

(2019) 03 J&K CK 0139

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 44, 47, 50 Of 2007

Kuldeep Singh And Another

APPELLANT

Vs

Superintendent Of Police, Cbi Acb, Rail Head Complex,
Jammu

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 420, 467, 468, 471, 511
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173, 197, 216, 227, 228, 323, 397, 482
Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471, 498A, 511
Prevention Of Corruption Act, 1988 — Section 5(2)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 J&K CK 0139

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Z. A. Shah, Jagpaul Singh, B. R. Chandan, Sunil Sethi, Mohsin Bhat, Monika Kohli

Final Decision : Dismissed

Judgement

1. Heard.

2. The petitioners through the instant three petitions filed under Section 561-A of Cr.P.C seek quashing of the proceedings initiated by the Central Bureau of Investigation in FIR No.RC004-2005 A 0012 dated 01.10.2005 registered by Police Station, Central Bureau of Investigation/ACB/Jammu purported to be under Sections 420, 467,468,471 and 120-B of the Ranbir Penal Code and final report filed in the Court of learned Chief Judicial Magistrate Jammu under Section 173 Cr.P.C and the order of charge dated 12.02.2007. All these petitions have been clubbed together as all petitioners have allegedly been involved in same FIR and have been directed to be charge sheeted by way of common order dated 12.2.2007 by CJM Jammu.

3. The brief facts of the case are that vide order dated 12.09.2005 passed by this court in CMP No.49/05 in PIL no.24/2005 titled Rattan Singh Gill vs. State of J&K and ors., the Central Bureau of Investigation was directed to register a case on the basis of FIR No. 24/05 dated 02.07.2005 by Police Station, Crime Branch, Jammu. The case was registered by the Crime Branch Jammu on the complaint of one Shri V.K. Gupta son of Manga Ram Gupta resident of Trikuta Nagar, Jammu. CBI accordingly registers the FIR for offences under Sections 120-B r/w 420, 467, 468 and 471 RPC.

4. It was alleged in the said complaint that against order of ?A? Grade timber, the officers of Forest department pass ?C? Grade timber; that against supply of Deodar the officers of Forest Department dispatch Fir which is 1/8th of the price of Deodar, that officers of Forest Department accept Fir Chir against Deodar from the contractors (timber merchants and for showing this favour the officers of Forest Department are accepting 10% Commission of the total value of timber that the timber merchants are supplying only 7 sleepers in 1 Cu.mt. whereas 1 Cu.mt. must contains 10 sleepers and thus the officers of Forest Department are accepting only 60-70% of the volume of the total supply and that the officers of the Quality Control

Department of the Army accept ?C? Grade timber against the order of ?A? Grade and for showing this favour, they accept 10% of the value of the timber as commission from the timber merchants.

5. During the Investigation, it was revealed that DGS&D New Delhi had placed two Supply Order is dated: 29.03.2005, which is in respect of 210 Cu.mt. of timber sleepers Grade-II of Chir/Fir species to be supplied to Army. This supply order was raised to 430 Cu.mt. The second supply order was dated 06.04.2005 for supply of 1370 Cu.mt. of timber sleepers Grade-I of Chir/Fir species to be supplied to Army. In response to these two supply orders the Forest Department procured timber of Chir/Fir species from five different traders, the details whereof are as under:-

S.No

Name of the timber merchant

Timber procured

Quantity

(in Nos.)

Quantity in Volume

(Cu.mt.)

1.

M/s. Classic Timber Traders

1,590
175
2.
M/s. National Timber Traders
2,504
275
3.
M/s. Farooq and Co.
410
45
4.
M/s. Syal Enterprises
684
75
5.
M/s. J.K.Wood Products
228
25
Total
5,416
595

Regarding allegation in respect of 'C' Grade timber instead of 'A' Grade timber, the Investigating Agency intercepted the 14 Railway wagons and these wagons were opened and inspected in presence of the members of the Committee constituted by this High Court. Out of 5420 scants found in 14 wagons, 122 scants were found substandard by the Committee members. It was found that accused Gurdeep Singh, the then Timber Passing Officer (TPO) Jammu and accused Gh. Mohd. Khan, the then Forester, working under TPO Jammu, dishonestly and fraudulently had passed all the timber so dispatched which included 122 substandard scants, the details whereof are as under:-

S.No.

Name of the Supplier

Total No. of timber scants supplied

Grade of Timber Scants

No. of timber scants found substandard

1.

M/s. Classic Timber Traders

1590

I

13

2.

M/s. National Timbe

1230

I

11

Traders

1274

II

48

3.

M/s.Farooq and Co

228

182

I

II

8

-

4.

M/s. Syal Enterprises

456

228

I

II

32

6

5.

M/s. J.K.Wood Products

228

II

4

5416

122

The allegation regarding supply of timber species Fir as against Costly Deodar Species was not found substantiated .Accordingly the allegation with regard to making payment of 10% of the total cost of timber as commission to officers of Forest Department was also found to be unsubstantiated.

Regarding the allegation that officers of Forest Department are accepting only 60-70 % of the volume of total supply, it was found that accused Gurdeep Singh the then TPO Jammu had passed total 5416 number of dispatched timber scants of Chir/Fir species falsely showing their measurement as 595 Cu.mt. as shown in the tally sheets duly signed by accused Gh. Mohd. Khan and also the abstracts of Tally Sheets which are signed by accused Gurdeep Singh and Ghulam Mohd. Khan. The volume of timber scants found in 14 wagons was found to be measuring 457.718 cu.mt. as against the 595 Cu.mt. falsely shown to have been passed by accused Gurdeep Singh the then TPO Jammu. Thus said accused and the officials of Forest Department have dishonestly and fraudulently passed and certified approximately 29% more volume, (the cost whereof comes to about Rs. 28.6 Lacs approximately) than the actual by falsely preparing the Tally Sheets and using them as genuine one, with view to cause wrongful gain to timber merchants, namely, accused Sheikh Farooq of M/s. J.K.Wood Products, Mohd. Farooq Ganai of M/s. Farooq & Co. Baldev Singh of M/s. Syal Enterprises, Mushtaq Ahmed of M/s. Classic Timber Traders and abstracts of tally sheets though signed by accused Gurdeep Singh TPO and accused Gh. Mohd. Khan the then Forester, yet the same were not prepared in their handwriting, though these were required to be prepared by them. Thus the allegation was found to be proved.

The allegation regarding payment to Officers of Quality Control of Army by the timber merchants for showing favor to accept substandard timber were not proved because the timber did not reach the destination. The allegations regarding procurement of timber in violation of guidelines of Hon?ble Apex Court in the case of T.N.Godvaraman T. Thirunulkpad vs. Union of India (1992) 2 SSC

267 were also not found substantiated.

After conclusion of investigation of the case, the Investigating Agency found that offences punishable under Section 120-B RPC r/w 420/511, 468 and 471 RPC and substantive offences punishable under Sections 420, 511, 468 and 471 RPC have been committed by accused (i) Gurdeep Singh, the then TPO Jammu (ii) Ghulam Mohd. Khan, the then Forester posted under TPO Jammu (iii) Sheikh Farooq of M/s. J.K.Wood Products (iv) Mohd. Farooq Ganai of M/s. Farooq & Co. (v) Baldev Singh Syal of M/s. Syal Enterprises (vi) Mushtaq Ahmed of M/s. Classic Timber Traders and (vii) Kuldeep Singh of M/s. National Timber Traders.

CBI accordingly presented the challan before CJM Jammu, who after hearing the counsel for accused persons and State held that prima facie case for framing of charges under sections 420/511,468,471 r/w 120-B RPC were out against petitioners/accused persons herein. The concluding para of order of court below of framing of charge against petitioners reads as under:-

"Learned counsel for the accused have laid much stress on the argument that the consignees in this case had right to inspect the consignment of timber at destination and thereafter they could reject it or even refuse to make payment. Reference has been made to the relevant clauses of the agreement between DGS &D and Forest Department of J&K State on one hand and the agreement between Forest Department and the accused Nos. 3 to 7 on the other. In order to understand this argument let us have a look at the relevant clauses of the aforesaid agreements. The clauses relating to inspection incorporated in the agreement between DGS&D and Forest Department read as under:-

Inspection (A) Initial

Inspection of timber will be carried out by a Gazetted Officer of the Principal Ch. Conservator of Forest, J&K Govt. Jammu/Srinagar, therefore has the responsibility of arranging effective and expedition inspection and or ensuring conformity with the specification, and avoid delay. In case of complaint of the consignee regarding the poor quality or non-conformity of timber with specification no serious notice will be taken unless percentage of such timber is more than two percent of the supplies made. Such complaint should be with in a period of 60 days from the receipt of timber at the destination.

Final Inspection:

(a) Associating with area representative of the DGQA (b) Representative of consignee and (c) Representative of Forest Department J&K shall jointly inspect the stores at the consignee and date of inspection may be mutually fixed.

(b) The entire quantity of timber under objection received at Destination should be kept intact till a Joint Inspection is made. All timber passed by the nominee of the Forest Department must be branded with passing hammer mark and any timber received without hammer mark should be set aside for joint inspection by the Forest Officer deputed by Principal Ch. Conservator of Forests.

(c) On such Re-inspection the timber is adjudged by the Head of the State Forest Department to be at variance with the species, the head of the CCF shall offer suitable rebate or replacement and the Indenting Officer, if the difference between the parties are not mutually resolved. The Inspection General of Forest Min. of Agriculture, New Delhi will decide such matter whose decision will be final.

The clauses relating to inspection in the agreement between the Forest Department and accused Nos. 3 to 7 read as under:-

FOR INITIAL INSPECTION

Initial Inspection will be carried out by a Gazetted Officer of the Conservator of Forests, Central Circle, J&K Govt. Jammu/ Srinagar, who therefore, has the responsibility of arranging effective and expeditious inspection and for ensuring conformity with the specifications and avoid delay. The party of the first part shall extend full co-operation in this regard for arranging effecting and expeditious inspection and for ensuring conformity with the specification. In case of any complaint of the consignee regarding the poor quality or non-conformity of timber with specification made within a period of 60 days from the receipt of timber at destination. The first party will replace the same at his own cost and any loss occurred on this account will be his responsibility.

If the rejection of stores is less than 5% there will be no Joint Inspection with the area representative of the DGQA, Mohali. The first party will not claim any payment for the rejected stocks, which will be disposed off by the consignee in the best of Govt. interests. In such cases copy No. 2 and 5 of I/Notes will be released by the respective consignee without any final joint Inspection and payment in these cases will be released on receipt of copy No. 2 and 5 of the I/Notes by CF Central. Tally sheets prepared at the time of the initial inspection will be sent to the Consignee.

FOR FINAL INSPECTION (IF REJECTION IS MORE THAN 5%)

In association with area representative of the DGQA, Mohali (B) representative of the consignee and (C) representative of Conservator of forests, central circle, J&K, who shall jointly inspect the stores at the consignee's end and date of inspection shall be mutually fixed.

(i) The entire quantity of timber under objection received at destination should be kept intact till Joint Inspection is made. All timber passed by the nominee of the CF Central, must be branded with passing hammer mark and any timber received without hammer mark should be kept aside for Joint Inspection by the forest Officer deputed by CRF Central.

(ii) On such re-inspection if the timber is adjudged by the CF Central to be at variance with the specification, the party of the first part shall offer suitable rebate or replacement, which may be mutually agreed upon between the first party and the indenting officer and CF Central. If the difference between the parties are not mutually resolved, the Inspector General of Forests, Ministry of

Environment & Forests, New Delhi will decide such matter, whose decision will be final.

A perusal of both these clauses reveals that the same pertain to the inspection of timber relating to its quality and specification. It does not talk of quantity volume of timber supplied. Thus from a reading of aforesaid clauses, the inspection appears to be only with regard to quality and specifications i.e. grade, species, size etc. and not to determine whether there is any shortfall in supply of timber. This becomes manifest from the covenants of aforesaid clauses which provide for replacement of timber in case it not found to be in conformity with requisite specifications and to compensate for the loss caused on this account. The question of replacement will come only in case of non-conformity with specifications, and in case of short fall of supply, there is no question of replacement. Replacement means to remove something and put another thing in its place. So it appears from a reading of aforesaid clauses that inspection of consignment does not pertain to verification of the fact whether there is any short fall in supply of timber. It appears from a reading of aforesaid clauses relating to inspection that so far as the certification, of quantity of timber supplied, by timber passing Officer, is concerned, the same is not subject to any inspection by the consignee under the terms of contract. Although it can be said that consignee could point out the short fall of supply, yet the fact that suppliers knowingly have made the short supply of timber shows that their intention to defraud existed right at the beginning of transaction. However, the in depth interpretation of these covenants shall be made after the trial of the case when the whole evidence will come on record. At the stage of framing of charge such an exercise cannot be undertaken and no final opinion can be expressed at this stage in this regard.

Even, if it is assumed that the consignees had the right to point out the short fall of supply to the suppliers and deduct the cost thereof, still then the suppliers cannot escape from their criminal liability because they had attempted to pass on lesser quantity and substandard timber by representing it to be a requisite quantity and standard in a dishonest manner. It is a settled law that same set of facts can give rise to Civil as well as Criminal liabilities. If there is material on record to show that accused intended to cheat the consignees, even if consignees may have Civil remedy under the terms of the contract, still then a criminal liability will arise against the accused. In the present case there is such material on record. The accused have dispatched the material, part of which was substandard and it was also found to be of lesser volume than what was passed and certified by accused Nos. 1 and 2. Thus, there are circumstances on record to show that accused had a dishonest intention in their dealings. The accused did whatever was within their power. Had the Hon'ble High Court not ordered the seizure of Railway Wagons, the material would have reached its destination. Thus it is a clear cut case of attempt to cheat on the part of accused, learned counsels for accused laid much stress on the argument that this was at best a case of preparation to cheat made by the accused and not a case of attempt. I am afraid

such an argument cannot be accepted. In a prosecution for the irrelevant in considering whether he had committed the offence of attempt to cheat. Thus if a person knowingly offers for sale bronze by representing it to be an article of gold, but the buyer does not buy it, will be a case of attempt to cheat. Similarly, if a seller dispatches goods with a certificate that particular quantity of goods has been dispatched. Knowing fully well that in fact a lesser quantity has been dispatched by him, and even if the consignee points out this fact while receiving the goods, still then it will be a case of attempt to cheat. In this case, the accused have completed their part of act by dispatching substandard and lesser quality of timber representing it be of requisite standard and quantity. The accused were required to do nothing further in order to complete their act, hence the accused have crossed the barrier of preparation and ventured into the realm of attempt. Thus, they have prima facie committed the offence of attempt to cheat.

It has been vehemently argument by learned counsels of the accused that offence of forgery is not made out against the accuse Nos. 1 and 2. It has been argued that these two accused as per prosecution case have signed tally sheets which depict incorrect measurements and certified falsely the requisite quality of the timber. That even then no offence of forgery is made out against the accused because it is not a case where the accused have put the signature of somebody else on the tally sheets or any other document. The argument is misplaced. S.464 of RPC defines making of a false document. A perusal of the said provision reveals that a man can be said to have committed a forgery of a document even if he himself is the author and signatory of the document. Illustration (h) to S.464 RPC does not require that he should sign a document making it to be believed that somebody else has signed the same or that he was authorized to sign the same on somebody else's behalf. From the two illustration (h) and(c) and Explanation 1 to S.464 RPC it is clear that legislature intended to cover cases under the offence of forgery, whenever the person was creator of a document can though the document was made by himself in his own name and signed in his own name. These two illustrations with Explanation I, therefore, make the scope of the definition of making a false document very wide and it cannot be said that part Ist of S.464 RPC is the only provision defining words making the false document. Thus Hon'ble High Court of Bombay in case of B.H.Shetty vs. J.A.Stampat reported as 1997 C. L.J. 2509, held that preparation of a bill which showed that accused had suffered a certain loss, though no such loss had occurred, was prima facie a forgery in view of illustration (h) and (c) and Explanation 1 to S. 464 RPC. In the present case also accused Nos. 1 and 2 who were supposed to verify the quality and quantity of timber supplied, falsely certified that supplied timber was of requisite quality and also signed the tally sheets which depicted exaggerated measurement of supplied timber than its actual measurement. In fact there is evidence on record to show that accused Nos. 1 and 2 did not prepare these tally sheets themselves which they were supposed to do not have the same been prepared by anybody from their office.

Thus it is a clear cut case of making of false documents by accused Nos. 1 and 2 in order to cheat the consignee and to bestow benefits upon accused Nos. 3 to 7, the supplied timber. These false tally sheets were relied upon by Forest Department and the supplied timber was dispatched in Railway wagons. Thus offences of commission of forgery for the purpose of cheating and using of these forged documents are made out against the accused.

Lastly, it has been argued by learned counsel for accused No. 1 that the said accused has acted in discharge of his official duties, as such, he is entitled of S. 197 Cr.P.C. since no sanction for prosecution of accused No. 1 has been obtained in this case, as such, cognizance of offences cannot be taken against the said accused. The law on the subject has been summarized by our own Hon'ble High Court in the case titled, Santosh Arora vs. State and ors. (561-A Cr.P.C. No. 60/2004) decided on 17.01.2007, in following words:-

"Protection given under Section 197 of the Code of Criminal Procedure is to protect responsible public servants against possible vexatious criminal proceedings for offences alleged to have been committed by them while acting or purporting to act as public servants. This protection available to the public servants cannot, however, be claimed as a cloak for doing and objectionable act in the grab of the official duty. There may be cases where while doing the official duty, the public servant, may exceed his duty which may fall within the definition of an offence. Such excess, will not, as such, be sufficient ground to deprive the public servant from the protection provided by Section 197 of the Code of Criminal Procedure. At the same time, if the act complained of, had nothing to do with the official duty, but was done, while on duty, and was an act falling within the definition of an offence, the public servant would not be entitled to protection under Section 197 of the Code of Criminal Procedure. During the process of examining the question as to whether or not the act of the public servant has been committed by him while acting or purposing to act in discharge of his official duties, it is not the duty, which may require examination so much, as the act, because the official act may be performed both in the discharge of, or in dereliction of, the official duty. It is the quality of the act which is important and the protection of Section 197 of the Code of Criminal Procedure will be available, if the act falls within the scope and range of the official duty of the public servant."

If we examine the act of accused No. 1 in the light of aforesaid legal position, it reveals that he has not acted in discharging of his official duty. There is material on record to suggest that accused No. 1 has prepared false tally sheets and thereby conspired with other accused in their attempt to cheat the consignees. To enter into criminal conspiracies and to prepare false documents cannot be the official duty of a person. Hence accused No. 1 cannot hide behind the cloak provided to public servants under section 197 of Cr.P.C. In any case, this issue can also be gone into after the trial of the case. At this stage, prima facie it appears that protection of Section 197 Cr.P.C. is not available to accused No. 1 in

the facts and circumstances of the case.

At the stage of framing charge, the Court cannot embark upon an inquiry whether the evidence is reliable or not for the purpose of framing of charge. At the stage of framing charge the Court need not be satisfied that the prosecution would ultimately result in conviction. It is enough that there are circumstances, which raise enough suspicion as to the complicity of the accused. It is not at the stage of framing charge necessary that the materials available should conclusively establish the various ingredients of an offence to enable the Magistrate to frame a charge.

In the face of the aforesaid legal position and the discussion of circumstances established from the material available on record, it is prima facie disclosed that accused entered into a criminal conspiracy to cheat the consignees and in this regard they made the requisite attempt which would have succeeded but for the intervention of Hon'ble High Court. It is also disclosed that accused created false measurement sheets in order to defraud the consignees and to execute their design to cheat the consignees. Thus prima facie offences under Sections 420/511, 468, 471 r/w 120-B RPC are made out against the accused. Charges against them are, accordingly framed. Memo of charges have been read over and explained to accused and their pleas have been recorded. The accused have denied the charges and claimed to be tried. The prosecution is, therefore, directed to lead evidence in support of their case. Put up on 16.04.2007 for prosecution evidence."

6. The counsel for petitioners have argued that no criminal offence/s have been made out as no consideration has been received by them; that as per agreement entered between petitioners with forest department, supplies made were subject to various clauses which entitled the other side to inspect the consignments and it was only after satisfaction of consignee, petitioners were entitled for full amount; counsel have placed reliance on various clauses of agreements including initial inspection, final inspection, dispatch clause, payment clause and overhead charge clause. That there was arbitration clause in agreement so criminal proceeding were not maintainable. That articles/timbers have yet not been received at destinations, so no offence is made out. It has further been argued that no offence under section 420/511 RPC has been made on facts and circumstances of case. Whereas counsel for petitioners, who are forest officials, has argued that compliance of section 197 Cr.P.C., while producing challan against forest employee has not been made out. So framing of charges under relevant sections is abuse of process of law. Counsel have relied upon 2004 (2) SLJ 438 case titled State of Orissa v Ganesh Chandra, wherein it is held that section 197 of Cr.P.C., protects responsible public servant from vexatious criminal proceedings; 2018 (14) Scale 816 case titled Himachal Pradesh Cricket Association Vs. State of HP, wherein it is held that where grave miscarriage of justice would be committed, if trial is allowed, then proceeding should be quashed; and 2009 (2) JKJ 353 case titled Darshan Singh v Ali Mohd. Makroo,

wherein it is held that decisive intention in discerning commission of offence is essential for offence under section 420 RPC.

7. Whereas, counsel for CBI has supported the order of framing of charge passed by court below and investigation conducted by CBI.

8. I have given my thoughtful consideration to whole aspects of the matter and law on the subject.

9. Law with regard to framing of charge in warrant case is now well settled that if upon consideration of the record of the case and the documents submitted therewith under section 173 Cr.P.C., and after hearing the submissions of the accused if magistrate is of opinion that there is ground for presuming that accused has committed offence, which magistrate is competent to try, he shall frame the charge or if magistrate considers charges to be groundless, he shall discharge accused.

10. This exercise requires judicial mind to the facts and circumstances of each case. At the initial stage if there is strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. Magistrate 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.

11. Law with regard to quashment of charge has now been well settled. In AIR 2014 SC 1106 in case titled Umesh Kumar Vs. State of Andhra Pradesh, it is held as under:-

A) Code of criminal procedure -section 482 -instead of considering prima facie case-High court appreciating and weighing the materials on record -concluding that charge sheet could not have been filed against accused and further ,no charges could have been framed - virtually acting as an appellant court - approach illegal and erroneous.

A Constitution Bench of this Court reiterated a similar view in CBI & Ors. v. Keshub Mahindraetc., AIR 2011 SC 2037 observing that when the charges are framed, the court makes an endorsement till that stage. So charges are framed on the materials produced by the prosecution for framing the charges "at that stage". Such indication is necessary otherwise the provisions contained in Sections 216, 323, 386, 397, 399, 401 etc. Cr.P.C., would be rendered nugatory and denuded a competent court of the powers under those provisions. The court cannot be restrained from exercising its powers either under Section 323 or Section 216 Cr.P.C.

12. In 2015 (9) SCC 294 in case titled The State Rep. by the Inspector of Police,

"Q' Branch CID., Tirunelveli Range, Tamil Nadu Vs. Mariya Anton Vijay, it is held as under:-

"85. The question as to how, in what manner and to what extent, the inherent powers of the High Court under section 482 of the Code are exercised for quashing the registration of FIR/final report/charge sheet/complaint etc. are no more res integra and settled by several decisions of this Court.

86. One leading case on this question is Bhajan Lal's case (supra) and the other is S.B.Johari's case (supra) apart from many others.

87. So far as the case of Bhajan Lal (supra) is concerned, following proposition of law is laid down:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 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 FIR 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 under Section 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

(88) As far as S.B. Johari (Supra) case is concerned, following proposition of law is laid down:

"4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjayya*, (1990) 4 SCC 76, after considering the provisions of Sections 227 and 228 CrPC, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the [pic]offence with which the accused could be charged. The court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39, *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 and *Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja*, (1979) 4 SCC 274 and held thus: (SCC p. 85, para 7) "From the above discussion it seems well settled that at the

Sections 227- 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." (emphasis supplied)

5....."

6. In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not....."

13. In present case, there were six allegations against the accused persons which CBI investigated; First allegation was that DGS&D, New Delhi has placed two Supply Orders to Conservator of Forests, Central Circle, J&K Government/Jammu, one for supply of 210 cu.mt. sleepers timber softwood (coniferous) sleepers Grade-II species of Chir/Fir which were to be supplied to three consignees of Army. However, this quantity was raised to 430 cu.mt. by amending order vide No.7147 dated 29.03.2005. This amended quantity of 430 cu.mt. was also of timber softwood (coniferous) sleepers Grade-II species of Chir/Fir and the numbers of consignees were raised from three to four and the quantity was also re-allocated, to each consignee. This made vide Supply Order No.WMP-4/102/4181/25.2.05/14/1966 dated 01.03.2005 and further amended vide No.WMP-4/02/4181/25.2.05/14/1966/Amdt.7147 dated 29.03.2005. Another supply order was to supply 1370 cu.mt. of timber softwood (coniferous) sleepers Grade-I species of Chir/Fir to 13 different consignees of Army vide Order No. WMP-4/102/4263/05.04.2005/14/1974 dated 06.04.2005.

During investigation it was found that timber scants were loaded in 14 wagons at Railway Station, Bari Brahmana, Jammu and dispatched to different consignees of Army as mentioned in the Supply Orders. The case while under investigation with the Crime Branch of J&K State, those 14 wagons containing timber scants were intercepted enroute and were seized to ascertain the quantity and quality of the timber being dispatched to different consignees.

After the investigation was taken by CBI, all the seized 14 Railways Wagons were got opened in presence of a committee of officers of Forest Department constituted by the orders of High Court of J&K and the committee was headed by Shri. P.C. Kapoor, the then Director, Forest Protection Force, Jammu/Srinagar and representative of five timber traders, from whom Forest Department of J&K State had procured those sleepers and dispatched to various consignees of Army as shown in the supply orders placed by DGS&D. All the scants found in those 14 wagons were got stacked and each and every scant was inspected by the members of the committee appointed by the High Court in the presence of

representative of timber merchants. The committee members in their report had opined that the sleepers should normally had rectangular section with opposite faces parallel to each other having equal length and width all along. However, a sizeable number of sleepers did not meet this criteria. Out of 5420 scants found in those 14 wagons (as against 5416 timber scants shown to have dispatched), 122 scants were found substandard by the committee, as shown in Annexure-"U" of the report dated 25.10.2005 of committee members. S/Shri Gurdeep Singh, the then Timber Passing Officer (TPIO), Jammu and Shri Ghulam Mohd. Khan, the then Forester, working under TPO/Jammu, dishonestly and fraudulently had passed all the timber so dispatched, which include 122 timber scants found substandard by the committee members. Thus, this allegation was found partly substantiated to the extent of 122 scants.

Second allegation was pertaining to ?supply of Deodar?, the forest officers dispatch Fir which has 1/8th of price of Deodar; during investigation it was not substantiated by any evidence.

Third allegation was with regard to acceptance by forest officer from contractor scants of Fir/Chir against Deodar scants and for showing this favour to private contractor the forest officer accepted 10% commission of the total cost of timber; but during investigation it was not substantiated by any evidence. So was not proved

With regard to fourth allegation of criminal conspiracy hatched by all accused in order to give undue benefits to private accused /timber merchants after forging the documents by forest official, during investigation it was found that accused Gurdeep Singh, the then TPO/Jammu had shown to have passed total 5416 numbers of disputed timber scants of Chir/Fir species, falsely showing their measurement as 595 cu.mt., as shown in the Tally Sheets duly signed by Shri Ghulam Mohd. Khan and also in the abstracts of Tally Sheets which are duly signed by S/Shri Gurdeep Singh and Shri Ghulam Mohd. Khan both. Those timber scants were loaded in 14 wagons for dispatching to different consignees at various destinations. When those sleepers were checked and measured by the committee members headed by Shri P.C.Kapoor as appointed by the Hon?ble High Court of J&K/Jammu, the number of scants were found 5420 in place of 5416 shown to have passed and dispatched by Shri Gurdeep Singh, the then TPO/Jammu. The volume of those 5420 timber scants were found measuring 457.718 cu.mt. only by the committee members as against 595 cu.mt., falsely shown to have been passed by Shri Gurdeep Singh, the then TPO/Jammu. Thus, the said officer and official of Forest Department of J&K State have dishonestly and fraudulently passed and certified approximately 29% more volume (the cost of excess volume shown was Rs. 28.6 lacs approximately) than the actual, by falsely preparing Tally Sheets, and using them as genuine one, with a view to cause wrongful gain to timber merchants, viz. S/Shri Sheikh Farooq of M/s J.K.Wood Products, Mohd. Farooq Ganai of M/s Farooq & Co., Baldev Singh Syal of M/s Syal Enterprises, Mushtaq Ahmed of M/s Classic Timber Traders and

Kuldeep Singh of M/s National Timber Traders.

The Tally Sheets relating to the supply of timber in this case were not found prepared by any of the employees posted in the O/o TPO/Jammu including TPO/Jammu himself. The GEQD (handwriting expert) has opined that these Tally Sheets are not in the handwriting of Shri Ghulam Mohd. Khan, the then Forester, O/o TPO/Jammu or Shri Gurdeep Singh, the then TPO/Jammu, which were required to be prepared by the Forester or TPO or any other employee of Forest Department, posted under TPO/Jammu and associated with the measurement work as per rule, though all the Tally Sheets are duly signed by Shri Ghulam Mohd. Khan, the then Forester and all the abstracts of Tally Sheets are signed by said S/Shri Gurdeep Singh and Ghulam Mohd. Khan, as opined by GEQD and also stated by various witnesses acquainted with the writings and signatures of S/Sri Gurdeep Singh and Ghulam Mohd. Khan.

However payment of the disputed timber, however, could not be released by the respective consignees, because the timber did not reach at the destinations, as the same was intercepted enroute and was seized during the course of investigation.

Fifth allegation was with regard to payment of illegal graft amount to officers of quality control of Army which was not proved, because supply did not reach at destinations.

Sixth allegation was with regard to violation of judgment of Apex Court in the case "T.N. Godvaraman, T.Thirunulkpad vs. Union of India (1997) Volume-II SCC, Page 267", wherein guidelines were issued and the movement of timber was suspended from the J&K State except for the use of DGS&D, Railways and Defence. The movement of timber out of the State of J&K was also forbidden unless; it is certified by the Managing Director of the J&K State Forest Corporation that the timber is of J&K SFC source.

During inspection of the disputed timber scants, the committee members appointed by the High Court have found that only 537 numbers of timber scants out of 5420 scants were found having hammer facsimile mark of J&K SFC as shown in Annexure-"W" of the report. However, investigation has revealed that M/s J.K.Wood Products, M/s Farooq&Co. M/s Syal Enterprises and M/s Classic Timber Traders have supplied timber with J&K SFC source. As regards, the supply effected by M/s National Timber Traders, investigation has revealed that this firm had purchased the timber from its sister-concern M/s Lakshmi Timber Traders for making available to Forest Department for the alleged supply. M/s Lakshmi Timber Traders had claimed to have supplied the disputed timber to M/s National Timber Traders out of its purchases of J&K SFC source in the year 2003. Further, M/s Lakshmi Timber Traders had also procured substantial quantity of timber from Himachal Pradesh State Forest Corporation, during the relevant period. Though most of the timber so purchased by it, has been found to have been sold but substantial quantity of timber of HP SFC source was available with this firm.

Thus, only an inference can be drawn that M/s National Timber Traders might have supplied the timber to the Forest Department i.e. disputed timber, out of stock of timber of HP SFC source available with M/s Lakshmi Timber Traders, which is a sister-concern of M/s National Timber Traders. Thus, this allegation could not be found proved beyond reasonable doubt.

14. From the perusal of order impugned, it is evident that trial court has taken care of all the points raised in the memo of petitions by cogent means and on the basis of cardinal principles of laws on the subjects.

15. First argument of counsel for accused that supply was not reached at destinations so they have not committed any offence and as consignee has right to point out the short fall of supply to suppliers and deduct cost thereof, is not tenable; because accused persons have attempted to supply lesser quantity than ordered and also substandard timber with dishonest intention in order to cheat the consignee. The criminal intention of accused persons is gatherable from the facts that, they had intention to cheat right from the beginning; accused have completed their act with criminal intention on their part; had the High court not ordered of seizure of railways wagons, the material would have been reached to destinations. To meet the requirements of Section 420 of the IPC, there should be delivery of property, whereas admittedly in the present case, there has been delivery of property by accused persons by loading the timbers which was substandard and less in quantity by dispatching the same through railway wagons.

16. Section 511 deals with punishment for attempt to commit offence. It reads as under:-

"Section 511 -. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.-Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both."

17. ?Attempt? is the direct movement towards the commission after the preparation are made. Only such attempts are punishable under Section 511 for which no express provision is made by the Code. The word 'attempt' is not defined in the Indian Penal Code. Every commission of a crime has three stages:-

1. Intention to commit it;
2. Preparation for its commission; and
3. A successful attempt.

If the attempt to commit a crime is successful, then the crime itself is committed; but where the attempt is not followed by the intended consequences, Section 511 of the RPC applies.

18. In *Satvir Singh vs. State of Punjab* reported in AIR 2001 SC 2828, it was observed that Section 511 of the Indian Penal Code makes attempt to commit an offence punishable. The offence attempted should be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are- (i) the offender should have done some act towards commission of the main offence; (ii) such attempt is not expressly covered as a penal provision elsewhere in the Code. Thus attempt on the part of the accused is sine qua non for the offence under Section 511, IPC. If the act of the accused asking his wife/victim to go and commit suicide had driven her to proceed to the railway track for ending her life then it is expressly made punishable under Section 498A of the IPC. Section 498A, IPC makes cruelty as a punishable offence. One of the categories included in the Explanation to the said Section (by which the word cruelty is defined) is thus: (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; when it is so expressly made punishable the act involved therein stands lifted out of the purview of Section 511, IPC.

19. While applying above law to present set of circumstances, it is evident that the acts of accused disclose an attempt to cheat the consignees by hatching conspiracy and by preparing of forged documents to deliver less quantity than ordered.

20. Next argument of counsel for petitioners is that it is civil liability which has been given the shape of criminal act, because in agreement there are various clauses which deal with terms and conditions for supplies of timbers by accused to the consignees. That all the payments in terms of agreement were subject to certain inspections to be conducted by forests department at initial stage then by representatives of DGQA, consignee and forest department. Counsel for petitioners read over these clauses during course of arguments. After giving my thoughtful consideration to these arguments, I am of the view that these are not tenable at this stage. In every criminal case based upon an agreement between parties, there is element of civil liability; but this will not bar criminal proceeding and civil proceeding to go together. In present case as is evident from report of police under section 173 Cr.P.C., accused hatched conspiracy with criminal intention to give undue benefit and gain to private timbers merchant owned by accused persons for Rs. 28.6 lacs by preparing false tally sheets by accused persons who are officials of forest department.

21. Another argument put forth by counsel for accused Gurdeep Singh, who was TPO, is that he has prepared tally sheet in discharge of official duty, so he is entitled for protection under section 197 Cr.P.C. This argument also does not hold good at this stage. Court below has relied upon judgement of this court passed in

561-A Cr.P.C no.60/2004 decided on 17.01.2007 titled Santosh Arora vs. State & ors., wherein it is held that where act committed has nothing to do with official duty then protection under section 197 Cr.P.C. would not be available.

22. In State of H.P. v. M.P. Gupta reported in (2004 (2) SCC 349), It is held as under:-

"We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". It was in pursuance of this observation that the expression 'was' come to be employed after the expression 'is' to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted. Above position was highlighted in R. Balakrishna Pillai v. State of Kerala (AIR 1996 SC 901).

That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B of IPC sanction under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This Court has stated the legal position in Shreekantiah Ramayya Munnipalli's case (supra) and also Amrik Singh's case (supra) that it is not every offence committed by a public servant which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad, etc. v. State of Bihar (1972 (3) SCC 89) as follows :

"As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409, Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."

Above views are reiterated in State of Kerala v. Padmanabhan Nair (1999 (5) SCC 690). Both Amrik Singh (supra) and Shreekantiah (supra) were noted in that case. Sections 467, 468 and 471 IPC relate to forgery of valuable security, Will etc; forgery for purpose of cheating and using as genuine a forged document respectively. It is no part of the duty of a public servant while discharging his

official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction under Section 197 of the Code is, therefore, no bar.

23. Another argument of counsel for petitioners is that in presence of arbitration clause in agreement between supplier and consignee, the criminal proceedings are barred, is also not tenable as Hon'ble Supreme Court in *Trisuns Chemical Industry vs. Rajesh Agarwal and others*, JT 1999 (6) SC 618, it was held as under:-

"We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own."

24. Rest of grounds taken in the petitions, and those have been argued are pertaining to appreciation of facts, which this court cannot consider in detail in these petitions.

25. Apex court in 2018 (5) Scale 269 in case titled *Asian Resurfacing of Road Agency Pvt. Ltd & Anr. Vs. CBI*, held as under;-

"36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. -----"

26. It is not the case of petitioners that there is a patent error of jurisdiction in passing the order of framing of charge by the trial court.

27. I have also gone through the law cited by learned counsel for the petitioners. These are not applicable in the present case because firstly facts of each case are to be seen then law is to be applied.

28. In view of above discussion, all these petitions are dismissed. Stay of proceeding, if any, is vacated. File of court below be sent back. Already more than 12 years have passed, so trial court shall decide the matter expeditiously

preferably within six months. Take notice no casual adjournment shall be granted by court below. Prosecution is directed to take effective steps in producing witnesses.