

(2000) 02 KAR CK 0059

In the Karnataka High Court

Case No : Criminal Revision Petition No. 147 of 1999

J. Alexander, I.A.S. Retd.

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 09-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155 (2), 156 (1), 227, 228, 239
Penal Code, 1860 (IPC) — Section 120 A, 120 B, 419, 420, 477 A
Prevention of Corruption Act, 1947 — Section 13 (1) (d), 13 (2), 5 (1) (d), 5 (2)

Citation : (2000) 2 KCCR 1363

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : C.V. Nagesh, for the Appellant; K. Taranath Shetty, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bannurmath, J.—This petition is filed challenging the order dated 27.1.1999 passed by the Special Judge for CBI Cases, Bangalore, ordering for framing of charges against the Petitioner (Accused-1) in Spl. C.C. No. 134 of 1994 for the offences u/s 120B of the Indian Penal Code and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (for short the PC Act).

2. The facts as per the prosecution case necessary for consideration of the revision petition are as follows: During the relevant period the Petitioner (Accused-1) was the Additional Chief Secretary and Finance Commissioner to the Government of Karnataka. Accused-2 (not a party in this petition) was (the then Chief Minister of Karnataka) and Accused 3 to 6 (not parties in this petition) were alleged to be the conspirators and beneficiaries of the criminal conspiracy. According to the prosecution in the year 1992 Accused-3 (V. Gokulkrishna) representing himself as the Proprietor/Director of M/s. Classik Computer System gave a representation dated 31.3.1992 to the Government for supply of Apple Macintosh Computer System in all 100 in number. The total cost of the system

was 5.27 crores including installation, software development charges and training programme. One of the terms was that 30% of the entire amount was to be paid as advance with firm order and the balance 70% of the amount was to be paid on delivery of the goods. According to the prosecution, this representation was given to the Petitioner, the then Additional Chief Secretary and Finance Commissioner, who along with Accused-2, the then Chief Minister of Karnataka, and Accused-3 and his brother Accused-6 entered into a criminal conspiracy by misusing the official capacity and going out of way accepted this offer of Accused-3. It is alleged that, without verifying as to the viability and the requirement of the System and without consulting the Technical Advisory Panel (TAP) or High Level Committee (HLC), the accused have managed to get approval of the Cabinet and, in fact, also have made hurried payment of Rs. 1.58 crores to Accused-3. It is to be mentioned here itself that in a Public Interest Litigation filed before this Court in Writ Petition No. 21340 of 1992 the order of which was later affirmed by the Division Bench in V. Gokulkrishna Vs. M.C. Nanaiah, held that the action of the Government placing the order was unconstitutional and void so also the payment of money to Accused-3 was violative of Article 267(2) of the Constitution and the provisions of the Karnataka Contingency Fund Act, 1957, and, accordingly, this Court quashed the Government Order for the supply of the computers offered by Accused-3 and his firm M/s. Classik Computer System. It is to be noted that after passing of the order in the writ petition on 3.12.1992 Sri J.C. Lynn, the then Chief Secretary to the Government of Karnataka, vide his letter dated 19.3.1993 lodged the First Information before the Superintendent of Police (CBI), New Delhi, seeking investigation and taking action in this regard. The CBI took up initial investigation and filed its First Information Report on 4.3.1993 initially against 3 persons, viz., the Petitioner herein (Accused-1), Sri S. Bangarappa (the then Chief Minister-Accused-2) and Sri V. Gokulkrishna (Director of M/s. Classik Computer System Accused-3) for the offences u/s 120B read with Sections 419 and 420 of the Indian Penal Code and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act. This FIR was registered in Crime No. RC-1(A)/93/ACU (IV) and further investigation was taken up. During the investigation, the CBI examined several witnesses and seized hundreds of documents. On completion of the investigation, the CBI filed the charge sheet against 6 persons including the Petitioner, who is shown as Accused-1. On the basis of the charge sheet and the material collected during the investigation the learned Special Judge took cognizance and issued process against all the accused. On appearance and at the stage of framing of charge, the Petitioner contended that there is absolutely no material let alone prima facie material to show any role played by the Petitioner in the alleged commission of the crime of either committing criminal misconduct or the offence of entering into a criminal conspiracy to commit the said criminal misconduct and as such submitted that as no charge can be framed against him prayed for discharge. This prayer was opposed by the learned Counsel appeared for the CBI on various grounds. After considering the rival contentions, by the impugned order dated 27.1.1999 the

learned Special Judge held that there are reasonable grounds to frame charges against all the accused including the Petitioner herein for the offences punishable u/s 120B IPC read with Sections 13(1)(d) and 13(2) of the PC Act as well as independent charge for the offence u/s 13(1)(d) and 13(2) of the PC Act. Accordingly, the learned Special Judge on 3.2.1999 framed the charges. Challenging the same the Petitioner has approached this Court in the present revision petition.

3. Sri C.V. Nagesh, learned Counsel appearing for the Petitioner, vehemently contended that, no doubt, during the relevant period the Petitioner was working as Additional Chief Secretary and Finance Commissioner and he had received the proposal of Accused-3 regarding supply of the computers. But, as per the official norms and procedure, on receipt of the same he has put up the same before the Chief Minister (Accused-2) for consideration and in turn the matter was placed before the Cabinet and after due consideration the Cabinet gave its approval. These facts by themselves, according to the learned Counsel for the Petitioner, do not constitute any offence of criminal misconduct as defined under the PC Act nor is there any material to show that the Petitioner has entered into a criminal conspiracy with any of the accused to commit any offence. As such framing of charge was not proper.

4. Elaborating his arguments, learned Counsel for the Petitioner relied upon various pronouncements of the Hon''ble Supreme Court and contended that at the time of framing of charge the learned Special Judge is required to sift and weigh the material placed before him and after applying judicious mind he has to consider whether or not there is any ground for presuming the commission of offence by the accused. It is contended that even if the entire allegations of the prosecution as found from the First Information and charge sheet and even the material collected during investigation itself if accepted as true and correct, absolutely there is no material to make out any prima facie case against the Petitioner regarding commission of any offence much less the one which he is charged with. On these among other grounds the learned Counsel for the Petitioner prayed for setting aside the impugned order of framing charge and discharge the Petitioner.

5. On the other hand, Sri Taranath Shetty, learned Standing Counsel for the Respondent/CBI, argued in support of the impugned order inter alia contending that the contentions raised by the learned Counsel for the Petitioner are premature and this Court at this stage, while exercising the revisional jurisdiction, should not go in detail into the material collected by the Investigating Agency and discuss the same as if Court of Appeal so as to give a finding of acquittal or guilt as the case may be. It is contended that at the stage of framing of charge, if the prosecution shows prima facie material and existence of sufficient material even if to suspect the involvement of the Petitioner in the crime alleged, this Court should not interfere with the order of framing of charge. It is contended that even if the material placed before the Court by the

Investigating Agency is considered, it will prima facie show that all the accused have entered into a criminal conspiracy to dupe the Government of Karnataka so as to enrich themselves wrongfully. The Petitioner misusing his official capacity of being the Finance Commissioner as well as Additional Chief Secretary has played a major role in securing the order of the State Government for the purchase of 100 Apple Macintosh Computer Systems from Accused-3 in violation of the norms and procedure required to be followed in this regard. It is also contended that the material available would clearly disclose these commissions and omissions on the part of the Petitioner which would be further required to be proved by the prosecution during the trial and as such at this stage this Court cannot go into the material evidence in detail so as to give a finding regarding the guilt or otherwise of the accused as it is open for the Petitioner during trial to prove his innocence. Hence, the learned Counsel for the Respondent prayed for dismissal of the revision petition.

6. Both the learned Counsel have taken me through the material evidence collected by the Investigating Agency and a relied upon various pronouncements which would be referred to in the course of discussion.

7. Before advertng to the merits of the case, let me consider the well settled principles in respect of framing of charge, discharge as well as the jurisdiction of this Court for quashing the proceedings at the stage. The Hon''ble Supreme Court in the case of B.N. Srikantiah and Others Vs. The State of Mysore, and in the case of Bhoor Singh and Another Vs. State of Punjab, , has held that the object of charge is to give to the accused notice of the matter he is charged with; the object is to warn the accused of the case he is to answer; that framing of charge is not a ceremonial procedure. So far as the scope and jurisdiction of the Court in regard to the requirement of framing of charge, in the case of Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, the Hon''ble Supreme Court observed thus:

It cannot be said that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in Section 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court as it has to judicially consider the question of doing so. Without fully advertng to the material on the record it must not blindly adopt the decision of the prosecution.

In the case of State of Karnataka Vs. L. Muniswamy and Others, the Hon''ble Supreme Court has held thus:

The Sessions Court, being seized of the case, has jurisdiction to frame appropriate charges as the facts may justify or the circumstances may warrant.

8. The Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is no sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record its reasons is to enable the superior Court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. In the exercise of the wholesome power u/s 482 the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice requires that the proceeding ought to be quashed.

9. For the purpose of determining whether there is sufficient ground for proceeding against an accused the Court possess, comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.

Later, in the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, the Hon"ble Supreme Court observed thus:

The Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

In exercising his jurisdiction u/s 227 the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basis infirmities appearing in the case and so on.

10. Yet in another decision of the Hon"ble Supreme Court in the case of Satish Mehra v. Delhi Administration and Anr. (1996 SCC 1104) while considering the scope of Sections 227, 228, 239, 240, 226 and 482 Code of Criminal

Procedure(CrPC) upholding its earlier pronouncement in the cases of Almohan Das and Others Vs. State of West Bengal, and of Prafulla Kumar (supra) held that a Judge can sift and weigh the material on record to see whether there is sufficient evidence to frame charge or not. It is open to the Court to consider the total effect of the documents and the evidence produced to check, to find out at the initial stage itself the availability or otherwise of material to proceed against accused. The exercise is to find out whether a prima facie case against the accused has been made out or not. The Apex Court also pointed that the test to determine prima facie would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application.

11. In the land-mark judgment of the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Hon"ble Supreme Court while considering the scope and jurisdiction of the Court for quashing the proceedings at the initial stage laid down the guide lines as to the cases in which the High Court while exercising its inherent or revisional jurisdiction under Code of Criminal Procedure(CrPC) or even u/s 226 of the Constitution of India can quash the proceedings. These guide lines are as follows:

- 1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- 4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private

and personal grudge.

12. Keeping in view these well settled dicta of the Hon"ble Supreme Court, let me consider the material on hand to find out whether the prosecution has succeeded in making out prima facie existence of material against the Petitioner for the offence u/s 120-B Indian Penal Code read with Section 13(1)(d) of the PC Act and also independently for the offence u/s 13(1)(d) read with Section 13(2) of the PC Act, as these are the two charges ordered to be framed against the Petitioner.

13. It is relevant to note that the offence u/s 120-B Indian Penal Code is the offence of criminal conspiracy. Section 120-A Indian Penal Code defines "criminal conspiracy" to mean when two or more persons agree to do, or cause to be done (1) an illegal act, or (2) an act which is not illegal by illegal means. Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy. Looking into the definition conspiracy differs from other offences in this respect that in other offences the intention to do a criminal act is not a crime in itself until something is done amounting to the doing or the attempting to do some act to carry out the intention; conspiracy, on the other hand, consists simply in the agreement or confederacy to do some act, no matter whether it is done or not. The gist of intention of conspiracy is an agreement to commit some offence and as such the act of entering into criminal conspiracy must be shown to have arisen or taken birth at the inception itself. In the present case, the Petitioner is alleged to have entered into criminal conspiracy with the other accused for commission of the offence u/s 13(1)(d) of the PC Act, viz., criminal misconduct by a public servant punishable u/s 13(2) of the PC Act. Section 13(1)(d) of the PC Act defines criminal misconduct that if a public servant (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest, he is said to commit criminal misconduct. Learned Counsel for the Petitioner drew my attention to the phrase "obtains for himself or for any other person". and contended that the accused public servant must be shown to have obtained either for himself or obtain for and on behalf of any other person any valuable thing or pecuniary advantage. According to the learned Counsel for the Petitioner, the prosecution must prima facie show that the public servant either obtains for himself any valuable thing or pecuniary advantage or obtained for any other person any valuable thing or pecuniary advantage. It is contended that admittedly there is absolutely no material or even allegation to show that the Petitioner has obtained any valuable thing or pecuniary advantage in the present case for himself. Nor is there any material to show that he obtained such valuable thing or pecuniary advantage for or on behalf of any other accused. According to the learned Counsel, if by a mere act of the Petitioner of placing the order of Accused-3 before the Government or the Chief Minister (Accused-2) in

his official capacity as Finance Commissioner or Additional Chief Secretary and later any one or other accused took advantage of the same to gain pecuniary advantage the Petitioner cannot be held to have committed criminal misconduct as per Section 13(1)(d) of the PC Act.

14. On the other hand, it is the case of the prosecution that by the very act of the Petitioner accepting the offer of Accused-3 has resulted in pecuniary gain to him (Accused-3), though there is no material that the Petitioner has obtained for himself any such pecuniary advantage and as such, the offence is complete. The word "obtain". is defined in "The Law Lexicon". (1997 edition), at page 1339, published by Wadhwa and Company, Nagpur, as "to get hold, to gain possession of, to acquire... "It means to get hold or to physically possess. Looking into the wordings in Section 13(1)(d) of the PC Act, viz., "obtains for himself or for any other person"., in my view, mean that the accused should obtain pecuniary advantage or valuable thing for himself or on behalf of any other person. The act of obtaining must be by a public servant or in the present case the Petitioner. If by mere action or inaction on the part of the Petitioner someone else obtains any pecuniary advantage the same cannot fall under the offence as defined u/s 13(1) (d) of the PC Act. As admitted by the learned Counsel for the Respondent, absolutely there is no material to show that the Petitioner obtained any pecuniary advantage for himself or obtained the same for or on behalf of someone else (the other accused), it cannot be held that he has committed the offence of criminal misconduct. In almost similar circumstances, the observation of the Hon''ble Supreme Court in the case of C. Chenga Reddy and Ors. v. State of A.P., 1996 SCC 1205 are worth noting. In that case, several Government officials including Executing Engineers, Deputy Executive Engineers, Section Officers and Contractors of Nellore North Division, were tried for the offences under Sections 120-B, 420/34 and 477-A/34 Indian Penal Code and Sections 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947, (equivalent to Section 13(1)(d) of the Prevention of Corruption Act, 1988). It is held by the Hon''ble Supreme Court thus:

Though the prosecution has established that the Appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work or jungle clearance on nomination basis and have committed departmental lapse yet no dishonest intention on their part could be shown and none of the circumstances relied upon by the prosecution could be construed as incriminating or were of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the Appellants and wholly incompatible with their innocence. That because of the actions of the Appellants in breach of codal provisions, instructions and procedural safeguards, the State may have suffered financially, particularly by allotment of work or nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them.

15. In the present case, as fairly admitted by the learned Counsel for the Respondent/CBI, there is absolutely no material to show that either the Petitioner obtained any pecuniary advantage for himself or obtained the same for or on behalf of any other accused. As earlier noted, even if the prosecution is able to show that because of the lapse on the part of the Petitioner someone else obtained pecuniary advantage that by itself cannot be termed as criminal misconduct committed by the Petitioner falling u/s 13(1)(d) of the PC Act. If one peruses the allegations as found in the First Information or the material collected as per the charge sheet and the order of the learned Special Judge, the acts of the Petitioner for his involvement are as follows:

1. On 31.3.1993 putting up of a note on the letter received from Accused-3 for supply of 100 pieces of Apple Macintosh Computer Systems for Rs. 5.25 lakhs per unit without ascertaining the credentials of the firm and without following proper norms in respect of such purchase by the Government and forwarding the same to the Chief Minister for his approval;

2. Without ascertaining properly to the fact that earlier such offer of Accused-3 was rejected by the Technical Advisory Panel, getting it approved through High Level Committee by furnishing incorrect notes and discarding the notes put up by the other officials against such proposal and getting the same passed at the level of HLC and further obtaining approval of the Cabinet;

3. Hurried action taken by the Petitioner not only in getting such order of Accused-3 approved but also releasing large sums of Rs. 1.58 crores in favour of Accused-3 by way of cheque and thereby causing irreparable loss to the State exchequer.

16. Even the First Information of the then Chief Secretary on the basis of which the present criminal proceedings are initiated against the Petitioner and others shows that the only crime committed by the Petitioner is that of omissions and commissions in not following proper norms.

17. In this regard, learned Counsel for the Petitioner took me through various notings of the officials including the Petitioner as well the report of the Technical Advisory Panel and High Level Committee to demonstrate that the Technical Advisory Panel is the initial advisory panel restricting its role only for giving advice of which the Petitioner is a Member. This consists of several top members and experts in various fields. However, it is contended that the report of the Technical Advisory Panel is not final. It is the role of the High Level Committee which again consists of and includes several independent members as well as members of Technical Advisory Panel who virtually sit in appeal like to decide whether the advice of the Technical Advisory Panel is acceptable or not and thereafter independently deal with the proposal as the final authority of High Level Committee and as such it is demonstrated that it is not the Petitioner who alone takes the decision independently so as to assume that he had some vested interest in the same. Further, it is undisputed that even the report of the High

Level Committee is not final. But, it is the approval of the Cabinet that finally decides regarding the transaction.

18. On the other hand, Sri Taranath Shetty, learned Counsel for the Respondent/CBI took me through the various documents like the notes put up by various other officials including one Smt. Seetha, Under Secretary, DPAR, to contend that the Petitioner had suppressed certain material before the High Level Committee and the Cabinet deliberately to get the sanction of the contract to Accused-3. He also brought to my notice the orders passed by this Court in the Public Interest Litigation in respect of the present case referred to earlier. In my view, it is not necessary to go into these documents in detail. Suffice to say that the prosecution has prima facie shown that the Petitioner by his acts of omission and commission has given some pecuniary advantage to Accused-3. But, that by itself will not, in my view, fall under the category of any of the clauses particularly u/s 13 of the PC Act since admittedly the Petitioner has not obtained any pecuniary advantage for himself or has obtained pecuniary advantage on behalf of any other accused or persons. As such, as observed by the Hon''ble Supreme Court in Chenga Reddy's case (supra), even if it is prima facie held that the Petitioner has committed codal violations and irregularities ignoring various circulars, instructions and ultimately due to such omissions or even commissions it has resulted in the State's suffering financially, that by itself cannot be held against him of commission of offence u/s 13(1)(d) of the PC Act. In this regard, it is to be noted that, though the learned Special Judge has passed the impugned order running to 14 paras and 17 pages, practically they are mere repetition of the prosecution case and nothing more. Absolutely, there is no sifting or weighing of material evidence which was brought to his notice by the prosecutor or the Counsel for the accused as to whether the Petitioner has committed the offence u/s 13(1)(d) punishable u/s 13(2) of the PC Act. Similarly, on going through the charge almost running into 15 pages again the same are virtually what is stated in the charge sheet filed by the CBI. As such, I am of the view that absolutely there is no application of mind by the learned Special Judge to find out as to whether there exists sufficient material to frame charges against the accused for the offence u/s 13(1)(d) of the PC Act.

19. On reconsideration of the material in the light of the pronouncements of the Hon''ble Supreme Court as to the consideration of material at the stage of framing of charge, in my view, even if the allegations made in the First Information, the material collected by the prosecution during investigation as enunciated in the charge sheet or the material itself are taken on their face value and accepted in their entirety, at the most it would show that the Petitioner has violated the norms and procedure. But do not prima facie show constituting any offence u/s 13(1)(d) punishable u/s 13(2) of the PC Act. As such, the charge framed against the Petitioner for this offence is liable to be quashed, since no useful purpose will be served by making the Petitioner to undergo the ordeal of trial and at a later date to pronounce him not guilty.

20. This takes me to the next charge, viz., the offence u/s 120-B Indian Penal Code read with Section 13(1)(d) of the PC Act. As noted earlier, in order to constitute the offence of criminal conspiracy the prosecution must show that there was an agreement between the Petitioner and the persons (any one or all the other accused) for doing an illegal act or for doing by illegal means an act which may not itself be illegal. No doubt, privacy and secrecy are more characteristics of conspiracy, than loud discussion in a lofty places open to public. As such, in all the cases, the prosecution cannot get direct evidence for such entering into conspiracy by the accused. Keeping in view this basic fact, it has been held by the Courts that such conspiracy can also be shown or proved by circumstantial evidence. It is also to be kept in mind that this intention to commit the offence must be at the inception and not at a later point of time. In the present case, as noted earlier, the alleged role of the Petitioner in the conspiracy was to commit an offence u/s 13(1)(d) of the PC Act. As I have already discussed in detail and as per the fair admission on the part of the learned Counsel for the Central Bureau of Investigation, there is absolutely no material to show that the Petitioner committed criminal misconduct so as to get pecuniary advantage for himself. There is absolutely no circumstantial evidence in this regard. Then, as contended by the learned Counsel for the CBI, the only offence the Petitioner be said to have been committed under this charge is to enter criminal conspiracy for the purpose of giving pecuniary advantage to Accused-3 as per the allegations found in the First Information, charge sheet as well as the material. For this purpose the prosecution must show prima facie that there was a meeting of mind of the Petitioner and Accused-3 for conspiring to commit offence u/s 13(1)(d) of the PC Act. There is absolutely no allegation much less any material to indicate that prior to 31.3.1992 these two accused met either personally or otherwise or there was even any meeting of mind by other means so as to agree for commission of the offence u/s 13(1)(d) of the PC Act. As observed, even if by overlooking certain norms prescribed either for bona fide reasons or even deliberately, if the Petitioner has put up the note in respect of the alleged purchase of the computer systems from Accused-3 and even if by such initial act which no doubt, later had to go through the process of placing the same before the Chief Minister, Technical Advisory Panel, High Level Committee and ultimately to be approved by the Cabinet in its entirety would not by itself show by any stretch of imagination that the Petitioner entered into an agreement to commit any offence with Accused-3 which can be termed as entering into criminal conspiracy. In my view, even the observation of the Division Bench of this Court in the Public Interest Litigation giving rise to the present case are considered wherein it is held that (1) the order of the Government dated 31.3.1992 was entirely unconstitutional and void; (2) the payment of a sum of Rs. 1,58,10,000/- out of the Contingency Fund was contrary to Article 267(2) of the Constitution and the provisions of the Karnataka Contingency Fund Act, 1957; (3) the then Additional Chief Secretary who put up the note on 31.3.1992 did not disclose the true facts in his notings; (4) the procedure preceding the order dated 31.3.1992 was entirely improper and (5) the ultimate decision of the

Government dated 17.7.1992 placing a firm order with the Appellant is arbitrary and violative of Article 14 of the Constitution and therefore the resultant contract cannot be acted upon, are the definite findings in respect of the illegality of the dealing between the State and Accused-3 even if particularly due to the initial action of Petitioner in putting up note on the letter of offer of Accused-3 dated 31.3.1992 that by itself would not lead to the conclusion in the present criminal proceedings to hold that the Petitioner entered into criminal conspiracy with Accused-3 for commission of offence of criminal misconduct.

21. Again at the cost of repetition it is observed that the learned Special Judge without considering as to existence of the prima facie material against the Petitioner for the alleged offence of criminal conspiracy punishable u/s 120-B Indian Penal Code has mechanically ordered for framing of the charge and as such the same also is liable to be quashed.

22. In the result, this revision petition is allowed and the order dated 27.1.1999 ordering framing of charges and the consequential charge dated 3/4.2.1999 passed by the Special Judge for CBI cases, Bangalore, in Special C.C. No. 134 of 1994 are quashed in so far as Petitioner is concerned. It is made clear that the observations and finding made herein are only in respect of the present Petitioner alone.

23. As the Petitioner is stated to be on bail, the bail bond stands cancelled.