

(2022) 09 OHC CK 0190
In the Orissa High Court
Case No : CRLMC NO.2272 Of 2021

Md. Mofazzalur Rahman & Another

APPELLANT

Vs

State Of Odisha (Vigilance)

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 200, 468, 482
Indian Penal Code, 1860 — Section 34, 120B, 379, 420, 427, 447, 506
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Forest (Conservation) Act, 1980 — Section 2
Mines and Mineral (Development and Regulation) Act, 1957 — Section 21, 22, 23, 30

Citation : (2022) 09 OHC CK 0190

Hon'ble Judges : S. Pujahari, J

Bench : Single Bench

Advocate : Pranaya Kumar Dash, V. Mohapatra, G. Khanna, S. Mohanty, Srimanta Das

Final Decision : Allowed

Judgement

S. Pujahari, J

1. This is an application filed by the petitioners under Section 482 of the Code of Criminal Procedure (for short the "Cr.P.C.") seeking for quashing of the Charge-sheet dated 30.03.2012 filed in Balasore Vigilance P.S. Case No.55 of 2009 (VGR Case No.23 of 2011), corresponding to T.R. No.16 of 2012 in the court of the learned Special Judge (Vigilance), Keonjhar, the order dated 21.11.2012 passed by the said learned Court taking cognizance of the offences under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short the "P.C. Act") and under Sections 201, 420, 379, 120-B of IPC, Section 21 of the MMDR Act, 1957 and Section 2 of the Forest (Conservation) Act, 1980 against the petitioners and co-accused persons, and the consequential proceedings.

2. Heard the learned counsel for the petitioner and Mr. Srimanta Das, the learned

Sr. Standing counsel appearing for the Vigilance Department.

3. The F.I.R. in this case appears to have been lodged by the Deputy Superintendent of Police, Vigilance Cell, Cuttack on the basis of a report of joint enquiry / verification conducted by a Team of the Vigilance Department on 10.11.2009 and 11.11.2009 in respect of Guruda Manganese Mines of M/s. Serajuddin & Co. located at Guruda under Joda Mining Circle, District- Keonjhar on the allegation of illegal mining activities of the aforesaid company. Pursuant to the said report, a case was registered by the Superintendent of Police, Vigilance, Balasore Division, Balasore, and on completion of investigation, charge-sheet was laid for the offences indicated above against eight accused persons including the present petitioner, who is a Partner of the Mining Leaseholder, namely, M/s. Serajuddin & Co. On the basis of the charge-sheet so submitted, the learned Special Judge (Vigilance), Keonjhar has taken cognizance of those offences and issued process to the petitioner and the co-accused persons. Hence, the present application.

4. The petitioner has sought for quashing of the Charge-sheet, the impugned order of cognizance and the consequential proceeding on the grounds, inter-alia, that the very inception of the prosecution is unauthorized, inasmuch the Vigilance Police had no authority to conduct the joint enquiry or verification prior to issuance of the Notification No.IV(A)SM-101/209-307/SM dated 27.01.2010 which devolved limited power on police for the purpose of detection, seizure and search into the alleged Mining activities. Admittedly, the F.I.R. in the present case has been drawn on the basis of the report of the joint physical verification of the Mines in question said to have been conducted on 10.11.2009 and 11.11.2009, i.e., prior to issuance of the aforesaid Notification. It is the further contention of the petitioner that the charge-sheet as submitted against him is also bereft of any factual or legal basis, and that the learned trial Court has passed the impugned order of cognizance without application of judicial mind. The allegation wise counter submissions made by the petitioner vide his application at hand may be broadly outlined as under:-

(i) It is alleged that the Lessee-company, M/s. Serajuddin & Co. extracted and despatched a quantity of 88,079.847 MT and 88,068.345 MT of Manganese Ore respectively, the value of which amounted Rs.104,48,03,145/-, during the period from 1966 to 1973, without any valid mining lease. As against this allegation, it is contended by the petitioner that the State Government had granted the Mining lease in favour of the Lessee-company over an area of 93.1 acres on 16.05.1955 for a period of twenty years, and the said grant for the reasons stated had been revoked on 04.04.1962 on the ground of failure on the part of the Lessee to execute the Mining lease deed within the stipulated time. The Lessee preferred a revision under Section 30 of the MMDR Act before the Central Government challenging the said revocation order, and during pendency of the said revision application, the Collector, Keonjhar allowed the Lessee to resume Mining operation. Since the revision application of the Lessee was rejected by the

Central Government, being aggrieved thereby, the Lessee preferred an appeal bearing FMA No.240 of 1971 in the High Court of Calcutta and also filed a Civil Revision No.2013(J) of 1966 against the revocation order of the State Government before the said High Court. The aforesaid Civil revision was allowed on 07.09.1973 setting aside the revocation order of the State Government, and the said order was challenged by the State Government by filing a Special Leave Petition, i.e., SLP(C) No.1322 of 1976 before the Apex Court. The Apex Court dismissed the appeal of the State Government and thereby the order of revocation passed by the State Government on 04.04.1962 was held to be bad in law. On 25.01.2000 the State Government revoked its earlier order dated 27.05.1976 vide which the renewal application of the Lessee had been rejected, and allowed the Lessee to execute the Mining lease for a period of twenty years with effect from the date of execution of the deed. It is thus the contention of the petitioner that the right, title and interest of the Lessee-company was recognized by the High Court of Calcutta vide their judgment dated 07.09.1973 in FMA No.240 of 1971, and the State Government also in its grant order dated 25.01.2000 categorically recognized the right of the Lessee to hold the Mining lease with effect from 16.05.1955. In that view of the factual position, it is the ultimate submission of the petitioner that the allegation of the prosecution that the Mining activities carried out by the Lessee during the period from 1966 to 1973 did not suffer from any illegality, inasmuch as the lease was restored by the State Government vide the grant order dated 25.01.2000. It is the alternative submission of the petitioner that the alleged offence relating to the period from 1966 to 1973 also could not have been taken cognizance of in view of the bar contained in Section 468 of Cr.P.C. It is also submitted that the State Government has collected royalty for the despatches made during the period from 1966 to 1973, and hence, the Mining operation during the said period cannot be said to be illegal.

(ii) It is alleged that due to the Mining operation carried out over the Forest land without any permission, the Lessee is liable to pay a total amount of Rs.60,37,500/- towards Net Present Value (NPV). As against this, it is the submission of the petitioner that for the first time, the DFO, Keonjhar vide his letter dated 05.02.2014 raised the demand for payment of NPV for 8.045 ha in forest area of Guruda Mining Leasehold area and immediately thereafter the Lessee deposited an amount of Rs.58,72,850/- towards NPV as per the demand notice. Hence, the allegation that the State Government incurred a loss for non-payment of NPV is factually not correct.

(iii) It is alleged by the prosecution that there was excavation 4600 MT of Manganese Ore amounting to Rs.11,59,20,000/- by digging pit in Plot No.615, Khata No.44 (Parbat Kisam) without any permission from the Ministry of Environment and Forest and thereby the Lessee contravened the provisions of law which amounts to theft. The petitioner has refuted this allegation by submitting that pursuant to the order dated 21.04.2014 passed by the Apex Court in W.P.(C) No.114 of 2014, the State Government furnished a list of 51

Iron Ore and Manganese Leases which had carried out Mining operation in violation of Forest (Conservation) Act, and that the Lessee-company (M/s. Serajuddin & Co.) being not included in the said list as Violator, the allegation made by the Prosecution in this behalf is wholly erroneous and unwarranted. It is the further submission of the petitioner that since the Mining lease was granted with effect from 16.05.1955 and the Lessee has been carrying out the Mining operation intermittently and some portion of the Mining leases in the State including the Lessee's Mining lease being identified as DLC Forest Area on 06.01.1998 only pursuant to the order dated 12.12.1996 of the Apex Court in W.P.(C) No.202 of 1995, non-mention of the particular period during which, the Lessee allegedly carried out Mining operation in DLC Forest area renders the charge-sheet inconclusive and erroneous. It is further emphasized by the petitioner that no complaint having been filed in view of Rule-9 of the Forest (Conservation) Rules, 2003, no proceeding for the alleged violation of Section 2 of the Forest (Conservation) Act, 1980 could have been initiated. A copy of the list of 51 Violators of Forest (Conservation) Act, 1980 as submitted by the State Government to the Central Empowered Committee has been submitted by the petitioner at Annexure-9 of the application.

(iv) It is next alleged by the prosecution that the Lessee-company extracted Manganese Ore in excess of the actual production shown in its record and thereby committed theft to the tune of Rs.639,90,26,905/-. As against this allegation, it is submitted by the petitioner that the assessment of the alleged excess production has been based on erroneous premise, inasmuch as the same was carried out by way of Tape / Chain method in the Joint Physical verification which was highly unscientific and inaccurate leading to "Compensation Errors" and "Cumulative Errors". According to the petitioner, with respect to Manganese Ores, the assessment ought to be made by analyzing the exploration data in respect of the concerned Mine with reference to the Mining plan / Mining scheme, and that in the present case, only 122.95 of the Ores had been found indicating exploration of only 8% to 10% of the total area. According to the petitioner, the result would have been in the range of 1,07,799.25 MT from the four quarries and not 14,27,797.990 MT as alleged by the prosecution. It is, therefore, submitted that the allegation made by the prosecution on this count is not sustainable due to erroneous assessment.

(v) It is the further allegation of the prosecution that the Lessee-company evaded payment of royalty to the tune of 19,19,70,807/- and also committed default in payment of sales tax to the tune of Rs.25,59,61,076/-. As against this, it is submitted by the petitioner that the Lessee has duly paid the applicable royalty and sales tax for the extracted quantity of 1,10,658.217 MT of Manganese Ore and not the quantity as alleged by the prosecution. He further relies on the Clearance Certificate issued by the DDM, Joda and in that view of the claim, the petitioner refutes the allegation regarding evasion of royalty or sales tax.

(vi) It is further alleged by the prosecution that the Lessee-company evaded payment of sales tax to the tune of Rs.16,86,744/- by submitting fabricated statements on the quality and value of the Manganese ore and caused loss to the Government Exchequer to that extent. In this context, it is contended by the petitioner that the allegation so made by the prosecution being based solely on the premise that the prevailing market rate of Orissa Mining Corporation was higher than the sale value of the Ore disclosed by the Lessee in its sale register which, was an erroneous approach of the prosecution. According to the petitioner, the Lessee sold the Ore as per the prices shown in its sale register and, accordingly, the sales tax was paid. He further submits that in view of the clearance certificate issued by the Sales Tax Authorities, the allegation made by the prosecution on this count is not sustainable.

5. Besides the contentions as above, the petitioner has also relied on certain subsequent events to contend that the launching of the present prosecution is not sustainable in law. It is averred by him that the Multi-Disciplinary Committee constituted by the State Government on 05.11.2016 comprising Director of Mines, Odisha, Representatives of Director, Vigilance, Representative of Principal Secretary, Forest & Environment Department, Regional Controller of Mines, Indian Bureau of Mines and Director of Geology re-examined the Vigilance cases in relation to Mining leases including the present case by holding several meetings in the year 2017 and it has been observed, inter-alia, by the said Committee that the allegations made by the Vigilance vide the charge-sheet in the present case are not correct. The petitioner further submits that in the aftermath of the judgment dated 02.08.2017 of the Apex Court in W.P.(C) No.114 of 2014, in the case of Common Cause vrs. Union of India, the Special Investigation Team (Black Money) observed that a fresh look may be given by the Multi-Disciplinary Committee, and that the Enforcement Directorate should be a part of the said Committee, for taking a fresh decision. In the light of the judgment of the Apex Court dated 02.08.2017 the Vigilance cases in relation to Mining lease were re-visited by the Committee and the said Committee vide its subsequent report dated 06.12.2018 reiterated its views given in the earlier report. The Committee has found the allegations made by the Vigilance to be based on misconception and incorrect facts and figures. It is ultimately submitted by the petitioner that in view of the reports of the aforesaid Multi-Disciplinary Committee, nothing survives to be decided in the present Vigilance case, and hence, the same should be quashed to prevent further abuse of the process of the Court.

6. It is further submitted by the learned counsel for the petitioner that, the procedures contemplated under the MMDR Act having not been followed in the present case, and the Vigilance Department being not competent to launch the prosecution in terms of Section 22 of the MMDR Act, and no complaint as required by the said Act having been made by the Authorized Officer, the charge brought under the said Act is not sustainable in law. It is his further submission that the Lessee-company having already been exonerated from the charge of

violation of the provisions under the Forest (Conservation) Act in the civil proceedings before the Apex Court in W.P.(C) No.114 of 2014, no criminal proceeding for violation of the said Act could have been initiated. In this context, the petitioner has placed reliance on a decision of the Apex Court in the case of Radheshyam Kejriwal vrs. State of West Bengal, reported in (2011) 3 SCC 581, wherein it has been held that a person exonerated in civil adjudication should not be proceeded against for the same wrong in a criminal case, the underlying principle being the higher standard of proof in criminal proceedings. The aforesaid view has been reiterated by the Apex Court in the case of Ashoo Surendranath Tewari vrs. CBI, reported in (2020) 9 SCC 636.

7. Referring a Three Judge Bench decision of the Apex Court in the case of State of Orissa vrs. Debendra Nath Padhi, reported in (2005) 1 SCC 568, the learned counsel for the petitioner submitted that the documents of unimpeachable character can be taken into consideration by the High Court for quashing of a criminal proceeding in exercise of power under Section 482 of Cr.P.C. The said principle has been reiterated in a later decision of the Apex Court in the case of Rukmini Narvekar vrs. Vijaya Satardekar, reported in (2008) 14 SCC 1. The principle settled by the said Authorities is that although at the stage of framing of charge the accused has no scope to produce any evidence before the trial Court, in a proceeding taken therefrom under Section 482 of Cr.P.C., the High Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. Needless to mention that the said principle can also be applied to a proceeding under Section 482 of Cr.P.C. for quashing of the order of cognizance and the consequential proceedings. The learned counsel has also placed reliance on a decision of the Apex Court in the case of Anita Malhotra vrs. Apparel Export Promotion Council, reported in (2012) 1 SCC 520, in which it was held that if on the face of a document which is beyond any suspicion and placed on record by the accused, it is discovered that the allegation/ charge against the accused cannot stand, it is incumbent on the High Court to look into those documents which have the bearing on the matter, even at the initial stage and grant relief to the accused, in exercise of the jurisdiction under Section 482 of Cr.P.C.

8. The learned counsel also emphasized that since the entire allegation by the prosecution has been directed against the Lessee-company, i.e., M/s. Serajuddin & Co., the petitioner, who is a partner of the said company, could not have been charge-sheeted in absence of any specific allegation against him much less any evidence showing or suggesting him to have acted independent of the will or interest of the company. In support of his such contention, he has placed reliance on the decisions of the Apex Court in the cases of Sunil Bharti Mittal vrs. CBI, reported in (2015) 4 SCC 609, Sharad Kumar Sanghi vrs. Sangita Rane, reported in (2015) 61 OCR (SC) 551 and Ravindranath Bajpe vrs. Mangalore Special Economic Zone Ltd. and others, reported in AIR 2021 SC 4587 and some other authoritative pronouncements.

9. The learned counsel for the petitioner has also placed reliance on a single Bench decision of this Court rendered in a batch of cases vide CRLMP No.35 of 2022, CRLMP No.36 of 2022 etc. (decided on 18.02.2022), to submit that in similar fact situations, the prosecution has been quashed in those cases.

10. Per contra, the learned Sr. Standing counsel appearing for the Vigilance Department submits that present being not a stage of the proceeding to make any threadbare analysis of the materials placed by the prosecution, and what all that is necessary being to find out as to whether or not there are prima-facie materials against the accused to be proceeded with for the offences alleged, the contentions advanced by the petitioner do not deserve to be looked into. According to him, there are enough materials on record showing involvement of the petitioner in criminal conspiracy and other offences as indicated above, and that technical flaws, if any, in the prosecution set up should not come in the way of doing substantial justice. It is his further submission that the contentions raised by the petitioner being in the nature of his defence plea to be substantiated through evidence at the stage of trial, this Court at the threshold of the proceeding should not interfere with the impugned order in exercise of its inherent jurisdiction.

11. With regard to the scope of exercise of inherent power by the High Court to quash a criminal proceeding, the Apex Court in the case of R.P. Kapur vrs. State of Punjab, reported in AIR 1960 S.C. 866, held as under:-

"xxxxx It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or

the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. xxxxxxxx”

12. Further, in the case of *State of Haryana vrs. Bhajan Lal*, reported in 1992 Supp.(1) SCC 335 the Apex Court also illustrated certain circumstances, under which the High Court can exercise its power under Section 482 of Cr.P.C. to quash a criminal proceeding at the threshold, if continuance of the proceeding is found to be tantamount to abuse of the process of the Court.

13. In the case at hand, the documents relied on by the petitioner do not appear to have been disputed by the Vigilance Department. It further appears from the charge-sheet and other papers on record that the entire allegation is directed against the Lessee-company, i.e., M/s. Serajuddin & Co.. There is hardly any allegation in specific against the petitioner regarding his involvement in any of the alleged offences, independent of the will, intent or interest of the Lessee-company. The allegation against the Lessee-company appears to be essentially regarding alleged violation, illegalities etc. in relation to Mining activities, attracting the provisions of the MMDR Act. Needless to mention that no prosecution for any offence under the said Act can be initiated except on a complaint by the Authorized Officer in view of Section 22 of the said Act. A complaint is also required for launching a prosecution under the Forest (Conservation) Act, 1980. Thus, statutory requirements have not been followed in the present case.

14. In the case of *Sunil Bharti Mittal (supra)* the Apex Court held as follows:-

“42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is

sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.”

15. In the case of Sharad Kumar Sanghi (supra) the Apex Court held as under:-

“9. The allegations which find place against the Managing Director in his personal capacity, as we notice, are absolutely vague. When a complainant intends to proceed against the Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In Maksud Sajjad vs. State of Gujarat (2008) 5 SCC 668, it has been held, thus:

“where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein (2008) 5 SCC 668 were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

10. The same principle has been reiterated in S.K. Alagh v. State of UP (2008) 5 SCC 662, Maharashtra State Electricity Distribution Company Ltd. v. Datar Switchgear Ltd. (2010) 10 SCC 479; and GHCL Employees Stock Option Trust v. India Infoline Ltd. (2013) 4 SCC 505.

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.”

16. In the case of Pradeep S. Wodeyar vrs. The State of Karnataka, reported in 2021 S.C. 503 the Apex Court held as under:-

“80 Vicarious liability and Section 23 of MMDR Act A-1 submitted that the charge-sheet does not ascribe any role to A-1 and hence the process initiated against him must be quashed. The appellants in support of their argument relied on Sunil Bharati Mittal (supra), Shiva Kumar Jaitia v. NCT of Delhi⁶⁰, Sunil Sethi v. State

of Andhra Pradesh⁶¹ and Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd.⁶² In Sunil Bharati Mittal (supra), a three- judge Bench of this Court observed that the general rule is that criminal intent of a group of people who undertake business can be imputed to the Company but not the other way around. Only two exceptions were provided to this general rule: (i) when the individual has perpetuated the commission of offence and there is sufficient evidence on the active role of the individual; and (ii) the statute expressly incorporates the principle of vicarious liability. Justice Sikri writing for a three-judge Bench observed:

43. 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, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.”

17. In the case of Ravindranatha Bajpe (supra) the Apex Court also held as follows:-

“27. As held by this Court in the case of India Infoline Limited (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director / Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.

28. From the order passed by the learned Magistrate issuing the process against the respondents herein – accused nos.1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against respondent nos.2 to 5 and 7 & 8. Merely because respondent Nos.2 to 5 and 7 & 8 are the Chairman / Managing Director / Executive Director / Deputy General Manager / Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against respondent nos.1 to 8 herein – original accused nos.1 to 8 for the

offences punishable under Sections 427, 447, 506 and 120B read with Section 34 IPC.”

18. In view of the well settled principle of law, as apparent from the decisions quoted above, the prosecution launched against the petitioner is found to be legally not sustainable, although the petitioner is admittedly a Partner of the Lessee-company. Further, for the discussion made hereinbefore, the offence of criminal conspiracy and other offences as alleged, are found to be not made out against the petitioner, especially when there is no specific allegation in that regard against him either as an individual or a partner of the Lessee-company. Hence, this Court finds merit in the contention of the petitioner that continuance of the criminal proceeding against him will amount to abuse of the process of the Court. The CRLMC, therefore, deserves to be allowed.

19. In the result, the CRLMC is allowed, and the impugned order passed in T.R. No.16 of 2012 in the court of the learned Special Judge (Vigilance), Keonjhar qua the petitioner as well as the consequential proceedings against him stand quashed.

20. Urgent certified copy be granted on proper application.

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