there is a reasonable likelihood of conviction.

The Hon''ble Supreme Court in *Patel Laljibhai Somabhai v. The State of Gujarat*, , 1971 (2) SCC 376, observed as under:--

"7. The underlying purpose of enacting Section 195(1)(b) and (c) and Section 476, seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offence and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by Section 190 CrPC, of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in Section 196(1)(c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party. It may be recalled that the superior Court is equally competent under Section 476-A CrPC, to consider the question of expediency of prosecution and to complain and there is also a right of appeal

conferred by Section 476-B on a person on whose application the Court has refused to make a complaint under Section 476 or Section 476-A or against whom such a complaint has been made. The appellate court is empowered after hearing the parties to direct the withdrawal of the complaint or as the case may be, itself to make the complaint. All these sections read together indicate that the Legislature could not have intended to extend the prohibition contained in Section 195(1)(c) Cr.P.C, to the offences mentioned therein when committed by a party to a proceeding in that court prior to his becoming such party....."

In view of the facts and circumstances of the case, I deem that no inquiry under Section 340 of Cr.P.C. is called for. Accordingly, the application is dismissed.

Crl. M.A. No. 1579/2012 in Crl. M.C. No. 456/2012

Crl. M.A. No. 16778/2012 in Crl. M.C. No. 3325/2012

The applications are dismissed as infructuous.