(2022) 11 TEL CK 0009

In the Telangana High Court

Case No : Criminal Petition No. 9292 Of 2014

Byappanahalli Prabhakar Reddy Kumar Babu APPELLANT

Vs

State Of Tellangana RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 482
Indian Penal Code, 1860 — Section 120B, 409, 420, 468, 471, 477A
Prevention of Corruption Act, 1988 — Section 9, 1, 12, 13(1)(c), 13(1)(d), 13(2)
Negotiable Instruments Act, 1881 — Section 138, 141, 141(1), 141(2)

Citation : (2022) 11 TEL CK 0009

Hon'ble Judges : Ujjal Bhuyan, CJ

Bench : Single Bench

Advocate : S V S Chowdary, K Surender

Final Decision : Dismissed

Judgement

1. Heard Mr. Vinod Kumar Deshpande, learned Senior Counsel appearing for Sri S.V.S.Chowdary, learned counsel for the petitioner and Mr. K.Surender, learned Special Public Prosecutor for Central Bureau of Investigation (CBI) (as his Lordship then was).

2. This criminal petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) for quashing of C.C.No.28 of 2013 pending on the file of Principal Special Judge for CBI Cases, Nampally, Hyderabad, qua, the petitioner.

3. Be it stated that the erstwhile High Court of Andhra Pradesh passed order dated 10.08.2011 in W.P.Nos.794 and 6604 of 2011 directing the CBI for registration of a case and conduct investigation into allegations of financial misdeeds by the then Chief Minister of Andhra Pradesh and his son involving huge amount of government largesse, corporate dealings including huge investments as part of quid pro quo arrangement for the largesse granted and for the benefit obtained by the investors from the State of Andhra Pradesh and also in all other aspects.

4. In view of the aforesaid order, CBI, Anti Corruption Bureau (ACB), Hyderabad registered a case being RC No.19 (A)/2011-CBI-Hyderabad on 17.08.2011 under Section 120B read with Sections 420, 409 and 477A of the Indian Penal Code, 1860 (IPC) and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (briefly, 'the P.C.Act' hereinafter) against Sri Y.S.Jagan Mohan Reddy (Accused No.1) and 73 others.

5. After conclusion of investigation, CBI filed charge sheet in the form of final report under Section 173 Cr.P.C being charge sheet No.17 dated 17.09.2013 putting up fourteen accused persons to face trial. This included the petitioner as accused No.13 i.e., Sri Byappanahalli Prabhakar Reddy Kumar Babu @ B.P.Kumar Babu.

6. The charge sheet gave a brief narration of the facts starting from the order passed by the High Court on 10.08.2011 in W.P.Nos.794 and 6604 of 2011. The charge sheet states that as per orders of the High Court CBI registered R.C.No.19(A)/2011-CBI-Hyderabad on 17.08.2011 under Section 120B read with Sections 420, 409 and 477A of IPC, and Section 13(2) read with Section 13(1)(c) and (d) of the PC Act against Sri Y.S.Jagan Mohan Reddy and seventy three others.

7. It was alleged that father of Sri Y.S.Jagan Mohan Reddy, Sri Y.S.Rajasekhara Reddy was sworn in as Chief Minister of Andhra Pradesh on 14.05.2004. Sri Y.S.Jagan Mohan Reddy and his father had adopted several ingenious ways to amass illegal wealth. Late Sri Y.S.Rajasekhara Reddy during his stint as Chief Minister of Andhra Pradesh from May, 2004 to August, 2009 had abused his public office to favour his son Sri Y.S.Jagan Mohan Reddy. The modus operandi followed by the duo was to dole out public properties, licenses, allotting/granting various projects, Special Economic Zones (SEZs), mining leases, real estate permissions etc., to persons of their choice violating established norms and procedures for quid pro quo. The beneficiaries, in turn, had given bribes to Sri Y.S.Jagan Mohan Reddy under the guise of purchasing shares in M/s. Jagati Publications Private Limited and other companies floated by him at huge and unsubstantiated premia.

8. In so far the role of Sri Y.S.Jagan Mohan Reddy, who has been named as accused No.1 is concerned, it was alleged that he had exercised influence over his father and other public servants to ensure that undue benefits were conferred on the chosen beneficiaries and in the process received huge amount of illegal gratifications.

9. As far as the role of the petitioner is concerned, it was alleged that during the period from July, 2007 and October 2007, accused No.3 Sri I.Syam Prasad Reddy, Chairman, Indu Group of Companies had paid an amount of Rs.50 crores to Sri Y.S.Jagan Mohan Reddy (accused No.1) under the cover of investment in M/s.Jagati Publications Private Limited (accused No.14) owned and controlled by Sri Y.S.Jagan Mohan Reddy. Petitioner, a long time business associate of accused

No.3, had facilitated routing of these funds through his company M/s.Cornerstone Property Investments Private Limited. Details of such transactions have been mentioned in the charge sheet. The investigating officer concluded that the accused persons, including the petitioner as accused No.13, have committed offences of criminal conspiracy, criminal breach of trust by public servant and agent, cheating, forgery for the purpose of cheating, using the forged document as genuine, falsification of accounts, taking gratification for exercise of personal influence over public servants to show favour or disfavour to any person, public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by other public servants, abetting a public servant to obtain a valuable thing for himself or for any other person without consideration from person connected in proceeding or business transacted by such public servants, criminal misconduct by abusing his official position, obtains for himself or for any other person any valuable thing or pecuniary advantage by a public servant resorting to by dishonestly allowing other person to misappropriate or convert for his own use. Thus, the accused persons had committed the above offences punishable under Section 120B read with Sections 409, 420, 468, 471 and 477A of IPC as well as under Sections 9, 11, 12, 13(2) read with Section 13(1)(c) and (d) of the PC Act.

10. As already indicated above, petitioner has been charged under Section 120B read with Sections 420, 409, 420, 468, 471 and 477A of IPC and Section 13(2) read with Section 13(1)(c) and (d) of the PC Act.

11. Learned counsel for the petitioner submits that there is no allegation of quid pro quo against the petitioner. After elaborately referring to various portions of the charge sheet learned counsel submits that ingredients of criminal conspiracy are completely absent in the present case as there is no meeting of mind. If there are also no ingredients of criminal conspiracy and in the absence of criminal conspiracy, all the other sections of IPC brought against the petitioner will fall through. In so far the PC Act is concerned, petitioner not being a public servant, provisions of the PC Act are not at all applicable. Therefore, petitioner cannot be charged with committing offences under the PC Act.

11.1. Another submission of Mr. Deshpande, learned Senior Counsel is that the company i.e., M/s.Cornerstone Property Investments Private Limited of which petitioner is alleged to be the alter ego has not been arrayed or named as an accused. In the absence of the company being named as an accused, CBI could not have only named the petitioner as the accused.

11.2. In support of his contentions, learned Senior Counsel has furnished a compilation of judgments on various aspects of the challenge. Learned counsel has placed reliance on the following decisions of the Supreme Court to contend that without impleading the company as one of the accused, individuals associated with the company cannot be arrayed as accused:

(1) Aneeta Hada v. Godfather Travels & Tours (Private) Limited (2012) 5 SCC

661, and

(2) Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609.

12. On the other hand, learned counsel for the respondent CBI has referred to the charge sheet more particularly to that portion dealing with the allegations against the petitioner and submits that role of the petitioner in the entire episode is clearly visible. He had facilitated routing of huge amounts of bribe money paid by the beneficiaries like Sri I.Syam Prasad Reddy (accused No.3) for onward payment to accused No.1 through the companies owned by accused No.1. Complete details of such transactions have been mentioned in the charge sheet. Petitioner had used his company M/s.Cornerstone Property Investments Private Limited to make illegal transactions. Therefore, the company has not been made an accused; rather the company is a victim of the illegal activities of the petitioner. From the relevant portion of the charge sheet, it is evident that petitioner had entered into criminal conspiracy with other accused persons in facilitating payment of bribes to accused No.1. Charging the petitioner under the PC Act would not detract from the main charge against the petitioner of committing the IPC offences. Therefore, in the facts and circumstances of the case, decisions relied upon by learned counsel for the petitioner including Aneeta Hada (supra) and Sunil Bharti Mittal (supra) are not at all applicable.

13. In his reply submissions, learned Senior counsel for the petitioner submits that all the transactions were made by the company M/s.Cornerstone Property Investments Private Limited of which petitioner was the Director. Therefore, it is the company which ought to have been named as an accused if at all the charges are probable. In the absence of the company as an accused, petitioner cannot be prosecuted de hors the company. That apart, the so called illegal transactions of the petitioner were made by the company through normal banking channels with other companies. Those were legitimate business transactions. No criminality could be attributed to such transactions. Therefore, present is a fit case where the decision of the Supreme Court in State of Haryana v. Bhajanlal AIR 1992 SC 604 would be squarely applicable and the charge sheet filed in C.C.No.28 of 2013 qua the petitioner is liable to be quashed.

14. Submissions made by learned counsel for the parties have received the due consideration of the Court.

15. At the outset, we may advert to the relevant portion of the charge sheet dealing with the allegations against the petitioner. For the sake of convenience, the same is extracted hereunder:

QUID PRO QUO INVESTMENTS:

INVESTMENT OF Rs.50 CRORE IN M/s. JAGATI PUBLICATIONS PVT LTD.

Investigation revealed that during the period between July, 2007 and October, 2007 Sri I. Syam Prasad Reddy (A-3) has paid an amount of Rs.50.00 Crore to Sri Y.S. Jaganmohan Reddy (A-1) under the cover of investment in M/s Jagati

Publications Pvt. Ltd. (A-14) owned and controlled by Sri Y.S. Jaganmohan Reddy. The amount was transferred to different layers to give them corporate colour in order to escape the criminal liability otherwise appurtenant to such nefarious deals.

Sri B.P.Kumar Babu, (A-13), a long time business associate of Sri I. Syam Prasad Reddy (A-3) has facilitated routing of these funds through his company M/s. Cornerstone Property Investments Pvt. Ltd., to M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., M/s. Alpha Avenues Pvt. Ltd., owned and controlled by Sri Nimmagadda Prasad in the sham of investments.

Investigation revealed that Sri I. Shyam Prasad Reddy (A-3) issued following cheques/RTGS from their following Bank Accounts of M/s. Walden Properties Pvt. Ltd., in the name of M/s. Cornerstone Property Investments Pvt. Ltd., of Sri Kumar Babu (A-13).

RTGS/Ch.No. &

Date

Amount

From the A/c

No.

To the A/c of

Date of Credit

RTGS UTR No. BKIDH0721200 9093 dt.

31.07.2007

5 Crore

M/s.Walden Properties A/c No.86002011 0000073

Bank of India,

Hyderabad.

M/s Cornerstone Properties C.A/c 1301003010003

25, Vijaya Bank,

CMH Road, Bangalore

31.07.2007

RTGS UTR No. BKIDH0721800 0523 dt.

06.08.2007

15 Crore

-do-

06.08.2007

RTGS UTR No. BKIDH0726900 990, dt.

26.09.2007

20 Crore

-do-

26.09.2007

RTGS UTR No. BKIDH0728200

291 dt.

09.10.2007

6 Crore

09.10.2007

Ch.No.842043, dt.06.08.2007

4 Crore

M/s.Walden Properties A/c No.

01510200006

515,

UCO Bank, Bangalore

08.08.2007

Total Amount

Rs.

50 Crore

Investigation revealed that immediately on receipt of Rs.50 Crore from Sri I. Shyam Prasad Reddy (A-3) to the Current A/c. No. 130100301000325 of M/s Cornerstone Property Investments Pvt. Ltd., at Vijaya Bank, CMH Road, Bangalore, the entire amount was in turn transferred to M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., M/s. Alpha Avenues Pvt. Ltd., of Sri Nimmagadda Prasad through the following cheques as shown below:

Cheque No.

& Date

Amount

Rs.

In favour of

Date of

Credit

326126,

01.08.2007

5 Crore

M/s. Gilchrist Investments Pvt.

Ltd., C. A/c No.0042200002300 9

HDFC,

Secunderabad.

02.08.2007

326133,

08.08.2007

15 Crore

-do-

08.08.2007

326134,

09.08.2007

4 Crore

-do-

09.08.2007

Investigation revealed that Rs.11 Crore was transferred to M/s Alpha Villas Pvt. Ltd., directly from M/s Cornerstone Property Investments Pvt. Ltd., and Rs.4 Crore through M/s Gilchrist Investments Pvt. Ltd., i.e., out of Rs.24 Crore received by M/s. Gilchrist Investments Pvt. Ltd., from M/s. Cornerstone Property Investments Pvt. Ltd., Rs.4 Crore was in turn transferred to M/s. Alpha Villas Pvt. Ltd., as below:

Cheque No.

& Date

Amount

Rs.

In favour of

Date of

Credit

0420058,

13.08.2007

4 Crore

M/s. Alpha Villas Pvt. Ltd., C. A/c No.0042256000169 1, HDFC,

Secunderabad.

13.08.2007

326161,

27.09.2007

11 Crore

-do-

28.09.2007

Similarly, Rs.15 Core was transferred to M/s. Alpha Avenues Pvt. Ltd., from M/s Cornerstone Property Investments Pvt. Ltd., through the following cheques and the details of transactions are as mentioned below.

Cheque No.

& Date

Amount

Rs.

In favour of

Date of

Credit

326162,

27.09.2007

9 Crore

M/s. Alpha Avenues Pvt. Ltd. C. A/c No.0042256000170 9, HDFC,

Secunderabad.

28.09.2007

326171,

12.10.2007

11 Crore

-do-

15.10.2007

From the above, it is clearly established that a total amount of Rs.50 Crore was received from M/s. Cornerstone Property Investments Pvt. Ltd., Bangalore from their Current A/c. No.130100301000325 at Vijaya Bank, Bangalore to the above mentioned three accounts i.e., 20 Crore to M/s. Gilchrist Investments Pvt. Ltd., Rs.15 Crore to M/s. Alpha Villas Pvt. Ltd., and Rs.15 Crore to M/s. Alpha Avenues Pvt. Ltd.

Scrutiny of all the above transactions of Current A/c. No.130100301000325 of M/s. Cornerstone Property Investments Pvt. Ltd., was in turn transferred to M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., and M/s. Alpha Avenues Pvt. Ltd., through cheques. This is evident from the balances of the account at that time. Except Rs.50 Crore received from M/s. Walden Properties Pvt. Ltd., there were not any balances available in Current A/c. No.130100301000325 of M/s. Cornerstone Property Investments Pvt. Ltd., to transfer Rs.50 Crore to M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., and M/s. Alpha Avenues Pvt. Ltd.

Investigation revealed that the said Rs.50 Crore received from M/s. Cornerstone Property Investments Pvt. Ltd., Bangalore in the above said three accounts of M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., and M/s. Alpha Avenues Pvt. Ltd., was in turn transferred to M/s. Jagati Publications Pvt. Ltd., through the following cheques in the mask of investment at the inflated premium of Rs.350 per share and the same were credited to the A/c of M/s. Jagati Publications Pvt. Ltd., at Oriental Bank of Commerce.

Investment in M/s. Jagati Publications Pvt. Ltd.

Cheque No.

& Date

Amount

Rs.

From the A/c of

Date of Debit

420053,

02.08.2007

5 Crore

M/s. Gilchrist Investments Pvt. Ltd.

A/c.

No.00422000023009

06.08.2007

420056,

11.08.2007

15 Crore

-do-

13.08.2007

346705,

16.08.2007

4 Crore

M/s. Alpha Villas Pvt.

Ltd., A/c No.00422560001691

18.08.2007

346707,

11 Crore

-do-

04.10.2007

01.10.2007

346814,

01.10.2007

9 Crore

M/s. Alpha Avenues Pvt. Ltd.,

A/c

No.00422560001709

04.10.2007

346815,

16.10.2007

6 Crore

-do-

17.10.2007

Total

Amount Rs.

50 Crore

Scrutiny of all the above transactions in the above said three accounts of M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., and M/s. Alpha Avenues Pvt. Ltd., revealed that Rs.50 Crore received from M/s. Cornerstone Property Investments Pvt. Ltd., was ultimately reached to M/s. Jagati Publications Pvt. Ltd., through the said three accounts. This is evident from the dates of entries and the balances in the statements of the accounts of the said three accounts. Except Rs.50 Crore received from M/s. Cornerstone Property Investments Pvt. Ltd., no sufficient balances were available in these accounts and whatever amounts received, the same were in turn transferred to M/s. Jagati Publications Pvt. Ltd., immediately. Sri Nimmagadda Prakash, brother of Sri Nimmagadda Prasad (A-12) signed most of the above mentioned cheques issued in favour of Jagati Publications Pvt. Ltd (A-8).

From the above transactions, the cheques, their dates of issue, credit and debit entries in the statements of accounts of all the above accounts of above companies, it is clear that the above said Rs.70 Crore was originated from the bank accounts of M/s. Walden Properties Pvt. Ltd., of Sri I. Syam Prasad Reddy and the same was ultimately reached to M/s. Carmel Asia Holdings Pvt. Ltd., and M/s. Jagati Publications Pvt. Ltd., belonging to Sri Y.S. Jaganamohan Reddy (A-1).

Investigation revealed that as per the board resolutions, Memorandum & Articles of Association, Sri I. Syam Prasad Reddy, in the capacity of Director of M/s. Walden Properties Pvt. Ltd., opened the above said bank accounts in the name of M/s. Walden Properties Pvt. Ltd., from which Rs.70 Crore routed to A-1. As per Memorandum and Articles of Association of the company, it was incorporated on 27.07.2004 and Sri I. Syam Prasad Reddy (A-3) and his wife Smt. I. Sundari are the shareholders and Directors of the company. As per the Account Opening Forms and extracts of the Minutes of the Board of the Company, Sri I. Syam Prasad Reddy (A-3) was authorized to open and operate the said bank accounts.

Scrutiny of the sources of amounts of Rs.70 Crore in the bank accounts of M/s. Walden Properties Pvt. Ltd., of Sri I. Syam Prasad Reddy (A-3) revealed that they have mobilized these amounts out of their own sources and the loans availed by them.

For instance, Sri I. Syam Prasad Reddy (A-3) availed Construction Finance Loan of Rs.40 Crore from HDFC Limited, Hyderabad vide Loan A/c No.600019046 in the name of M/s. CHIDCO Pvt. Ltd., for the constructions of an Integrated Township "Fortune Fields" in Kukatpally, Hyderabad and out of this loan amount, Rs.20 Crore was transferred to their Current A/c. No.1252 at UCO Bank, Banjara Hills, Hyderabad through RTGS on 28.12.2006 and on the same day it was transferred to M/s. Walden Properties Pvt. Ltd., at Bank of India, Khairatabad Branch, through Cheque No.932197 and part of it was used for the above said investment in M/s. Carmel Asia Holdings Pvt. Ltd.

Similarly, Term Loan of Rs.12.60 crore was obtained from Bank of India, Khairatabad in the name of M/s. Walden Properties Pvt. Ltd., for part finance cost of Wind Turbine Generator Unit, out of which, Rs.5 Crore was used for the above said investment in M/s. Carmel Asia Holdings Pvt. Ltd.

Investigation prima facie revealed that Sri I. Syam Prasad Reddy (A-3) is the Chairman & Managing Director of M/s. Indu Group of Companies and has major stake in the group companies. During the period from December, 2007 to October, 2007, he paid bribes of Rs.70 Crore to Sri Y.S. Jaganmohan Reddy (A-1) as quid-pro-quo in the mask of investment into his group companies M/s. Carmel Asia Holding Pvt. Ltd., and M/s. Jagati Publications Pvt. Ltd., at highly inflated premiums of Rs.250 and Rs.350 per share respectively against the undue favours received by him from the Govt. of A.P. as mentioned above.

Investigation revealed that in order to give the colour of investment to these illegal transactions, M/s. Carmel Asia Holdings Pvt. Ltd., issued shares in the name of M/s. Beta Avenues Pvt. Ltd., for Rs.20 Crore at an inflated premium of Rs.250 per share. Similarly M/s. Beta Avenues Pvt. Ltd., gave colour of ICD of Rs.20 Crore received from M/s. Walden Properties Pvt. Ltd., through M/s. Veen Promoters Pvt. Ltd., to conceal these illegal transactions.

Similarly, M/s. Jagati Publications Pvt. Ltd., issued shares in the name of M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., and M/s. Alpha Avenues Pvt. Ltd., for Rs.50 Crore at a premium of Rs.350 per share. In turn these three companies also issued shares in the name of M/s. Cornerstone Properties Pvt. Ltd., at the same rate of premium of Rs.350 per share. M/s. Cornerstone in turn allotted 33% its holding to M/s. Walden Properties Pvt. Ltd., to give the colour of genuine investments to conceal the flow of funds between Sri I. Syam Prasad Reddy and Sri Y.S. Jagan Mohan Reddy. This is evident from the scrutiny of the flow of funds between them. Right from the originating point to ultimate destination of funds, in all the statements of accounts immediately on receipts of the funds, the same were in turn forwarded further and there was no gap between the flow of funds and even no balances were available in the accounts through which these funds were routed.

For instance, cheque No.960872 for Rs.10 Crore was issued by Sri I. Syam Prasad Reddy from M/s. Walden Properties on 30.12.2006 in the name of M/s. Veen Promoters and on the same day Sri Nimmagadda Prakash, brother of

Nimmagadda Prasad issued cheque No.333237 for Rs.10 Crore from M/s. Beta Avenues in the name of Carmel Asia Holdings Pvt. Ltd., relating to Sri Y.S. Jaganmohan Reddy (A-1) without receiving the proceeds in M/s. Beta Avenue A/c, shows the nexus and intentions between them. In fact, the said Rs.10 Crore was reached to M/s. Veen Promoter on 02.01.2007 and on the same day to M/s. Beta Avenues.

Investigation revealed that around 20 companies including M/s. Beta Avenues Pvt. Ltd., M/s. Veen Promoters Pvt. Ltd., M/s. Gilchrist Investments Pvt. Ltd., M/s. Alpha Villas Pvt. Ltd., and M/s. Alpha Avenues Pvt. Ltd., are closely held private limited companies and all these companies were controlled by Sri Nimmagadda Prasad, though the Directors may vary from company to company. All the investment decisions were essentially taken by Sri Nimmagadda Prasad himself and as per his instructions, other Directors including his brother N. Prakash used to issue the cheques for investments, etc.

Investigation revealed that the valuation reports pertaining to M/s. Carmel Asia Holdings Pvt. Ltd., and M/s.Jagati Publications Pvt. Ltd., relating to Sri Y.S.Jagan Mohan Reddy (A-1) based on which premiums fixed are fake and ante-dated.

Sri Vijay Sai Reddy (A-2) was the founder Director of M/s. Jagati Publications Pvt. Ltd., and the Financial Advisor for Group Companies of Sri Y.S. Jagan Mohan Reddy (A-1).

Investigation revealed that the valuation report dated 12.07.2007 which was prepared by Sri J. Prabhakar of M/s. Jagadisan & Company, Chartered Accountant, showed the business value of M/s. Jagati Publications Pvt. Ltd., as Rs.3,450 Crore.

Investigation revealed that Sri V. Vijaya Sai Reddy (A-2) had approached Sri J. Prabhakar of M/s. Jagadisan & Company over phone during November/December, 2006 to carry out valuation of M/s. Carmel Asia Holdings Pvt. Ltd., and in the process Sri V. Vijaya Sai Reddy (A-2) had provided inputs regarding business strategy, project cost, projected balance sheets, future cash flows and projected profit and loss accounts, and the data was sent through Sri Murali, Chartered Accountant. Sri J. Prabhakar had taken the relevant material by copying the same for valuation through the laptop of Sri Murali and the report was prepared during January, 2007.

Investigation revealed that Sri J.Prabhakar had prepared the business valuation of M/s. Jagati Publications Pvt. Ltd., M/s. Indira Television Ltd., and M/s. Janani Infrastructure Pvt. Ltd., which are subsidiaries of M/s. Carmel Asia Holdings Pvt. Ltd., as per the details given below:

Name of subsidiary

Percentage of holding by CAHPL

Value of Business in the region (Rupees in Crore)

From

To

Indira Television Ltd.

02.08.2007

75%

137

139

Jagati Publications Pvt. Ltd.

76%

136

149

Janani Infrastructure

Pvt. Ltd.

71%

21

21

Investigation revealed that Sri J.Prabhakar of M/s. Jagadisan & Company had prepared the report dated 01.11.2006 valuing the business range of M/s. Jagati Publications Pvt. Ltd. from 136 Crore to 149 Crore and subsequently during December, 2007, Sri Vijaya Sai Reddy had contacted Sri J. Prabhakar of M/s. Jagadisan & Company and asked to carry out the valuation of M/s. Jagati Publications Pvt. Ltd., again to project the valuation as Rs.3,400 Crore as the said company was earlier valued from 136 to 149 Crore.

Investigation revealed that the valuation of M/s. Jagati Publications Pvt. Ltd., was based on the projections/inputs provided by Sri V. Vijaya Sai Reddy and not on merits. In order to solicit bribes in the guise of investments Sri V. Vijaya Sai Reddy in furtherance of criminal conspiracy with Sri Y.S.Jaganmohan Reddy had got fixed the value of premium at Rs.350 per share and to justify the premium, Sri V. Vijaya Sai Reddy had approached Sri J. Prabhakar of M/s. Jagadisan & Company to give inflated valuation report of M/s. Jagati Publications Pvt. Ltd. at Rs.3,450 Crore.

Investigation revealed that in pursuance of conspiracy, the valuation report prepared by Sri J. Prabhakar was antedated as 12.07.2007 at the instance of Sri V. Vijaya Sai Reddy, which was completed in the month of January, 2008. The reason for antedating the report was to justify for fixing the high premium for the amounts already received by M/s. Jagati Publications Pvt. Ltd., from various beneficiaries. Thereby Sri Y.S.Jagan Mohan Reddy received the bribes at a premium of Rs.350 per share from various companies as a quid pro quo for the benefits received by them from the Government by influencing his father late Dr. Y.S. Rajashekara Reddy.

Sri V. Vijaya Sai Reddy (A-2) maintained a close nexus with Sri Y.S.Jaganmohan Reddy (A-1) and his father late Dr. Y.S. Rajashekara Reddy, the then Chief Minister of A.P. Late Dr. Y.S. Rajashekara Reddy, the then Chief Minister of A.P. by using his official powers in view of his close association with Sri V. Vijaya Sai Reddy (A-2) got him nominated to coveted posts in the Governing Bodies of Tirumala Tirupati Devasthanams (TTD) and Oriental Bank of Commerce evidencing the affinity of A-2 with the family of A-1 and late Dr. Y.S.Rajashekara Reddy. In pursuance of criminal conspiracy with the A-1 and his father and also with the remaining co-conspirators exaggerated the projections and valued M/s. Jagati Publications Pvt. Ltd., highly and also fixed the premium of Rs.350 per share and also got evaluated M/s. Jagati Publications through M/s. Deloitte Touch Thomatsu India Pvt. Ltd. and thereby facilitated the receipt of bribe to the tune of Rs.50 Crore from Sri I. Syam Prasad Reddy (A-3) through the above said companies.

Sri V. Vijaya Sai Reddy, A-2, while functioning as one of the Directors in the Board of Directors of Oriental Bank of Commerce has also continued in business association with M/s. Jagati Publications Pvt. Ltd., retaining his status in its Board of Directors. M/s. Jagati Publications obtained Letter of Credit from OBC to a tune of Rs.40 Crore prior to the commencement of the project. Though Sri V. Vijaya Sai Reddy was the Director of OBC, Sri Y.S. Jagan Mohan Reddy in pursuance of the criminal conspiracy with Sri Vijaya Sai Reddy dishonestly and fraudulently suppressed the material fact that Sri Vijaya Sai Reddy who has got long standing association with him and also M/s. Jagati Publications Ltd., is in the Board of Directors of the OBC. Sri Y.S. Jaganmohan Reddy has not furnished the declaration as to his business association with Sri Vijaya Sai Reddy, who was holding a position as Director in the Board of Directors of Oriental Bank of Commerce.

Sri V. Vijaya Sai Reddy by abusing his official powers failed to protect the interest of Oriental Bank of Commerce as one of the Directors in its Board of Directors appraising the actual business and financial status of M/s. Jagati Publications Ltd. (A-14)

Sri V. Vijaya Sai Reddy (A-2), a close associate and a confederate of Sri Y.S. Jagan Mohan Reddy (A-1) and his father late Y.S. Rajashekara Reddy, the then Chief Minister of A.P., was instrumental in inflating the share price of M/s. Jagati Publications Ltd. (A-14) and getting the same fixed at a high premium of Rs.350 without there being any rationale and before commencement of business by using Delloitte Report which was got inflated as Sri V. Vijaya Sai Reddy (A-2) strongly urged Sri P.N.Sudarshan to do so.

Further, in pursuance of criminal conspiracy with the A-1 and his father, Sri V. Vijaya Sai Reddy (A-2) fraudulently has got artificially inflated the credit worthiness of M/s. Carmel Asia Holdings Pvt. Ltd., an investment company of holding M/s. Janai, M/s Jagati and M/s Indira Television held by A-1 by exaggerating the projections and also fixed the premium of Rs.250 per share by ante-dating the valuation report of M/s. Carmel Asia Holding Ltd., thereby facilitated the receipt of bribe to the tune of Rs.20 Crore by Sri Y.S. Jaganmohan Reddy (A-1) from Sri I. Syam Prasad Reddy (A-3) through the above said companies.

16. From the above, what is discernible is that the allegation against the petitioner relates to facilitating payment of bribe money by accused No.3 to accused No.1 by showing them as corporate investments. As per the charge sheet, during the period from July 2007 and October 2007, accused No.3 had paid an amount of Rs.50 crores to accused No.1 under the cover of investment in M/s.Jagati Publications Private Limited (accused No.14) owned and controlled by accused No.1. It is alleged that the aforesaid amount was transferred in different layers to give them a corporate colour. The charge sheet says that accused No.13 i.e., the petitioner is a long time business associate of accused No.3. Accused No.3 had issued several cheques/made RTGS transactions from the bank account of his company M/s.Walden Properties to the account of M/s.Cornerstone Property Investments Private Limited of the petitioner. Total amount paid through the five transactions was Rs.50 crores. Investigation revealed that immediately on receipt of Rs.50 crores from accused No.3 into the account of M/s.Cornerstone Property Investments Private Limited of the petitioner, the entire amount was transferred to M/s.Gilchrist Investments Private Limited, M/s.Alpha Villas Private Limited and M/s.Alpha Avenues Private Limited, all belonging to Sri Nimmagadda Prasad, who is an accused in other calendar cases arising out of RC No.19 (A)/2011-CBI-Hyderabad, through several cheque transactions, details of which have been given in the form of a statement in the charge sheet as extracted above. After tracing the money trail, CBI found that the entire amount was paid from the account of M/s.Walden Properties of accused No.3 and deposited into the account of M/s.Cornerstone Property Investments Private Limited of the petitioner. This amount, in turn, was transferred to the three companies of Sri Nimmagadda Prasad. It was noticed that after the entire amount was transferred to the companies of Sri Nimmagadda Prasad, there was no balance left in the account of M/s.Cornerstone Property Investments Private Limited. Investigation further revealed that from the three companies of Sri Nimmagadda Prasad, the said amount of Rs.50 crores was transferred to M/s.Jagati Publications Private Limited, accused No.14, through six cheque transactions which were shown as investments in the shares of M/s.Jagati Publications Private Limited, at highly inflated premia of Rs.350 per share. Thus the allegation against the petitioner is that he had acted as a conduit in chanelling the bribe money to accused No.1.

17. The above allegation made against the petitioner by CBI cannot simply be

brushed aside at this stage as being of no consequence. It cannot be said at this stage that there are no materials whatsoever against the petitioner to justify pre-empting holding of criminal trial against the petitioner. Present is certainly not a case for quashing of the charge sheet qua the petitioner at the stage of filing of charge sheet. Therefore, this Court is not inclined to interdict the proceedings right at the threshold.

18. In so far contention of the learned Senior Counsel for the petitioner that without arraying M/s.Cornerstone Property Investments Private Limited of which the petitioner is a Director as an accused, petitioner cannot be prosecuted, it would be apposite to deal with two decisions relied upon by the learned Senior Counsel for the petitioner.

19. In Aneeta Hada (supra) the question which arose for consideration of the Supreme Court was whether the authorized signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arrayed as an accused. Thus, the core issue before the Supreme Court was whether the company could have been made liable for prosecution without being impleaded as an accused and whether the Directors could have been prosecuted for offences punishable under Section 138 of the Negotiable Instruments Act, 1881. After adverting to the facts of the appeals, Supreme Court recorded that the gravamen of the controversy was whether any person mentioned in Sections 141(1) and 141(2) of the Negotiable Instruments Act, 1881 could be prosecuted without the company being impleaded as an accused. It was thereafter that various provisions of the aforesaid Act including Section 138 thereof were analysed in the backdrop of relevant case laws. Adverting to Section 141 of the aforesaid Act, it was held that the said provision clearly speaks of commission of offence by the company. It was in that context, Supreme Court held that for maintaining a prosecution under Section 141 of the Negotiable Instruments Act, 1881, arraying of the company as an accused is imperative.

20. Supreme Court in Sunil Bharati Mittal (supra) examined the principle of alter ego in the backdrop of commission of an offence involving a company or corporation. After a detailed analysis, Supreme Court held that the criminal intent of the alter ego of the company i.e. personal group of persons that guide the business of the company would be imputed to the company/corporation. If the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well. After holding so, Supreme Court discussed the circumstances when the Director/person in charge of the affairs of the company can also be prosecuted when the company is an accused person. It has been held as follows:

42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when

the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

xxx xxx xxx xxx xxx

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

21. Thus from the above, it is discernible that if an offence is allegedly committed involving a company or a corporation, the criminal intent of the alter ego of the company or corporation would be looked into. Alter ego means a person or a group of persons who control the affairs of the company or the corporation. However, Supreme Court sounded a note of caution that since corporate entity is an artificial person there can be no vicarious liability of the alter ego unless the statute specifically provides for because it is the cardinal principle of criminal jurisprudence that there can be no vicarious liability unless the law so provides. In this connection, an example has been given of Section 141 of the Negotiable Instruments Act, 1881. Therefore it has been held that when a company or a corporation is an offender, vicarious liability of the directors or the alter ego cannot be imputed automatically if there is no statutory provision to this effect.

22. In the instant case, the allegation against the petitioner is that he had misused the bank account of the company and routed the crime tainted money through the said bank account for onward transmission to the ultimate beneficiary. The investigating agency has not pinned any blame on the company; rather the allegation is that it is the petitioner who is responsible for routing of

such money because of his long standing close business association with accused No.3. Therefore, in the above factual backdrop, decisions relied upon by the learned Senior Counsel for the petitioner in Aneeta Hada (supra) and Sunil Bharti Mittal (supra) would be of no assistance.

23. There is one more aspect. Mentioning of provisions of the PC Act against the petitioner in the charge sheet, though he is not a public servant, may not have a material bearing so far the IPC related offences against the petitioner are concerned.

24. That being the position, Court is of the view that no case for invoking provisions of Section 482 Cr.P.C for quashing of the charge sheet in C.C.No.28 of 2013 qua the petitioner has been made out. There is no merit in the criminal petition and the criminal petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

