(2016) 11 KAR CK 0001

In the Karnataka High Court

Case No : Criminal Revision Petition No. 432 of 2013 connected with Criminal Petition No. 2313 of 2016

Katta Subramanya Naidu APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, Section 397
Penal Code, 1860 (IPC) — Section 120B, Section 419, Section 420, Section 465, Section 468, Section 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), Section 7, Se

Citation : (2017) 1 AirKarR 546 : (2017) 1 KantLJ 324

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Venkatesh S. Arabatti, Advocate, for the Respondent in Criminal Petition No. 2313 of 2016; Hashmath Pasha, Advocate, for the Petitioner in Criminal Petition No. 2313 of 2016; Sriyuths Venkatesh P. Dalwai, Advocate, for the Respondent in Criminal Revision

Final Decision : Allowed

Judgement

Anand Byrareddy, J. - These petitions are disposed of by this common order.

2. The background, in which these petitions are filed, is as follows. It is said that there was a proposal for acquisition of large tracts of land in Bandikodigehalli and other Villages in Jala Hobli, Bangalore North Taluk, for the establishment of IT and ITES Industries, by the State of Karnataka through the Karnataka Industrial Areas Development Board (KIADB), a statutory body. It is said that during the process of acquisition of lands, several officials of the KIADB were alleged to have demanded bribe from the landowners for speedy disbursement of compensation amounts. In this regard, one Rukmangada Naidu is said to have informed the Lokayuktha Police of these illegal demands. On the basis of the same, a case in Crime No. 24 of 2010 is said to have been registered against several officials of the KIADB, for offences punishable under Sections 7 and 13(1)

(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the ''PC Act'', for brevity). Other cases followed, on the basis of a source report by the Lokayuktha Police, against more officials of the KIADB as well as others, in Crime Nos. 42 to 46 of 2010. During the course of investigation of these cases, the Investigating Officer, in Crime No. 42 of 2010 was said to have been directed by the Superintendent of Police, Lokayuktha, to probe into the possible role of M/s. Itasca Software Development Private Limited (hereinafter referred to as ''Itasca'', for brevity) as regards irregularities in acquisition of land and to register a separate case. The Managing Director of Itasca had already been named as an accused in Crime No. 43 of 2010. Searches are said to have been carried out in the offices of Itasca and on the basis of information gathered, a search was said to have been carried out on the offices of one M/s. Indu Builders and Developers, a firm said to be consisting of partners, who were employees of Sowbhagya Petrol Bunk (accused 4 and 5), which was said to be run by the petitioner''s wife, the petrol bunk was also said to have been searched and the offices of one M/s. United Telecom Company (hereinafter referred to as ''UTL'') was also subjected to search. It was on such investigation, that the Lokayuktha Police had filed a charge-sheet against the petitioner, his son and others for offences punishable under Sections 7,8 and 13(1)(d) read with Section 13(2) of the PC Act and Sections 419, 420, 465, 468 and 471 read with Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as the ''IPC for brevity). The case is now registered as Spl. CC No. 135 of 2011.

It is the case of the prosecution, that the petitioner and his son were said to be closely associated with accused 3, the Managing Director of Itasca. Itasca is said to have made an application in the year 2006, seeking allotment of land to establish a Special Economic Zone for IT and ITES Industries. This application, it is claimed, was at the behest of accused 2, the son of the petitioner, as discovered later. It is alleged that though the application filed was defective, the petitioner who held the Portfolio of Minister of Medium and Major Industries, in the then Government of Kama taka, is said to have fast tracked the application, overruling objections raised by the concerned officials and is said to have had the application placed before the State High Level Clearance Committee (SHLCC), the apex body to sanction industrial projects and acquisition of land for the same, and of which body he was said to be an ex officio member. The application was purported to have been made on the basis that the land to be acquired for Itasca would be on ''consent basis'', unlike other applicants, who had sought for compulsory acquisition. The SHLCC had granted clearance for the project as on 16-1-2007, proposing that an extent of 325 acres of land of Bandikodigehalli be allotted to Itasca, subject to the landowners agreeing that the State pass consent awards for compensation.

It is alleged that Itasca had negligible capital investment and in order to enable it to deposit the large compensation amount which it was to deposit with KIADB, for purposes of acquisition of the land, UTL had entered into an agreement with

Itasca to fund the project and supplied the funds to Itasca, which in turn was deposited by accused 3, on behalf of Itasca. It was then decided to appoint an agency to identify, interact and negotiate with the landowners to facilitate consent acquisition and accordingly a tripartite agreement is said to have been entered into between Itasca, UTL and Indu Builders, who is said to have been appointed as such aggregator agency. Apart from depositing the compensation amount with KIADB, Itasca had sought to make additional payment of compensation through Indu Builders, to the landowners to obtain consent letters.

It was alleged that with respect to the draft proceedings of SHLCC on the word ''consent'', whitener had been applied to erase the word and that this was the handiwork of the petitioner, which constituted forgery.

It then transpires that accused 1 and 2 and their associates had proceeded to forge documents and utilised the same to withdraw the compensation amount through M/s. Indu Builders and Developers, which was purportedly acting on behalf of landowners in withdrawing the compensation amounts, which ultimately found its way into the hands of the petitioner and his family. It was thus alleged by the prosecution that this was indeed the illegal gratification received from Itasca and UTL. Incidentally, the entire share holding of Itasca was said to have been transferred in favour of one Basavapumaiah, the Chairman of UTL-accused 6. UTL is said to have funded a total sum of Rs. 317 crores, of which a sum of Rs. 87 crores is said to have been routed through Indu Builders, to the petitioner and his family.

As the aforesaid allegations were characterised as a mere theory put forward by the prosecution, in the absence of cogent material to implicate accused 1, he is said to have filed an application under Section 227 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ''Cr. P.C.'' for brevity), seeking discharge. That application having been rejected, the present petition is filed.

3. Sri B.C. Muddappa, the learned Counsel appearing on behalf of the petitioner in the first of these petitions would contend that the Court below has failed to appreciate the circumstances under which Section 7 read with Section 13(1)(d) and 13(2) of the PC Act would be applicable. It is contended that the final report submitted by the IO does not any where indicate that there was a demand made nor of acceptance of any illegal gratification by the petitioner - in which event, the above provisions could not have been invoked. The Court below has thus failed to exercise its judicial discretion to discharge the petitioner in the face of such a glaring circumstance.

It is pointed out that the nexus sought to be canvassed, which the petitioner allegedly had with the other accused is sought to be traced to the alleged money transfers to the son of the petitioner, either from M/s. Itasca or M/s. UTL or M/s. Indu Builders and Developers. This, on the face of it, would not result in the receipt of illegal gratification by the petitioner. On the other hand, the only reference to the involvement of the petitioner is as regards the participation of the petitioner as an ex officio member of the SHLCC, which accorded its approval to the proposal of acquisition of land for the benefit of M/s. Itasca. It is contended that there is no other material to indicate the involvement of the petitioner in any further transactions with any of the other accused persons.

It is contended that the further allegation of the petitioner having ensured that the application of M/s. Itasca was fast tracked for consideration by the SHLCC, over other applications by other applicants, it is contended, is not an objection raised by any entity. There was no such deviation and that even if there was any such lapse, the ultimate decision was that of the Committee consisting of 32 individuals, including the Chief Minister of the State and other high functionaries and not the petitioner alone. It is therefore contended that the petitioner could not be singled out for criminal prosecution on that account.

It is contended that the further allegation as to the petitioner and his family members having received the compensation amount in respect of lands belonging to others is also not substantiated by any cogent evidence. It is pointed out that the compensation amount paid to the landowners was in two components. Namely, the compensation amount paid through the medium of KIADB and the compensation amount paid through UTL, Itasca and Indu Builders and Developers. There is no material produced to demonstrate that even a single landowner had come forward to complain of non-receipt of compensation in respect of the arrangement as between the aforesaid entities and the respective landowners. In any event, the aforementioned arrangement was a private arrangement and could not be characterised as resulting in offences punishable under the provisions of the PC Act.

It is contended that insofar as the allegation that the petitioner had committed forgery in seeking to erase the word ''consent'' in the draft proceedings of the SHLCC, is concerned, it is asserted that when the final order dated 16-1-2007 would indicate that approval for acquisition had been accorded for acquisition by consent only and not acquisition simpliciter, the said allegation is not sustainable.

It is also pointed out by the learned Counsel, that the charge-sheet would indicate the participation of two legal entities, which were necessarily to be made the accused, namely, Itasca and UTL, two companies incorporated under the Companies Act, 1956, apart from M/s. Indu Builders, a partnership firm. By merely naming the Managing Director of Itasca, arraigned as accused 3 and the Chairman of UTL, accused 6 and the partners of Indu Builders as accused 4 and 5, would hardly make those entities answerable for any illegalities nor could any recoveries of alleged illegal money transfers be legally made, in the absence of those entities. The aforesaid accused could not be held vicariously liable for acts on behalf of the said entities.

It is further contended that in the absence of accused 3, in respect of whom, a Co-ordinate Bench of this Court has held that the proceedings were bad in law and has quashed the proceedings, insofar as the said accused is concerned, the allegations against the petitioner are completely diluted as only if the crucial circumstance that the petitioner had, along with the said accused and others, engineered the acquisition proceedings, for the benefit of Itasca, and that illegal gratification had been paid by the said entity through accused 3 and received by the petitioner or by someone, on his behalf - no case could be sustained against the petitioner. As the core allegation is made in a vacuum, without the said co-accused, who was allegedly a co-conspirator. It is also pointed out that the order of this Court in Criminal Petition No. 5102 of 2015, dated 10-3-2016 has been allowed to attain finality and steps have not been taken to question the said order even after a lapse of seven months.

It is stated that accused 6, Basavapurnaiah had died during the pendency of these proceedings and hence the case sought to be made out as to the role of UTL, which entity was sought to be held answerable for the alleged illegal acts through the said accused is no longer possible and therefore the theory of a conspiracy between the petitioner, Itasca and UTL being established is also not possible.

It is contended that the first case pertaining to the alleged irregularities in the acquisition and payment of compensation was in Crime No. 24 of 2010, registered as on 28-6-2010, against a First Division Assistant and a Special Land Acquisition Officer of KIADB. It is thereafter that a series of cases in Crime Nos. 42 to 46 of 2010, were registered as on 1-10-2010. It is on investigation and seizure of material documents in searches conducted under those cases, that the case against the petitioner and 9 others, in Crime No. 57 of 2010 came to be registered on 1-12-2010, including accused 3, who was already named as the accused in the case in Crime No. 46 of 2010. As pointed out by this Court in the order in Criminal Petition No. 5102 of 2015, the material gathered in the course of investigation in Crime Nos. 42,43 and 46 of 2010, was merely transferred to the case against the petitioner in Crime No. 57 of 2010 and there was no fresh material. It is hence contended that the said circumstance would be akin to carrying out a long drawn out investigation before registering a case against the petitioner and this would completely dilute the evidentiary value of the material sought to be used against the petitioner. As the mandatory requirement of registering an FIR, before a detailed investigation is conducted is not followed.

It is contended that the very material gathered in the course of investigation in the cases in Crime Nos. 42 to 46 of 2010 forming the basis for registering the case against the petitioner and others would tantamount to a second FIR being registered on the basis of the same material which was already available in those cases, which is impermissible in law.

It is hence sought that the proceedings against the petitioner be quashed.

4. Insofar as the petitioner in the second of these petitions is concerned, who is arraigned as accused 9, Sri Hasmath Pasha, the learned Counsel appearing for the said petitioner would contend that the Lokayuktha Police have filed a charge-

sheet against the said accused for offences under Sections 420 and 506 read with Section 120-B of the IPC in Case No. Spl. C.C. No. 135 of 2011, before the Court below.

It is stated that the allegation against the petitioner, accused 9, is to the effect that he had conspired with accused 2 to 5 and 8 and pursuant thereto had introduced accused 8 to accused 3, the Managing Director of Itasca and thereupon accused 2, 3, 4, 5 and 7 had obtained consent letters of the landowners for the acquisition and consent awards being passed.

It is pointed out that according to the case of the prosecution, accused 3 was the main conspirator, and as against him, the proceedings have been quashed by this Court in Criminal Petition No. 5102 of 2015 and since this petitioner is said to be a co-conspirator, he would be entitled to the same relief.

Sri Pasha would also urge the other legal contentions raised on behalf accused 1.

5. Per contra, the learned Special Public Prosecutor Sri Venkatesh Dalwai, appearing for the respondent-police in the first of these petitions would contend that the order under challenge is an interlocutory order and a challenge to such an order is barred under Section 397(2) of the Criminal Procedure Code, 1973 and also under Section 19(3)(c) of the Prevention of Corruption Act, 1988.

It is contended that under Section 227 or 229 of the Cr. P.C., the jurisdictional Court would only cursorily examine the prima facie material or the allegations either to proceed with the trial or otherwise. Hence, for this Court to address the alleged infirmities highlighted would result in the scope of the proceedings being enlarged, which the procedure does not contemplate. It is for this reason any such alleged infirmities in investigation or form are not treated as circumstances that would vitiate the proceedings under Section 460 of Cr. P.C .

It is asserted that the petitioner''s contention that investigation was conducted prior to the registration of the FIR is incorrect and misleading. It is pointed out that the IO had, on examination of the documents seized during search conducted in the earlier cases, and not in Crime No. 57 of 2010, formed an opinion that cognisable offences were made out which required registration of an FIR and accordingly the FIR in Crime No. 57 of 2010 was filed as on 1-12-2010 and thereafter a detailed investigation had been taken up. It is asserted that there is no illegality'''' in material gathered in other cases being considered to unearth the acts of omission and commission on the part of the accused and to prosecute a case independently, as in the present case on hand.

It is contended that the effect of the proceedings as against accused 3 by virtue of the order passed in Criminal Petition No. 5102 of 2015 would not enable the other accused to plead that the pending case against them could no longer be prosecuted.

It is contended that it is evident, prima facie, that the petitioner had acquired lands in the name of his wife even prior to the acquisition proceedings and it was a well-engineered conspiracy to acquire the lands for the benefit of Itasca, which was not qualified to secure the same. It was the petitioner who had piloted the application of Itasca on the basis of a false nett worth certificate. Accused 2, the son of the petitioner had sponsored the funding application. It was in return for such favour that funds were released by UTL through Itasca and routed to the petitioner and his family, through Indu Builders, a benami firm - of which the partners were petrol bunk employees, working under the petitioner''s family. It is alleged that there are a large number of bogus documents created in the name of non-existent persons, in whose names compensation amounts had been released by Itasca, which conveniently found its way into the accounts of Indu Builders. There is said to be material to indicate that the petitioner''s son had received at least Rs. 21.95 crores by forging signatures of imaginary landowners. A total Rs. 87 crores had been deposited with Indu Builders towards alleged compensation payable to landowners. Such large fund transfers were possible on account of 99% shares of Itasca having been transferred in favour of Basavapurnaiah, the Chairman of UTL.

It is hence contended that the petition is wholly misconceived and is liable to be dismissed.

6. The learned Special Public Prosecutor Sri Venkatesh Arabatti, appearing for the Lokayuktha Police, in the second of these petitions would contend that the commission of offences as set out in the charge-sheet, inter alia, are as follows:

(a) Accused 1 has obtained illegal gratification;

(b) Accused 1 has committed irregularities in allotment of lands;

(c) Accused 1 has exercised undue influence on various persons including private persons and the officials of the KIADB;

(d) Accused 1 has committed forgery by applying whitener after the signatures of the Chief Minister of Karnataka (page 94 of the charge-sheet and pages 26 and 28 of the Order dated 29-4-2013 and various places in the charge-sheet booklet);

(e) Accused 1 dropped approximately 450 acres of land in Bandikodigehalli from acquisition and notified separately for acquisition without the consent of the landowners (page 94 of the charge-sheet); and

(f) Accused 1 got accused 7 posted as Special Deputy Commissioner to aid in the commission of the offences.

Insofar as accused 2 is concerned, the offences committed by him, as disclosed in the charge-sheet are as follows:

(a) Accused 2 has formed the Company M/s. Itasca Software Development Private Limited along with accused 3, which applied for allotment of 325 acres of land from KIADB;

(b) Accused 2 has got the lands allotted to the name of the Company from the

KIADB and paid the initial fees of Rs. 3.00 lakhs from his account (page 94, para 6 of the charge-sheet and also in order dated 29-4-2013);

(c) Accused 2 has committed forgery in relation to the application for allotment; obtaining consent letters from the landowners; obtaining agreements and other documents from landowners for the same;

(d) Accused 2 set up accused 4 and 5 as partners of M/s. Indu Builders and Developers, a bogus partnership firm, as a conduit for the payments of money (page 95, para 9 of the charge-sheet);

(e) Accused 2 has committed forgery by appropriating the bearer cheques which were issued in the names of the landowners towards compensation (page 96, para 14 of the charge-sheet) to the extent of Rs. 47,07,68,000/-;

(f) Accused 2 has conspired with other accused with criminal intention, for the company''s project with false promises of higher compensation to landowners. In cases, where the landowners were ignorant/illiterate, their signatures or LTM (as the case may be) were obtained by accused 2 without informing them about the documents; and

(g) Accused 2 has taken signatures on various documents from various landowners in the office of accused 3, brought the Notary (Sri Jayanna) to the office of accused 3 for attesting the created documents.

The role played by accused 3, who was an Advocate by qualification, but had chosen to pursue a business and was said to be the son of a Senior Advocate practising at Bangalore, were stated to be as follows:

(a) Accused 3 has formed the company along with accused 2, which applied for allotment of 325 acres of land from KIADB;

(b) Accused 3 was actively involved in the documentation at his office regarding the acquisition of lands, obtaining signatures from landowners on the documentation for acquisition of lands and cheating the landowners (page 95, para 9 of the charge-sheet); and

(c) Accused 3 has conspired with other accused with criminal intention, for the Company''s project and the signatures/LTM of the landowners on various documents were taken in his office (page 96, paras 12 and 14 of the charge-sheet).

Accused 9, the petitioner in the second of the petitions was said to have been a Corporator in the Bruhath Bangalore Mahanagara Palike and a close associate of accused 1 and 2. He was also a client of the father of accused 3. The offences and acts of the said accused, as disclosed in the charge-sheet are said to be as under:

(a) Petitioner-accused 9 has assisted accused 1 and 2 in luring and inducing the landowners to come to the negotiation table; agree for giving up their lands for acquisition; and holding out threats in case they do not agree for giving up their lands, they would lose their lands and would not get compensation also, (page 96, para 12 of the charge-sheet);

(b) Petitioner-accused 9 was a Corporator at the relevant point of time and in view of his position, he was able to lure and induce the landowners to agree for compensation and also forcibly coerced them to consent for the acquisition, in case they did not agree (page 96, para 12 of the charge-sheet);

(c) Petitioner-accused 9 was also involved in obtaining the documents through deceitful means and also forged the documents. Petitioner-accused 9 along with other accused took maximum advantage of illiteracy of the land holders/owners by keeping them in darkness with the intention of cheating them (page 96, para 12 of the charge-sheet) and also in order dated 29-4-2013;

(d) Petitioner-accused 9 received payment for repaying his personal loan and some of the amount was paid from M/s. Indu Builders and Developers (order dated 29-4-2013);

(e) Petitioner-accused 9 has committed forgery by appropriating the bearer cheques which were issued in the names of the landowners towards compensation (page 96, para 14 of the charge-sheet); and

(f) Petitioner-accused 9 has obtained various General Power of Attorneys from the landowners to further the criminal intention (pages 154 and 156 of the charge-sheet Booklet).

It is contended that the proceedings against accused 3 having been quashed by virtue of an order of this Court, would have no bearing insofar as the prosecution of accused 9.

It is contended that the said accused had filed an application seeking discharge before the Trial Court which has been dismissed and hence there is no warrant to consider his prayer in the present petition at this stage. As the Court below has taken cognizance of the case and of the offences disclosed to have been committed by accused 9.

7. In the light of the above rival contentions and on perusal of the material made available it is seen that the final report filed against the petitioner (accused 1) and 8 others alleging commission of offences punishable under the provisions of the PC Act and the IPC, is shown hereunder in tabular form:

SI. No. Details of accused Sections invoked

1 Mr. Katta Subramanya Naidu 7,13(l)(d) read with 13(2) of Prevention of Cormption Act, 1988 (PC Act) and 465, 471 read with 120-B of Indian Penal Code, 1860 (IPC)

2 Mr. K.S. Jagadish alias Katta 8 of PC Act, 1988 and 420, 465, 468 and Jagadish Naidu 120-B of IPC

3 Mr. S.V. Srinivas 12 of P.C. Act, 1988; 420, 465, 468, 506 read with 120-B of IPC

4 Mr. Jagaiah (absconding at the time of filing charge-sheet) 420, 465, 468 read with 120-B of IPC

5 Mr. Venkaiah (absconding at the time of filing charge-sheet) 420, 465, 468 read with 120(3) of IPC

6 Mr. Basavapoomaiah 12 of P.C. Act, 1988 and 120(3) of IPC

7 Mr. T.P. Muninarayanappa 13(1)(d) read with 13(2) of P.C. Act, 1988 and 120-B of IPC

8 Mr. B.K. Manju 420, 506 read with 120-B of IPC

9 Mr. M. Gopi 420, 506 read with 120-B of IPC

Before proceeding to address the case on merits, the preliminary objection as regards the maintainability of the petition against an interlocutory order, as sought to be canvassed by the learned Special Public Prosecutor, placing reliance on the decision in V.C. Shukla v. State through C.B.I. AIR 1980 SC 962, is to be held as not tenable. The said decision was rendered in the context and the interpretation of the scope of Section 11 of the Special Courts Act, 1979. On the other hand, it is held thus by the Apex Court in the case of Jarnail Singh v. State of Rajasthan 1992 Cri. L.J. 810 (Raj.) (FB):

"34. To sum up, we find that an order framing charge is an order of moment; it deprives the liberty of a citizen and puts him to jeopardy of a trial. Such an order finally rejects the plea of the accused that he is entitled to a discharge or that he is not liable to be tried. Such an order concludes the enquiry and the pre-trial proceedings against the accused. The order framing charge takes away a very valuable right of the accused. Hence, in our considered opinion, an order framing charge is not an interlocutory order within the meaning of Section 397(2) of Cr. P.C. and such an order is amenable to the supervisory jurisdiction of the Court of Session and the High Court under Section 397(1) of Cr. P.C. We answer the reference accordingly."

It is plain that under Section 227 or 239 of Cr. P.C., the jurisdictional Court would only examine, prima facie, the material or the allegations to decide to proceed with the trial or to discharge the accused.

A primary allegation in the charge-sheet against the petitioner is to the effect that the petitioner has received illegal gratification. In this regard, the material in support of the same and the further narration of the sequence of events, do not indicate a direct demand or receipt of illegal gratification by the petitioner, from any party. There is reference to accused 2, the petitioner''s son, or a firm of which accused 4 and 5 were partners, of having received huge amounts, which were said to be compensation amounts payable to landowners. The said compensation amounts were termed as additional compensation paid directly by

Itasca and UTL to landowners through the firm of which accused 4 and 5 were partners. These above circumstances are apparent, prima facie, but whether the said amounts were paid to and received on behalf of the petitioner cannot be presumed.

It is alleged that the petitioner has committed irregularities in allotment of lands. This was not a possibility, the allotment of land is not made by the petitioner as is evident from the facts stated. The allotment is made by the SHLCC.

It is alleged that the petitioner had exercised undue influence on various persons including the officials of the KIADB. The role of the petitioner does not go beyond the stage of having been a ex off do member of the SHLCC. The allegation is hence vague and would not lead to framing of any tenable charge.

There is a seemingly serious allegation of the petitioner having committed forgery by applying whitener and obliterating the word ''consent'' from the draft proceedings of the SHLCC, during the process of SHLCC considering the application of Itasca for allotment of land. As pointed out by the learned Counsel for the petitioner, there is no material to indicate that it was the petitioner who had committed any such act or that it was done at the instance of the petitioner. In any event it is asserted that the documents relied upon for this accusation on the other hand indicate that the approval of the SHLCC had been cross-checked with the draft of the Final Order by the Principal Secretary to the Government of Karnataka, and it is thereafter the final order was issued. The final order dated 16-1-2007 of the SHLCC was for acquisition of land for Itasca was to be by consent acquisition only. Hence the draft proceedings said to have been tampered by the petitioner as the concerned minister has not lead to any mischievous result.

It is to be kept in view that the case of the prosecution is that there were transfer of funds, which were characterised as illegal gratification that was ultimately received by the petitioner through the other accused. The transfer was as a result of a well-engineered conspiracy involving two corporate bodies from whose accounts the monies came, namely, Itasca, purportedly represented by accused 3 and UTL, represented by accused 6. Significantly, the said corporate bodies are not named in the charge-sheet. This is inexplicable as there is no immunity available to the companies from prosecution, merely because prosecution would be in respect of offences for which punishment prescribed is mandatory imprisonment and fine. It is also to be kept in view that prosecution, conviction and sentencing are different stages in a criminal trial. The stage for sentencing is reached only after a verdict of guilt is pronounced after a full-fledged trial. (See: Standard Chartered Bank and Others v. Directorate of Enforcement and Others (2005) 4 SCC 530) Further, a corporate body is an artificial person which acts through its officers. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, provided there is sufficient evidence of his active role coupled with criminal intent. When the company is the offender, vicarious liability of its officers cannot be imputed automatically, in the absence of any statutory provision to this effect. (See: Sunil Bharti Mittal v. Central Bureau of Investigation (2015)4 SCC 609).

There are two further developments that have occurred during the pendency of these petitions which would have a bearing on the sustainability of the case of the prosecution. The allegation of conspiracy involves two principal accused, namely, Srinivas, accused 3 and Basavapoomaiah, accused 6 who were said to be the Managing Director of Itasca and the Chairman of UTL, respectively. Their companies are the direct beneficiaries of the acquisition of land, in return for which illegal gratification is allegedly received by the petitioner through others. In view of the proceedings having been quashed as against Srinivas by virtue of the order of this Court dated 10-3-2016 and in view of the death of Basapoornaiah, the allegation of conspiracy, as between the petitioner and those accused, is no longer sustainable, and when the companies represented by the said accused are not even charge-sheeted. Prima facie, the charge of conspiracy should fail.

Insofar as accused 9, who is the other petitioner, is concerned, the allegation against him is that he had conspired with accused 2 to 5 and in pursuance of the conspiracy, introduced accused 8 to accused 3 and brought landowners to the office of accused 3 and the said accused, namely, 2,3,4,5 and 7 had obtained consent letters of landowners for acquisition and for the State to pass consent awards. As rightly contended by the learned Counsel for the petitioner, accused 3, the Managing Director of Itasca was billed as one of the main conspirators, and as against whom the proceedings has been quashed by this Court. Hence, as a co-conspirator he would be entitled to a similar relief. Reliance on the case in State of Uttar Pradesh through C.B.I., S.P.E., Lucknow and Another v. R.K. Srivastava and Others (1989) 4 SCC 59, is aptly applicable. Though there was a contention raised on behalf of the respondent that the possibility of accused 3 being added during the trial under Section 319 of Cr. P.C., may not be tenable - for the very material that is now placed before the Court below in the form of a charge-sheet and which was the subject-matter of the order quashing the proceedings against him cannot be used for the purpose of summoning him, as held by the Apex Court in the case of Hardeep Singh v. State of Punjab and Others (2014) 3 SCC 92.

Further, for the reason that the two corporate bodies namely, Itasca and UTL not having been named in the charge-sheet as the accused, the theory of conspiracy has no foundation and cannot be sustained against any of the accused.

In the result, the petition in Cri. R.P. No. 432 of 2013 is allowed and the order dated 29-4-2013 passed by the Court below in Spl. CC No. 135 of 2011, rejecting the application filed by the petitioner under Section 227 of Cr. P.C., is set aside and the petitioner-accused 1 therein is discharged.

Further, the petition in Criminal Petition No. 2313 of 2016 is allowed and the proceedings pending against the petitioner-accused 9, before the Court below in Spl. CC No. 135 of 2011, insofar as the petitioner is concerned, stands quashed.

