

(2006) 09 AP CK 0141

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3091 of 2006

Dr. P. Madan Mohan Rao (A-2)

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 171, 24, 415, 418
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2006) 2 ALD(Cri) 811 : (2007) 1 ALT(Cri) 41

Hon'ble Judges : P. Lakshmana Reddy, J

Bench : Single Bench

Advocate : T. Pradyumnakumar Reddy, for the Appellant; T. Niranjan Reddy, SC, for the Respondent

Final Decision : Allowed

Judgement

P. Lakshmana Reddy, J.—This Criminal Petition is filed u/s 482 Cr.P.C. to quash the proceedings in C.C. No. 21 of 2002 on the file of the Special Judge for Central Bureau of Investigation (for short "C.B.I.") Cases, Hyderabad so far as it relates to the petitioner who is arrayed as A-2 in the said calendar case.

2. The relevant facts, in brief, are as follows:

The petitioner herein Dr.P. Madan Mohan Rao is a Paediatrician and Neonatologist. He made an application on 22.11.1994 to the Corporation Bank for loan of Rs. 3,82,500/- for purchase of medical equipments viz. incubators, warmers and infusion pumps worth Rs. 5,10,000/- from M/s. General Equipments, Pune. The petitioner herein opened savings bank account No. 7683 for that purpose on 03.12.1994 and made initial cash deposit of Rs. 1.28 lakhs. On 04.12.1994 the bank sanctioned loan of Rs. 3,82,500/- and disbursed the same by way of issuing pay order of Rs. 5.10 lakhs in favour of M/s. General Equipments after debiting Rs. 1.28 lakhs in the savings bank account of the petitioner and the said pay order was issued after the petitioner produced

proforma invoice of M/s. General Equipments, Pune for supply of electro medical equipments to the petitioner. Further the petitioner had produced a quotation dated 18.11.1994 issued by M/s. General Equipments Ltd., Pune for the above said medical equipment. The said pay order was encashed at Hyderabad itself through Bank of Baroda after depositing the same with current account No. 1324 of M/s. General Equipments Ltd., Pune on 05.12.1994. On the same day a sum of Rs. 5 lakhs was transferred to the current account No. 1161 of Hyderabad Medical Management Group in the same branch operated by A-3 who is an employee of new citi hospitals (Secunderabad Health Care Limited) and out of it Rs. 1,25,000/- was encashed duly producing self-drawn cheque and thereafter on the same day from the said account No. 1161 a sum of Rs. 3,75,000/- was transferred to the current account No. 433 which is the account of Secunderabad Health Care Limited (A-7).

3. The said loan amount was sanctioned and disbursed after execution of the loan agreement by A-2 along with guarantor A-5 agreeing to repay the loan amount with interest thereon @ 4.5% over and above the Reserve Bank of India rate of interest subject to the minimum of 16.5% per annum. The repayment shall be made within 48 months in 45 equal monthly instalments @ Rs. 11,412/- with three months interval period.

On 08.07.1999 the Regional Manager, Corporation Bank, Hyderabad filed a report before the Superintendent of Police, C.B.I., Hyderabad alleging that P. Madhukar Rao, Senior Manager of Corporation Bank conspired with C.H. Devender, Nagarjuna Health Care Centre, Secunderabad for a consideration of illegal gratification and sanctioned loans in favour of Dr. P. Madan Mohan Rao, Dr. Suryanarayana Thampa, Dr.E.V. Ramana Rao, Dr. P.V. Sudhakar Raju, Dr.K. Sanjeev, Dr.L. Mahesh, and Dr.M.S.N. Raju in violation of procedural norms and acted in a manner prejudicial to the Corporation Bank which amounts to criminal misconduct and requested the C.B.I. to register a case against P. Madhukar Rao and C.H. Devender and also the purported suppliers of the medical equipments and the loanees viz. General Equipments, Pune, Hyderabad Medical Management Group, Vijaya Pharma, Lakshmi Instruments, D.N. Enterprises and Lakshmi Surgical Agencies.

4. On the said report, the Inspector of Police, C.B.I. Special Protection Force, Hyderabad registered the same as case in Crime No. R.C. No. 9(A)99-CBI-Hyd for the offences punishable under Sections 120-B, 420, 468 and 171 I.P.C. and also u/s 13(2) read with Section 13(1)(d) of Prevention of Corruption Act (for short "P.C.Act").

After investigation the Inspector of Police filed the charge sheet before the Special Judge for C.B.I. Cases, Hyderabad under the above said sections of law against P.Madhukar Rao (A-1), Dr.P.Madan Mohan Rao (A-2), N.P.Manik Rao (A-3), T.Chakradhar Rao (A-4), G.Vasudeva Reddy (A-5), Danial Soloman (A-6) and M/s. Secunderabad Health Care Limited represented by A-5 and A-6 before the Special Judge for Central Bureau of Investigation (for short "C.B.I.") Cases,

Hyderabad.

5. The allegation against the present petitioner-A-2 is that the electro medical equipments financed under the loan are intended to be held at New Citi Hospitals for A-2's consultancy services. But, however, A-2 entered into memorandum of understanding with New Citi Hospitals (M/s. Secunderabad Health Care Limited) to the effect that the revenue generated out of the equipment will be shared by both of them (i.e. the doctor and the hospital) equally and thus the equipments financed under the loan were leased out by A-2 to the New Citi Hospitals (M/s. Secunderabad Health Care Limited i.e.A-7). It is the further case of the prosecution that A-2 is also one of the shareholders in M/s. Secunderabad Health Care Limited with the trade name of New Citi Hospital, Secunderabad where A-5 who is the managing director and also guarantor for the loan and A-6 is the Executive Director who is instrumental in arranging the blank letter head and proforma invoice of M/s. General Equipments, Pune from one Abhay Tokekar who is representative of General Equipments who was regularly visiting A-6 in connection with supply of medical equipments. The said blank letter head and proforma invoice were issued to avail this loan by A-2. The loan amount of Rs. 3,82,500/- which was meant for purchase of electro medical equipments from M/s. General Equipments was ultimately diverted to the account of M/s. Secunderabad Health Care Limited (A-7) where A-2 is a shareholder and A-5 is the Managing Director which indicates that no medical equipments were purchased from M/s. Equipments out of this Loan. It is the case of the prosecution that the investigation revealed that the account was opened on 03.12.1994 by Sri Abhay Tokekar, Proprietor of M/s. General Equipments on the introduction by A-5 and that the signatures appearing on the proforma invoice of M/s General Equipments, dt.18.11.1994, the invoice No. 7, dated nil for Rs. 5,10,000/- and the acknowledgement on the forwarding letter are that of A-4 who is a business executive in the New Citi Hospitals and it proves that the above said proforma invoice and the invoice No. 7 of M/s General Equipments are bogus and the same were submitted to the bank in order to cheat the bank and that the loan amount obtained on such bogus documents was diverted to M/s. Secunderabad Health Care Limited and that the equipments mentioned in invoice No. 7 of M/s. General Equipments were purchased by New Citi Hospital from Phoenix Medical Systems, Madras and other local supplier between 12.05.1994 and 02.09.1994. It is further mentioned in the charge sheet that the investigation revealed that the subject loan is an accommodative loan and the loan amount though remitted in the name of supplier of medical equipments, was encashed by the borrower/hospital and that the investigation revealed that A-1 disbursed the loan in undue haste for extending undue financial benefit to the borrower/hospital by granting an accommodative loan. The aforesaid acts of the accused constitute offences punishable under Sections 120-B, 420, 468 and 471 I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

6. On the said allegations the learned Special Judge took the case on file and issued summons to all the accused 1 to 7 including the present petitioner who is

arrayed as A-2. The petitioner herein filed an application before the Special Judge for discharge in CrI.M.P. No. 668 of 2003. The learned Judge dismissed the said application filed for discharge and framed the charges for the offences punishable under Sections 120-B, 420, 468 and 471 I.P.C. against all the accused including the present petitioner besides framing another charge u/s 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988 against A-1 who is the then Senior Manager of Corporation Bank who sanctioned loan.

7. Along with the present petition, the petitioner's counsel filed copy of letter dated 20.03.1999 addressed to the Senior Manager, Corporation Bank, S.P. Road Branch, Secunderabad by A-2 wherein it is stated that he already paid the principal amount of Rs. 3,82,000/- and he further paid Rs. 1,00,000/- on 20.03.1999 along with two post dated cheques one for Rs. 50,000/- dated 30.03.1999 and another for Rs. 50,000/- dated 15.04.1999 which contained the endorsement of the bank to the effect that cash of Rs. 1,00,000/- accepted and final settlement is to be finalized in consultation with the Regional Manager, Regional Office, Hyderabad. The petitioner also filed the copy of the F.I.R. and also the copy of the statement of account furnished by Corporation Bank, S.P. Road branch, Secunderabad to A-2 for the period from 01.04.1996 to 05.01.1997, which shows the periodical payments, made by the petitioner towards loan amount. The petitioner also filed the certificate issued by Corporation Bank, S.P. Road, Secunderabad wherein it is certified that A-2 closed the Corporation Medi loan account 4/94 on 31.08.1999.

8. The respondent-C.B.I. did not dispute about the correctness of the documents filed by the petitioner to the effect that A-2 discharged the loan amount by 31.03.1999 long prior to the filing of the charge sheet which is filed in the year 2001. It is also not disputed in the counter that the Senior Manager, Corporation Bank who filed the report on 08.07.1999 did not name the petitioner herein under the caption "accused" given therein, though eight persons are shown as accused in that report.

9. While the said case is pending trial, the petitioner-A-2 approached this Court by way of filing this petition seeking to quash the proceedings against him u/s 482 Cr.P.C. contending that the loan was granted to the petitioner on 04.12.1994 and on 20.03.1999 the petitioner addressed letter to the bank informing them that he has already paid Rs. 3,82,000/- which is the loan amount and further paid Rs. 1,00,000/- on 20.03.1999 and also promised to pay the remaining amount if any due and accordingly discharged the amount and closed the loan account on 31.08.1999 and therefore there was no dishonest intention at the time of inception and there is no wrongful gain to him or wrongful loss to the bank and therefore Section 420 I.P.C. is not applicable. It is further contended that the name of the petitioner does not find place in the F.I.R. as an accused and he was subsequently implicated falsely. It is further contended that in the charge sheet it is alleged that A-4 the business executive signed the acknowledgement and therefore there is no forgery committed by the petitioner

and hence Sections 468 and 471 I.P.C. are not attracted. He further contended in the petition that there is no material either oral or documentary to fasten the liability upon the petitioner that he entered into criminal conspiracy with the other accused and that even if the allegations mentioned in the charge sheet are taken as true, no offences punishable under Sections 420, 120-B, 468 and 471 I.P.C. are made out and hence the proceedings against him in C.C. No. 21 of 2002 on the file of the Special Judge for C.B.I. Cases, Hyderabad are liable to be quashed.

10. After receipt of notice of this petition, the standing counsel for C.B.I. filed counter opposing the petition. In the said counter it is contended that there is sufficient material available against all the accused including the present petitioner. The C.B.I. filed charge sheet against the accused under Sections 120-B, 420, 468 and 471 I.P.C. by citing 26 witnesses and 110 documents to prove the allegations made in the charge sheet and that after due hearing the learned Special Judge applied his mind and framed charges against all the accused including the present petitioner for the offences punishable under the above said sections of law. It is further contended in the counter that the role of petitioner (A-2) is that he availed corporation meditech loan for purchase of medical equipments from Corporation Bank by submitting bogus invoices and availed the loan amount and that as per the statements made by Managing Director, M/s Phoenix Medical System Private Limited, Chennai (LW-20) and Sri Abhay Tokekar, Pune (LW-21) it is clear that they have not sold any medical equipments to the petitioner-A-2 and they sold the same to M/s Secunderabad Health Care Ltd. (A-7) and that the documents would clearly show that A-7 had purchased medical equipments prior to availing loan by the petitioner-A-2 and hence there is sufficient evidence to prove the case against the present petitioner.

11. Along with the counter, the respondent filed the copy of charges framed by the Special Judge and also the statements of Managing Director, M/s Phoenix Medical Services Private Limited (LW-20) and Sri Abhay Tokekar (LW-21). The respondent further filed the copy of the pay order, copy of take delivery letter, copy of agreement entered into between the bank and A-2 and guarantor A- 5 and also unattested deed. The respondent also filed the application submitted by A-2 for loan. The respondent also filed copy of Invoice No. 7 and also proforma invoice wherein A-4 alleged to have forged the signatures on behalf of Sales Executive, M/s General Equipments, Pune.

12. Heard both sides.

13. The learned Counsel for the petitioner reiterated the contentions raised in the petition. He contended that the bank never complained that A-2 cheated the bank and that admittedly A-2 made periodical payments towards the discharge of the loan amount and ultimately by 31.08.1999 the entire loan amount was discharged and the loan account was closed and that if really the petitioner had dishonest intention at the time of borrowing the loan, he would not have discharged the loan amount and that the very fact that the petitioner duly

discharged loan amount indicates that he never intended to cheat the bank and that in fact the bank never alleged that A-2 cheated the bank and that there is no allegation of any wrongful loss to the bank or wrongful gain to the petitioner in the charge sheet. None of the bank officials stated that on account of this loan transaction the bank suffered loss and the petitioner gained wrongfully and therefore there is absolutely no material in support of the allegation of cheating and when there is no cheating, the question of forgery attracting the offences punishable under Sections 468 and 471 I.P.C. does not arise. He submitted that there is absolutely no material to show the dishonest intention on the part of the petitioner to avail the loan. Therefore, the proceedings against the petitioner are a clear abuse of process of law. The learned Counsel relied upon the latest decision of the Apex Court in *Anil Mahajan v. Bhor Industries Ltd. and Anr.* (2006) 1 SCC (CrL.) 746 wherein the Apex Court held that in order to attract Sections 415, 418 and 420 I.P.C., fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction and that from mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out and that the distinction between offence of cheating and mere breach of contract should be kept in mind and mere use of words cheating in the complaint would not be sufficient and that the substance of the complaint has to be seen. In that case, the Apex Court after considering the substance of the complaint held that it pertains to a case of breach of contract and not a criminal case of offence of cheating and hence the Magistrate erred in issuing process and the proceedings are liable to be quashed.

The learned Counsel relied on another decision of the Apex Court in *Ajay Mitra v. State of M.P. and Ors.* 2003 SCC (CrL.) 703 wherein the three Judges' bench of the Apex Court held that mens rea at the time of inducing the person deceived to deliver any property to any person is essential to constitute offence of cheating u/s 420 I.P.C. and that where the complaint or FIR prima facie does not disclose commission of any cognizable offence against the accused, the same would be liable to be quashed.

The learned Counsel further relied on another decision of the Apex Court in *Uma Shanker Gopalika v. State of Bihar and Anr.* (2006) 2 SCC (CrL.) 49 wherein it is held that breach of contract would amount to cheating only if intention to cheat was existing at the very inception and that if such intention developed later on, the same would not amount to cheating and the remedy in the latter case lies before the civil court filing a properly constituted suit and that in the absence of any allegation in the complaint that at the very inception there was any intention on behalf of the accused to cheat, the offences under Sections 420/120B I.P.C. are not made out and under such circumstances allowing the investigation to continue would amount to abuse of process of the Court and the prosecution is liable to be quashed.

The learned Counsel further relied upon another decision of Apex Court in *Ram Jas v. State of U.P.* 1974 CrL.J. 1261 wherein the ingredients required to

constitute the offence of cheating are set out as follows:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

14. On the other hand, the learned standing counsel for C.B.I. contended that there is a specific allegation in the charge sheet to the effect that A-2 submitted bogus quotations and invoices in order to cheat the bank and availed the loan and that merely because the said loan was discharged, it cannot be said that no offence of cheating was committed. He reiterated the contentions raised in the counter. The learned standing counsel invited the attention of this Court to a Four Judges' Bench decision of the Apex Court in *Tulsi Ram Vs. State of U.P.*, wherein it is held that for a person to be convicted u/s 420 IPC, it has to be established not only that he has cheated someone but also that by doing so he has dishonestly induced the person who was cheated to deliver any property etc. A person can be said to have done a thing dishonestly if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person. Wrongful loss is the loss by unlawful means of property to which a person is entitled while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled. These are the two facets of the definition of dishonesty and it is enough to establish the existence of one of them. The law does not require that both should be established. He also relied upon another decision of Apex Court in *G.V. Rao v. L.H.V. Prasad and Ors.* : 2000CriLJ3487 wherein it is held that where accused palmed off his sister as woman of much higher caste than she really was and petitioner married her on faith that he was marrying woman of his own caste and status, the petitioner was said to have been fraudulently and dishonestly induced by deception to do a thing i.e. marrying woman of caste wholly prohibited him, which but for deception practiced upon him by accused, he would have omitted to do so and such act of the accused falls under second part of Section 415 I.P.C.

15. The point that arises for determination in this petition is: Whether the proceedings in C.C. No. 21 of 2002 on the file of the Special Judge for Central Bureau of Investigation, Hyderabad so far as it relates to the petitioner who is arrayed as A-2 in the said calendar case are liable to be quashed?

POINT:

16. The undisputed facts in this case are that the present petitioner who is a doctor obtained loan of Rs. 3,82,000/- from Corporation Bank for the purpose of

purchase of medical equipment agreeing to repay the loan with interest at 4.5% over and above the Reserve Bank of India rate of interest subject to a minimum of 16.5% per annum repayable in 45 equal monthly instalments @ Rs. 11,412/- with three months interval period. It is also not disputed that the petitioner executed loan agreement and also agreement for term loans under IDBI/ARDC loans refinance scheme hypothecating the incubators, warmers and infusion pumps etc. It is also not disputed that A-4 stood as guarantor for the said loan. It is also not disputed that by the date of filing report by the Corporation Bank, the petitioner discharged major portion of the loan amount and the remaining portion was also discharged and closed the loan account long prior to filing of the charge sheet against him in this case. As seen from the charge sheet, it is alleged that the equipments financed under the loan were leased out by A-2 to New Citi Hospitals (M/s Secunderabad Health Care Limited-A-7) with an understanding that the revenue generated out of the equipment will be shared by both of them. From the said allegation the case of the prosecution is evident that the petitioner purchased the equipments for which loan was availed. The allegation is that the said equipments financed under the loan are intended to be held at New Citi Hospitals for A-2's consultancy services, but, however he entered into memorandum of understanding with the New Citi Hospitals to the effect that the revenue generated out of the equipment will be shared by both of them. As seen from the terms of the agreement it is nowhere stipulated that the loanee shall not lease out the equipment with such an understanding. The allegation against the petitioner is that he made the bank to believe that he was purchasing the equipments from M/s General Equipments, Pune with the loan amount, but, the said equipments were not in fact purchased from M/s General Equipments, Pune subsequent to the grant of loan and that New Citi Hospitals purchased those equipments prior to sanctioning of loan to A-2, that the petitioner submitted bogus quotations and invoices signed by A-4-New Citi Hospitals to the bank for availing this loan. It is not disputed that the quotations and invoices belong to M/s. General Equipments. But, it is alleged in the charge sheet that A-6 obtained blank letter heads and proforma invoice of M/s General Equipments, Pune from one Sri Abhay Tokekar who was regularly visiting A-6 in connection with supply of his medial equipments and A-4 forged the signatures of M/s General Equipments in the said blank letter head and proforma invoice and A-2 submitted those forged documents before the bank for availing the loan. Along with the counter, 161 Cr.P.C. statement of Abhay Tokekar recorded over telephone is filed to substantiate the allegations made in the charge sheet. A perusal of the said statement discloses that Abhay Tokekar did not state that he supplied the blank letter heads or blank invoices of M/s General Equipments to A-6 or to anybody. It appears that the signatures in the said documents were not even shown to Abhay Tokekar to verify whether the said documents do not contain the signatures of any of the persons connected with M/s General Equipments. Mr. Abhay Tokekar stated in his statement that during the year 1994 he supplied some medical equipments to New Citi Hospitals, Secunderabad and some amount was due to him from New Citi Hospitals and he was contacting

regularly A- 6 of New Citi Hospitals for payment of his dues and in the meantime at the end of the year 1994 A-6 promised him that if he opens a bank account in Hyderabad City, his due amount will be paid and therefore he agreed to open the account at Hyderabad and accordingly on one day A-6 took him to the Bank of Baroda, Branch Hyderabad and introduced him to the bank employee and asked him to open account and accordingly he opened the account in the name of M/s. General Equipments in the said bank and that within a day or two he obtained cheque book from that bank and he also deposited a bank pay order for Rs. 5,10,000/- issued in the name of M/s General Equipments in the said account and as demanded by A-6 he gave him two signed blank cheques to A-6 as A-6 threatened that if he does not issue cheques his payment will be stopped and that he has not drawn any amount from his account and subsequently he came to know about the fraud committed by A-6 regarding some bank loan. So from the said statement relied on by the prosecution it is clear that the pay order issued to M/s General Equipments was credited to the account of M/s General Equipments and later M/s General Equipments issued cheques for Rs. 5,00,000/- for transfer to Account No. 1161 which is operated by A-3 who is an employee of New Citi Hospital, Hyderabad. It is not alleged that A-2, the present petitioner played any role in that regard. Even if those allegations are taken as true, it cannot be said that A-2 committed any offence of cheating the bank. In fact, the Corporation Bank Regional Manager who gave report to the C.B.I. on the basis of which the crime is registered, did not state that the present petitioner cheated the bank. He did not even name the present petitioner as an accused in the report given, though the names of the accused are specifically mentioned therein along with several other loan transactions. While making allegation against A-1 that some irregularities have been noticed in sanctioning loans for purchase of medical equipments, the loan transaction of the present petitioner is also mentioned therein. But, it is nowhere stated that the petitioner herein cheated the bank in any manner. The names of the accused persons are specifically mentioned in paragraph 2 of that report. The Senior Manager of the Corporation Bank who sanctioned loans is shown as A-1 and one C.H. Devender, Nagarjuna Health Care Centre, Secunderabad is shown as A-2 and the purported suppliers of medical equipments were shown as A-3 to A-9. The name of the present petitioner is not shown under the head "names of the accused persons" in the report. In the F.I.R. registered on the basis of the report given by the Regional Manager of the Corporation Bank also the name of petitioner is not shown as one of the accused in the column meant for "name and address of the accused", though nine names have been mentioned as accused. After investigation into such report, the police filed the present charge sheet. Curiously, neither C.H. Devender, Nagarjuna Health Care Centre, Secunderabad who was figured as A-2 in the F.I.R. nor any of the alleged suppliers of the medical equipments who were figured as A-3 to A-9 have been charged in this case. Only the person shown as A-1 in the said F.I.R. is found in the charge sheet. The names of the borrowers of loans in respect of which A-1 said to have committed irregularities for illegal gratification are mentioned in the report. The names of seven doctors have been

mentioned under the head "name of borrower". The loan amounts are also mentioned against the name of each borrower along with the loan number and date. It is useful to extract below that portion of the report given by the Regional Manager:

Loan No. & Date	Name of the Borrower	Loan Amount
4/94 04.12.1994	Dr.P.Madan Mohan Rao	Rs. 3,82,500.00
1/95 16.01.1995	Dr.Suryanarayana Thampa	Rs. 3,00,500.00
2/95 20.01.1995	Dr.K.V.Ramana Rao	Rs. 4,86,000.00
4/95 18.02.1995	Dr.P.V.Sudhakar Raju	Rs. 5,00,000.00
6/95 26.03.1995	Dr.E.Sanjeev	Rs. 4,75,000.00
7/95 30.03.1995	Dr.L.Mahesh	Rs. 5,00,000.00
8/95 30.03.1995	Dr.M.S.N.Raju	Rs. 5,00,000.00

It is mentioned in the report that the loans sanctioned under loan Nos. 4/95 (relating to A-2), 6/95, 7/95 and 8/95 are unauthorized as the amount of loan is beyond the lending powers of the Branch Manager and no ratification was obtained as required by procedure. So the loan transaction of the petitioner herein is mentioned in the report only to show that A-1 sanctioned loan beyond his lending powers without prior sanction. No allegation is made against the petitioner herein in the report. Further none of the other doctors are figured as accused in the charge sheet. Only the petitioner herein has been shown as an accused. It is not mentioned in the report specifically that any loss has been caused to the Corporation Bank on account of the loan transaction of Dr.Madan Mohan Rao, the present petitioner who is arrayed as A-2 for the first time in the charge sheet. In paragraph No. 7 of the report under the head "total gains or loss caused" it is mentioned that a loss of Rs. 36,44,863/- has been caused to Corporation Bank as on 05.11.1998. In paragraph No. 8 of the report under the caption "specific lapses of the accused" it is mentioned that Sri P.Madhukar Rao conspired with one C.H.Devender to cheat the bank, accepted illegal gratification and failed to safeguard the interests of the bank and the said Devender failed to comply with all formalities in applying loans and also guilty of non-payment of loan obtained with forged documents and cheated the bank. So from the perusal of the report given by the Regional Manager Corporation Bank on the basis of which the crime was registered and was investigated into, it is nowhere stated that the petitioner herein cheated the bank and on account of his act the bank suffered any wrongful loss or the petitioner herein obtained any wrongful gain on account of this loan transaction. Even in the charge sheet it is not mentioned that any wrongful loss has been caused to the bank or the petitioner herein obtained any wrongful gain on account of the transaction with Corporation Bank. It is also not mentioned in the charge sheet that the present petitioner-A-2 is responsible either for obtaining blank letterheads and invoices from M/s General Equipments or for forging the signatures of M/s General Equipments in those documents. On the other hand, it is the specific case of the prosecution that A-6 obtained blank letterheads and invoices and it was A-4 who forged the signatures. As observed supra, the statement of Mr.Abhay Totekar does not disclose that he furnished blank letterheads and invoices of the General Equipments to anybody and that the quotations and invoices of M/s General

Equipments were shown to Mr. Abhay Tokekar to show that those documents do not contain the signatures of M/s General Equipments. Merely because it is alleged in the charge sheet that the petitioner herein submitted bogus invoices of M/s General Equipments signed by A-4 of New Citi Hospitals to the bank for availing this loan in order to cheat the bank, it cannot be said that there is material to proceed against A-2 for the offence of cheating, in the absence of any material gathered by the prosecution to substantiate the said allegation.

17. Even if it is taken that the petitioner-A-2 produced bogus quotations and invoices of M/s General Equipments to the bank at the time of applying for loan, can it be said that such action of A-2 amounts to cheating the bank. To answer this question, it is necessary to consider the ingredients of the offence of cheating which has been defined in Section 415 I.P.C., which reads as follows:

415. Cheating:-- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

18. As seen from the said section mere inducement or deception by itself are not sufficient to attract the offence of cheating and that such deception or inducement must have caused or likely to cause damage or harm to that person in body, mind, reputation or property. Here according to the prosecution Corporation Bank was cheated by the act of the petitioner-A-2. But, it is nowhere stated in the charge sheet that on account of the loan sanctioned to A-2, Corporation Bank sustained any loss much less wrongful loss. Admittedly the Corporation Bank is doing money-lending business and for the purpose of their business, the bank announces several schemes in order to attract the borrowers to borrow the amounts on hypothecation of movable property. As seen from the statement of account relating to A-2 issued by the Corporation Bank, the petitioner herein paid several instalments starting from 17.04.1996 up to 25.03.1999. As seen from the copy of the letter addressed to the bank by the petitioner which contains the endorsement of the bank, the petitioner paid the entire principal amount prior to 20.03.1999 and on 20.03.1999 he paid cash of Rs. 1,00,000/- and also handed over two post dated cheques for Rs. 50,000/- each, dated 30.03.1999 and 15.04.1999 and the bank accepted those amounts and endorsed the same on the said letter, dated 20.03.1999 which is much prior to the Regional Manager of Corporation Bank giving report dt. 08.07.1999 to the C.B.I. As seen from the endorsement in the letter addressed to the bank by the petitioner on 20.03.1999 the bank endorsed that the cash was received and the final settlement would be finalized after consultation with the Regional Manager, Hyderabad. As seen from the copy of the certificate issued by the Corporation Bank, the bank certified that the loan account No. 4/1994 of the petitioner was

closed on 31.08.1999. Therefore, it is clear that the petitioner discharged the entire loan amount with accrued interest and also with penal interest on account of default in payment of certain instalments even prior to giving report by the Regional Manager, Corporation Bank. That appears to be the reason why the name of the petitioner herein is not shown as accused in the report. The loan transaction of the petitioner is mentioned in the report obviously to show that A-1 irregularly granted loan of Rs. 3,82,500/- as the financial powers of A-1 is to grant loan up to Rs. 3,00,000/- only.

19. The learned standing counsel for C.B.I. contended that merely because the loan was discharged and the loan account was closed prior to giving report or before the charge sheet is filed, it cannot be said that no offence was committed as according to the prosecution the petitioner submitted bogus documents and availed the loan. In support of his contention he relied upon the Four Judges Bench decision of Apex Court in *Tulsi Ram Vs. State of U.P.*, . The facts of that case are the following: One joint family carried on business in the names and styles of five different names in Rae Bareilly District. Though different members of the family were shown as partners in those five firms, the business of the firms was being conducted by and under the orders and directions of one Lachhmi Narain, Kartha of the joint family. In May, 1949 one of the firms was appointed the sole importer of cloth for distribution amongst wholesalers in the Rae Bareilly District. A partner or an employee of one of the firms booked small consignments of say two or three bags of rape seed, poppy seed or mustard seed from various stations in Rae Bareilly and Partapgarh districts to various stations in West Bengal. A person concerned used to execute forwarding notes and obtain railway receipts in respect of such consignments and these receipts were prepared by the railway authorities in triplicate, one being given to the consignor, one sent to the destination station and one kept on the record of the forwarding station. The consignor's foil of the railway receipt was then taken to Rae Bareilly and there it was tampered with by altering the quantity of the goods and the freight charges. These forged railway receipts were then endorsed by the consignor in favour of one or other of the firms and thereafter these firms drew large sums of money commensurate with the huge quantities of goods specified in the forged railway receipts and on the security of these railway receipts drew demand drafts or hundis in favour of various banks and two firms in Kanpur as payees on a firm styled as Murarka Brothers, Calcutta, as drawee which firm was established by the same family about a year or so before the transactions in question were entered into and after this firm was established in Calcutta one Lachhmi Narain opened an account in the name of the firm in the Calcutta branch of the Allahabad Bank and authorized Babu Lal and Chandrika Singh, who was originally an employee of the firm and was transferred to Calcutta, to operate on the account. The banks, which discounted the hundis and the drafts were the Kanpur branches of the bank of Bikaner, the Bank of Bihar, the Bank of Baroda and the Central Bank of India. These payees realized the amounts by presentation of the hundis and railway receipts to Murarka Brothers at Calcutta.

Delivery of consignments dispatched by the partners of the employees of the various family firms could obviously not be taken with the help of forged railway receipts because had that been done the fraud would have been immediately discovered. Instead, delivery was taken through commission agents on indemnity bonds on the allegation that the railway receipts had been lost. Such bonds were executed either by one of the partners or by an employee. These consignees in fact took delivery of the small consignments at the special request of Lachhmi Narain, disposed of the consignments and credited the sale proceeds to the account of one of the firms. The prosecution case is that the banks obtained discount charges of one or two annas per cent for the amount paid by them, although had the family firms obtained these amounts by way of loan they would have been charged interest at 6 to 9 per cent on these amounts. It is contended on behalf of the accused before the Apex Court that merely because the firms were able to obtain temporary credits on the basis of their hundis, it cannot be said that they have made any wrongful gain to themselves and that the firms had good credit in the market and for obtaining credit in the transaction in question they gave good equivalents in the shape of hundis and that out of 180 odd hundis drawn by the firms only a very few were dishonoured and that this happened only in the month of December, 1949 and that out of hundis worth Rs. 80 lakhs whose worth Rs. 74 lakhs were in fact honoured and even the remaining hundis would have been honoured but for the fact that there was slump in the market and cotton bales worth Rs. 12 lakhs and therefore it does not amount to wrongful loss to anybody or wrongful gain to the accused. The Apex Court rejected the said contention raised on behalf of the accused and observed as follows:

Where a consignor of goods draws a hundi for the price of the consignment on some firm and supports that hundi with the railway receipt obtained by him in respect of the consignment, the party in fact pledges the consignment to the bank discounting the hundi and, therefore, in such a transaction the railway receipt cannot be regarded as anything else than a security for that transaction. If that security turns out to be worthless or practically worthless because the value of the consignment is only a fraction of what it was represented to be, the discounting of the hundi by the party drawing it must necessarily be regarded as unlawful. It would thus follow that the firm in question made a gain by obtaining credits and that these credits were obtained by them by resorting to unlawful means. The gain they made was, therefore, unlawful.

20. The learned Counsel for the accused Mr. Mulla in that case further contended that for an act to be regarded as dishonest it is not enough to show that one person deceived another and thereby made a wrongful gain, but it is further necessary to show that as a result of the deception the other person sustained wrongful loss. The Apex Court considered the definition of "dishonestly" defined u/s 24 of the Indian Penal Code and also considered Sections 463 and 420 I.P.C. and observed as follows:

But, in an offence u/s 420 IPC a pecuniary question necessarily arises. The first part of Section 464, I.P.C. provides that a person is said to make a false document who dishonestly or fraudulently makes, signs etc., a document with a particular intention and covers cases both of acts which are dishonest and acts which are fraudulent. Where no pecuniary question arises the element of dishonesty need not be established and it would be sufficient to establish that the act was fraudulent and, therefore, it may be, as the learned Judge has held, that where an act is fraudulent the intention to cause injury to the person defrauded must be established. But where the allegation is that a person has dishonestly induced another to part with property something different has to be considered and that is whether he has thereby caused a wrongful loss to the person who parted with property or made a wrongful gain to himself. These are the two facets of the definition of dishonestly and it is enough to establish the existence of one of them. The law does not require that both should be established.

From the reading of the above said facts and also the observations of the Apex Court made in the cited case, it is clear that the facts of the cited case are not similar to the facts of this case. In the cited case, the railway receipts, which were forged were considered as security for the loan borrowed; whereas in the instant case, the alleged bogus quotations and bogus invoices cannot be treated as security for the loans borrowed. In the instant case, the loans were granted on hypothecation of goods for purchase of medical equipments. Further, in the cited case, the bank sustained loss of interest and the accused got unlawful gain by adopting such device of securing short term credits. Whereas in the instant case, there is no allegation made in the charge sheet that on account of this loan transaction relating to A-2, the Corporation Bank sustained loss or A-2 obtained any gain on account of his act of production of bogus documents at the time of availing loan. Without there being any material in support of either wrongful loss to the Corporation Bank or wrongful gain to A-2 on account of this transaction, it cannot be said that there is *prima facie* material to establish offence of cheating and that A-2 cheated the bank by producing bogus documents viz. quotations and invoices. When there is no element of cheating as defined u/s 415 I.P.C., Section 468 I.P.C. does not attract. Regarding Section 471 I.P.C. there is no material to show that the accused dishonestly used as genuine any document, which he knows or believed to be the forged documents. "Dishonestly" has been defined in Section 24 I.P.C. which shows that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". What is meant by wrongful loss and wrongful gain has been discussed in the above-cited *Tulsi Ram Vs. State of U.P.*, of the Apex Court. There is absolutely no allegation in the instant case that there was wrongful loss to the bank or the wrongful gain to the accused. As observed *supra*, even the Corporation Bank officials did not say that the bank suffered any loss on account of the act of A-2 submitting bogus quotations and bogus invoices of M/s General Equipments, Pune. It is also not alleged in the

charge sheet that A-2 obtained wrongful gain on account of securing loan by producing bogus quotations and invoices.

21. The learned standing counsel for C.B.I. furnished the case diary containing the statements of the witnesses for perusal of this Court. I have gone through the statements of all the officers of the Corporation Bank who were examined as L.Ws.1, 2, 4 and 5. None of them have stated that the bank sustained wrongful loss on account of the loan sanctioned to the petitioner herein. LW-1 (Natesan Rama Murthy) is the then Regional Manager who filed the report to the C.B.I. and he did not state anything against the present petitioner-A-2. As already observed supra in the report given by him no allegations are made against the petitioner-A-2 by him and he did not name A-2 as an accused. LW-2 (Maruvala Narayana Bhat) is the Senior Manager who succeeded A-1-Madhukar Rao in Corporation Bank, Secunderabad Branch. He too did not state anything against the present petitioner-A-2. The sum and substance of his statement is that his predecessor A-1 sanctioned about seven loans to the doctors including the present petitioner and that several irregularities have been committed by A-1 in granting loans. In respect of the loan sanctioned to the present petitioner, the irregularities pointed out are that the columns of the loan application for the amount of loan and other particulars regarding margin, repayment and security etc. are not filled up and the loan application is not signed by the appraising officer and that the proof of income submitted by the borrower and guarantor and other statements submitted by the parties are the photo copies only and are not attested by the branch manager or the parties and the suppliers of the equipment in this case are M/s General Equipments, Pune and the invoice provided is not dated.

LW-3 (L. Bhaskar Sharma) is the Senior Manager of Bank of Baroda, Masab Tank Branch, Hyderabad and he is examined to speak about the opening of account No. 1324 in the name of M/s General Equipments by Mr.Abhay Tokekar. LW-4 (K. Ajit Kumar Gadiyar) is the key witness for the prosecution and he is the Senior Manager, Inspection and Audit Division, Mumbai Regional Office, Mumbai, Corporation Bank. He stated that he investigated into the irregularities concerning advances portfolio of S.P. Road Branch, Secunderabad and came to know the irregularities in respect of seven Corp Meditech loans including the loan sanctioned to the present petitioner. He stated in his statement that all the loans had become sticky and the repayments were not coming. In respect of the loan transaction of the present petitioner, he stated as follows:

The first loan mentioned herein is in the name of Dr. P. Madan Mohan Rao No. Corp Meditech 4/94 and this loan was disbursed by the then branch Manager Sri P. Madhukar Rao on 04.12.1994 and approval/ratification was sought by him from the Regional Office, Hyderabad under branch letter OR.969/94 dated 04.12.1994. The doctor had applied for the loan vide his loan application dated 23.11.94. Besides this on seeing the loan documents made available by the bank to the IO, I am to state that, prior to the above mentioned letter the branch

Manager had addressed another letter to the R.O. Ref. No. OR/943/94, dated 25th November, 1994 wherein he has sought sanction of loan of Rs. 3,82,500/- in the name of Dr. P. Madan Mohan Rao. In this letter the branch Manager has mentioned that Dr. P. Madan Mohan Rao, is practicing pediatrician and Neonatologist. He is having 15-year experience. Also mentioned is the fact the doctor has signed a MOU with the management of New City Hospital for installing the equipments. I have perused the MOU and I have observed that the terms and conditions contained therein clearly indicate that the equipments financed under the loan are leased out by the borrower to the New Citi Hospitals.

He further stated in his statement that on 09.04.1997 he visited Newciti Hospitals along with the branch Senior Manager and enquired about the medical equipment and he was taken to the paediatric ward where a staff nurse identified the electro medical equipment viz. incubators, warmers etc. and that the hospital was not maintaining any such record to show that the medical equipments identified do belong to Dr.P.Madan Mohan Rao. He concluded by saying that Corp meditech loan No. 4/94 granted to the present petitioner was in violation of the norms laid down in Corp Meditech Scheme and that Dr.P.Madan Mohan Rao had no dealings with the branch in the past and the loan was disbursed without obtaining confidential credit information report from his bankers viz. State Bank of Hyderabad, Gunfoundry branch, in undue haste for extending undue financial benefit to the borrower/hospital by granting an accommodative loan.

22. LW-5 (Umakant Achuth Bhat) was an employee in the said branch of Corporation Bank, S.P.Road, Secunderabad and he stated that he accompanied LW-4 to the New Citi Hospitals. He corroborated the statement of LW-4. All the bank officials whose statements were recorded by the C.B.I. have stated about the irregularities committed by the then Branch Manager-A-1. They did not state specifically that the bank had sustained any loss on account of sanctioning of loan transaction relating to the present petitioner-A-2. It is also not the case of the Corporation Bank that the loan granted to the Doctors under Corp Meditech scheme is a concessional or subsidized loan. Their case is only that the sanction accorded by the Regional Office, Hyderabad is not in total conformity with the Corp Meditech Scheme as the medical equipments financed were intended to be held in a hospital not owned by the borrower. None of the bank officials stated that the petitioner herein cheated the bank. So merely because it is mentioned in the charge sheet that the petitioner herein cheated the bank, it cannot be said that there is prima facie material to establish the offence of cheating.

23. As seen from Section 415 I.P.C. the legislature itself explained as to which kind of acts amount to cheating and which do not amount to cheating, by way of giving nine illustrations. An explanation is also given as to what is meant by "deception" by way of explanation u/s 415 I.P.C. It is useful to extract below the said explanation and also the illustrations: 415 IPC - Cheating: Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any person, or to consent that any person shall retain any property, or

intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to "cheat".

24. Explanation : A dishonest concealment of fact is a deception with the meaning of this section. Illustrations

(a) A, by falsely pretending to be in Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces to Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money A cheats.

(f) A intentionally deceives Z in the belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend money A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards break his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage from Z. A cheats.

As seen from the explanation mere concealment of fact is not deception, and only dishonest concealment of fact amounts to deception. Similarly in all the

illustrations we find the word "dishonestly". Dishonestly has been defined u/s 24 of I.P.C. as per which the acts, which were done with the intention of causing wrongful, gain to one person or wrongful loss to another person. Here in the instant case, even if the entire version of the prosecution is taken as true, there is absolutely no prima facie material to show that there was wrongful loss to the bank or wrongful gain to the petitioner herein on account of the loan transaction. Mere misrepresentation or concealment of facts does not come under the definition of cheating if the intention of causing wrongful loss or obtaining wrongful gain is absent.

I shall examine the Illustrations (a) to (i) one by one. Illustration (a) applies when a person falsely pretending to be a high rank official intentionally deceives another and thus induces another to let on credit goods for which he does not mean to pay. Here in the instant case, it is not the case of the prosecution that the petitioner falsely represented to the bank that he is a doctor and induced the bank to give him the loan, which he did not mean to discharge. In fact, it is not the allegation of the prosecution that even at the time of borrowing the loan, the petitioner herein had an intention not to repay the loan. In this case even prior to giving report and much prior to filing of the charge sheet, the petitioner had already discharged the entire loan amount. If really he had dishonest intention of not repaying the loan amount on the date of his borrowal, he would not have discharged the loan. Therefore, the act of the petitioner herein does not come under illustration (a).

Illustration (b) relates to a counterfeit mark of an article and therefore it does not apply to this case.

Illustration (c) relates to exhibiting a false sample of article by the seller and therefore it also does not apply.

Illustration (d) relates to a case of tendering in payment by way of a bill, which the purchaser had knowledge that the bill would be dishonoured and thereby dishonestly induced the seller to deliver the article intending not to pay for it. This illustration is also not applicable to the facts of this case as it is not the case of the prosecution that the petitioner herein borrowed loan with an intention not to discharge the same.

Illustration (e) relates to pledging some articles misrepresenting that they are diamond articles though in fact those articles are not diamonds with an intention to deceive the pledgee and thereby dishonestly induces the pledgee to lend money. Here in the instant case it is not the case of the prosecution that the articles hypothecated are not available. It is the case of the prosecution that the articles are not purchased with the loan amount subsequent to the sanction of loan and that the articles which were already purchased were shown as the goods hypothecated. Even if that is taken as true, there is no wrongful loss to the bank or wrongful gain to the petitioner herein. The other allegations of the prosecution are that the petitioner leased out the equipment to the hospital by

entering into memorandum of understanding with the New Citi Hospitals. As already observed supra, there is no prohibition from entering into such memorandum of understanding with the hospital as per the terms and conditions agreed between the petitioner and the bank. Further even according to the statements of witnesses even at the time of borrowing itself this memorandum of understanding was filed before the bank and the bank was fully aware of it. But, the bank officials stated that in spite of such memorandum of understanding filed before the bank, the then Manager sanctioned the loan irregularly. Even if that is taken as true, the petitioner herein cannot be found fault with. Therefore, this illustration is also not applicable to the facts of this case.

As per Illustration (f) if a person intentionally deceives another in the belief that he means to repay any money that the other man may lend to him and thereby dishonestly induces the other person to lend him money and the person who borrowed the money had no intention to repay it even on the date of borrowal itself. As already observed supra, there is no deception on the part of the petitioner herein and that in fact the petitioner has been paying the instalments. Of-course according to the statements of bank officers, repayment was not prompt. From mere irregular payments, it cannot be said that the borrower had no intention to repay the loan even at the inception of borrowing the amount. If at all the petitioner had committed default in payment of instalments fixed, it gives right to the bank to recover the entire amount at once as per the terms and conditions mentioned in the loan agreement. But, mere failure to pay the instalments regularly, it does not come under cheating. Thus, this illustration is also not at all applicable to the facts of this case. Illustration (g) explains as to which does not come under cheating and which comes under cheating. As per this illustration if "A" at the time of obtaining the money, intends to deliver the indigo plants and afterwards break his contract and does not deliver it, it does not amount to cheating, but he is only liable for civil action for breach of contract. Only if "A" dishonestly induces "Z" to advance money upon the faith of such delivery which he does not intend to deliver at all and thereby causes wrongful loss to the person who advanced money or obtained wrongful gain to "A" and then alone it amounts to cheating. If at the time of taking advance "A" had no intention not to deliver, but subsequently he could not deliver on account of subsequent events, it does not amount to cheating and it only amounts to breach of contract. Here in the instant case, it is not the version of the prosecution that at the time of borrowing the loan itself, the petitioner had no intention of repayment and he induced the bank to advance the bank loan and on account of it, the bank suffered wrongful loss or the petitioner herein had obtained wrongful gain. As already observed supra, the loan borrowed is not a subsidized loan or a loan on concessional rate of interest and that the bank formulated various schemes in the course of money lending business in order to attract borrowers and by offering facility to the borrowers to purchase the necessary equipments for their use by making repayments in instalments. For example, the banks are now offering loans to the salaried employees and other

individuals for purchase of household equipments like furniture etc. with the facility of repayment in instalments. Similar schemes have been formulated and offered to the doctors also during the course of their banking business. Even if it is assumed that the petitioner herein produced false documents and obtained loan on misrepresentation of facts but with an intention to repay the loan, it does not amount to cheating as defined u/s 415 I.P.C., as such act of the petitioner herein did not result in wrongful loss to the bank or wrongful gain to the petitioner herein. Take for another example that if a government servant apply for loan from out of his general provident fund account on the ground that he need loan for medical expenses by producing false medical certificate, can it be said that such an act of the employee amounts to cheating as defined u/s 415 I.P.C. The said act may amounts to misconduct for which he is liable to be proceeded against by way of departmental enquiry, but it does not amount to cheating for the reason that it does not satisfy the last portion of Section 415 I.P.C. viz. "which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property." Further though there is a concealment of facts it does not come under dishonest concealment of facts as no wrongful loss is caused to the department or no wrongful gain is obtained by the employee. As per General Provident Fund Rules the loan can be sanctioned from out of the general provident fund only for certain specified purposes and therefore some times, the employees may resort to avail the loan facility by misrepresenting the facts, such acts in my considered view do not attract any criminal offence much less an offence of cheating. In the decision of the Apex Court in *Tulsi Ram's case* AIR 1963 SC 666 (supra) it is held that for a person to be convicted u/s 420 IPC, it has to be established not only that he has cheated someone but also that by doing so he has dishonestly induced the person who was cheated to deliver any property etc. Their Lordships further explained as to what is meant by "dishonestly" and observed that a person can be said to have done a thing dishonestly if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person. Their Lordships further explained as to what is meant by wrongful loss and wrongful gain and held that wrongful loss is the loss by unlawful means of property to which a person is entitled while wrongful gain to a person means a gain to him by unlawful means of property to which the person gaining is not legally entitled. Of-course, in the cited case, Their Lordships have observed in paragraph 14 that the High Court has held that these banks did sustain wrongful loss inasmuch as they got very meagre amounts for discounting the hundis whereas had the true facts been known to them they would not have discounted the hundis though they may have advanced loans and charged interest at between 6 to 9% on the amounts advanced and that it was because of the fraudulent misrepresentation made to the banks that they lost what they could have otherwise been able to obtain and thus wrongful loss has been caused to them. Their Lordships" further held on the facts of that case that even if it is assumed that there was no wrongful loss to the banks but there is sufficient material to show that the firms which produced railway receipts and obtained short term credits obtained wrongful gain and

therefore the act of the joint family firm amounts to cheating. But the facts of this case are not similar to the facts of the cited case. Because in this case it is not the case of the prosecution that the bank sustained any loss on account of the loan sanctioned to the petitioner who obtained loan on production of false documents and on account of misrepresentation of facts, at the time of obtaining loan by the petitioner herein. As already observed supra none of the bank officials have stated in their statements that they sustained any loss on account of the loan transaction sanctioned to the petitioner herein and that in the report, the Regional Manager did not show the petitioner as an accused while referring to some others as accused. Therefore, the decision of the Apex Court in the cited decision is not applicable to the facts of this case. In my considered view even if the entire case of the prosecution is taken as true, it does not attract either Sections 420, 468 or 471 I.P.C. At the most the act of the petitioner herein may amounts to impropriety or a breach of contract which gives rise to cause of action for the bank to recover at once the entire loan amount advanced or to seize the hypothecated equipment for the purpose of sale of those equipment and for realization of the loan amount advanced. Thus, the alleged act of the petitioner does not fall under any of the illustrations given u/s 415 I.P.C. So it can not be said that there is prima facie material to establish the offence of cheating.

In the latest decision also, in Anil Mahajan's case (2006) 1 SCC (CrL.) 746 (supra) the Apex Court held that in order to attract Sections 415, 418 and 420 I.P.C., fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction and that from mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out and that the distinction between offence of cheating and mere breach of contract should be kept in mind and mere use of words cheating in the complaint would not be sufficient and that the substance of the complaint has to be seen. In that case, the Apex Court after considering the substance of the complaint held that it pertains to a case of breach of contract and not a criminal case of offence of cheating and hence the Magistrate erred in issuing process and the proceedings are liable to be quashed. The said decision is applicable to the facts of this case. In another decision of the Apex Court in Ajay Mitra's case 2003 SCC (CrL.) 703 (supra) the three Judges' bench of the Apex Court held that mens rea at the time of inducing the person deceived to deliver any property to any person is essential to constitute offence of cheating u/s 420 I.P.C. and that where the complaint or FIR prima facie does not disclose commission of any cognizable offence against the accused, the same would be liable to be quashed. In the instant case also, there is no material in support of such mens rea.

The learned standing counsel submitted that the Special Judge passed an order dismissing the petition filed for discharge and framed charges against the present petitioner after satisfying himself that there is material to frame the charges and therefore this Court cannot interfere at the stage of trial. The learned Counsel filed copy of the order passed by the learned Special Judge. As

seen from the said orders, it was argued therein on behalf of the prosecution that the statements of the witnesses 20 and 21 and documents 1 to 8, 43, 46 and 47 would clearly show that A-7 purchased medical equipments long prior to availing of loan by A-2 and by using bogus invoice loan was obtained to show as if equipment was purchased with the loan amount. On such contention the learned Special Judge observed that some of the documents relied on by the prosecution would show that the amount received by supplier of the equipments from the bank came back to the account of A-7 and that when the allegation against the petitioner is that an equipment purchased by A-7 long prior to applying of loan was shown as the equipment purchased with the loan amount, this diversion of amount from the account of supplier to the account of A-7 throws a very strong suspicion towards the allegations made against the petitioner and that mere suspicion is sufficient to frame charge. The learned Special Judge further observed that the documents and statements of LWs. 20 and 21 do prima facie show that equipment was purchased long prior to the sanction of loan and loan amount paid to the supplier was diverted to the account of A-7 which is sufficient prima facie material to frame necessary charges and therefore he is inclined to frame the charges. The learned Special Judge failed to discuss about the rulings cited on behalf of the petitioner-accused and he simply observed that those decisions are not applicable to the facts of the case because there is prima facie material in support of diversion of funds and purchase of equipment long prior to sanction of loan by A-7. The learned Special Judge failed to note that even if those allegations are taken as true, it does not amount to cheating as there is no allegation of either wrongful loss to the bank or wrongful gain to the petitioner herein on account of loan transaction. The learned Special Judge simply appears to have been carried away by the words "cheating" used in the charge sheet though in fact none of the bank officials have stated that the petitioner have cheated the bank. Merely because the learned Special Judge dismissed the petition filed for discharge, it does not prevent this Court to exercise powers u/s 482 Cr.P.C. to quash the proceedings in order to prevent the abuse of process of Court. In my considered view, this is a clear case of abuse of process of criminal Court, which warrants interference by this Court exercising its powers u/s 482 Cr.P.C. Thus, this point is held in favour of the petitioner and against the prosecution.

25. IN THE RESULT, the criminal petition is allowed and the proceedings in C.C. No. 21 of 2002 on the file of the Special Judge for Central Bureau of Investigation Cases, Hyderabad so far as it relates to the petitioner who is arrayed as A-2 in the said calendar case are hereby quashed.