
(2012) 06 AP CK 0029

In the Andhra Pradesh High Court

Case No : Criminal Petition No"s. 4593, 4594, 4742, 4743, 4744, 4768, 4769, 4770, 4771, 4772, 4773 of 2012 and Writ Petition No. 16128 of 2012

M/s. Jagathi Publications Ltd.

APPELLANT

Vs

Central Bureau of Investigation, Hyderabad

RESPONDENT

Date of Decision : 02-06-2012

Acts Referred:

Antiquities and Art Treasures Act, 1972 — Section 25, 25(1)
Cattle Trespass Act, 1871 — Section 20
Constitution of India, 1950 — Article 19, 19(1)(a), 19(1)(g), 20, 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 156, 16, 161(3)
Evidence Act, 1872 — Section 25, 26, 27
General Clauses Act, 1897 — Section 26
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 114, 120A, 120B, 201, 302
Prevention of Corruption Act, 1988 — Section 11, 13(2), 19(3)(c), 9

Citation : (2012) 2 ALD(Cri) 762 : (2012) 2 ALT(Cri) 285 : (2013) CriLJ 118

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; P. Keshava Rao for CBI, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Sri. Justice B. Chandra Kumar

1. Since the facts of all these petitions are one and the same and common arguments have been advanced by both the learned counsel in all these petitions, they are being disposed of by this common order. Criminal Petition Nos. 4593 and 4594 of 2012 have been filed by M/s. Jagathi Publications Limited and V. Vijaya Sai Reddy (hereinafter referred to as "A-2") respectively, seeking to set aside/quash the orders of the Principal Special Judge, CBI Cases, Hyderabad, (hereinafter referred to as "Special Judge") dated 27.04.2012 made in R.C. No. 19(A)/2011 taking cognizance of the final report submitted on 31.03.2012 and in issuing summons to the accused by assigning C.C. No. 8 of 2012 and to direct

the Special Judge to consider the taking of cognizance in the matter after entire investigation is completed.

2. Criminal Petition No. 4742 of 2012 has been filed challenging the order dated 28.05.2012 passed in C.C. No. 8 of 2012 in R.C. No. 19(A)/2011-CBI/HYD, by the Special Judge, by virtue of which Mr. Y.S. Jagan Mohan Reddy-Accused No. 1 (hereinafter referred to as "Accused") has been remanded to judicial custody u/s 309 Cr.P.C.

3. Criminal Petition No. 4743 of 2012 has been filed by the CBI, challenging the orders dated 28.05.2012 passed in CrI.M.P. No. 1052 of 2012 in R.C. No. 19(A)/2012-CBI/Hyd by the Special Judge in denying the police custody of the accused to CBI and ordering his judicial custody u/s 309 Cr.P.C.

4. Criminal Petition No. 4744 of 2012 has been filed by the CBI, challenging the orders dated 28.05.2012 passed in CC No. 8 of 2012 in RC No. 19(A)/2012-CBI/Hyd, by the Special Judge, seeking suspension of the operation of the above referred order dated 28.05.2012 so far as it is against the CBI to the extent of granting judicial custody of the accused u/s 309 Cr.P.C. instead of police custody u/s 167(2) Cr.P.C.

5. Criminal Petition No. 4768 of 2012 has been filed by the accused challenging the order dated 30.05.2012 passed in R.C. No. 19(A)/2011 by the Special Judge, taking cognizance of the final report submitted by CBI on 07.05.2012 and issuing summons to the accused by assigning case No. 10 of 2012 and further to direct the Special Judge to consider taking cognizance in the matter after the entire investigation is completed.

6. Criminal Petition No. 4769 of 2012 has been filed by M/s.Jagathi Publications challenging the order dated 29.05.2012 passed in R.C. No. 19(A)/2011 by the Special Judge, taking cognizance of the final report submitted by CBI on 23.04.2012 and issuing summons to the accused named in the said report by assigning case No. 9 of 2012 and further to direct the Special Judge to consider taking of cognizance in the matter after the entire investigation is completed.

7. Criminal Petition Nos.4770 and 4773 of 2012 have been filed by M/s.Jagathi Publications and V. Vijaya Sai Reddy, respectively, challenging the order dated 30.05.2012 passed in R.C. No. 19(A)/2011 by the Special Judge, taking cognizance of the final report submitted by CBI on 07.05.2012 and issuing summons to the accused named in the said report by assigning case No. 10 of 2012 and further to direct the Special Judge to consider taking of cognizance in the matter after the entire investigation is completed.

8. Criminal Petition Nos.4771 and 4772 of 2012 have been filed by the accused and V. Vijaya Sai Reddy respectively, challenging the order dated 29.05.2012 passed in R.C. No. 19(A)/2011 by the Special Judge, taking cognizance of the final report submitted by CBI on 23.04.2012 and issuing summons to the accused named in the said report by assigning case No. 9 of 2012 and further to

direct the Special Judge to consider taking of cognizance in the matter after the entire investigation is completed.

9. Writ Petition No. 16128 of 2012 has been filed challenging the arrest of the accused on 27.05.2012 and to set aside the action of the respondent in causing arrest of the accused. Since the accused has been in judicial custody, this petition has been filed by his wife on behalf of the accused.

10. As seen from the above reliefs claimed by the accused, he is challenging the arrest, remand to judicial custody u/s 309 Cr.P.C. and seeking to quash the orders passed by the learned Special Judge. Though he has also contended that his right to campaign in the elections has been violated, but the main challenge is the action of the CBI in arresting him. The accused has not filed any application seeking bail before this Court. Therefore, there is no prayer to grant any interim bail to him or allow him to participate in the election campaigning in support of his party's candidates contesting in the elections. Therefore, the facts and circumstances of this case appears to be different from the facts and circumstances of the case of Mr. K.A.Paul (order in Criminal Petition No. 4765 of 2012, dated 31.05.2012). In that case, Mr. K.A.Paul approached this Court seeking bail and particularly prayed for interim bail to enable him to campaign in the ensuing elections.

11. The brief facts of the case are that a letter written by Sri Shankar Rao, M.L.A., had been treated as Public Interest Litigation and a Division Bench of this Court by its order, dated 10.08.2011, in W.P.Nos.794, 6604 and 6979 of 2011 directed the CBI to register a crime and investigate into the accusations indicated therein and other aspects related thereto and to take investigation to its logical end in accordance with law. Basing on the said order, the CBI registered a case in RC.No.19(A) 2011-Hyd for the offences punishable under Sections 120B, 409, 420, 467, 477A IPC and Sections 13(2) read with (1)(c) and (d) of the Prevention of Corruption Act, 1988 on 17.08.2011 against the accused and others.

12. As seen from the order of the Division Bench of this Court dated 10.08.2011, it is alleged that Late Dr. Y.S.Rajasekhara Reddy, father of the accused, extended huge benefits in the shape of allotment of lands, mineral rights, licences, SEZs rights to develop ports all along the Eastern Coast forming part of Eastern Andhra Pradesh apart from permission for star hotels and complexes in and around Hyderabad and other major cities in Andhra Pradesh. It is also averred that the Corporates and individuals, who benefited from these official favours were in turn made to invest kickback amount into several individual and corporate business of the accused. It is also alleged that on account of the aforesaid Quid Pro Quo arrangement, the income of the accused rose from Rs. 11 lakhs in 2004 to Rs. 43,000 crores by the time of his father's demise. It is further alleged that the beneficiaries of the official favours from the late Chief Minister resorted even to money laundering by adopting Hawala routes thorough tax haven countries such as Mauritius and these monies are brought into the

companies and business of the accused at huge premium though the track record and business assets of companies of the accused had hardly any achievements, assets to its credit or business on hand. It is alleged that Late Y.S.Rajasekhara Reddy, had declared assets worth Rs. 2.12 crores in April, 2002 before the Election Commission of India and the accused, in his Income Tax returns for the year 2003-04, declared his annual income as Rs. 9,19,951/- only and these facts reveal that A.1 and his Late father were the persons with moderate means and do not have much sources of income before assuming the charge of the public office. The accused declared his assets worth Rs. 77.40 crores before the Election Commission of India while contesting for Kadapa Lok Sabha Constituency. It is also alleged that the accused-A.1, apart from exercising influence with his Late Father, also allegedly exercised the influence of other Ministers and other top bureaucrats in Government for benefiting selected persons violating the rules and regulations and received illegal gratifications/corrupt money through various methods. Several specific different transactions have been alleged in the first information report.

13. The specific allegations made against the accused in the first charge sheet dated 31.03.2012 are as follows.

A-1, being the Chairman and Director of M/s.Jagathi Publications Pvt. Ltd., by dishonestly concealing the facts regarding the profitability and turn over of the company solicited the investments at high premium as a bribe and as a quid-pro-quo from the companies namely M/s.Aurobindo Pharma Limited (A-3) through the family members of its M.D., K.Nityananda Reddy (A-7), M/s.Trident Life Sciences Limited (A-5), M/s.Hetero Group Companies (A-4) and its Director, M.Srinivasa Reddy (A-6) in allotment and transfer of lands from APIIC, whereas in reality M/s.Jagathi Publications Pvt. Ltd., (A-12) (hereinafter referred as "Jagathi Publications") could not achieve any profit till then.

A-1, in league with his deceased father Late Dr. Y.S.Rajasekhara Reddy, the then Chief Minister of A.P. and B.P. Acharya (A-9), the then VC & MD, APIIC, Y.V.L. Prasad (A-10), the then Zonal Manager, APIIC, Patancheru, hatched a criminal conspiracy to defraud APIIC for getting allotment of 75 acres of land each at SEZ, Jedcharla to A-3, A-4 and A-5 on outright sale at a relatively low lease premium and sale consideration respectively. As a quid-pro-quo to the above mentioned undue benefits conferred on the above mentioned companies, A-1 with the active aid and assistance of V. Vijay Sai Reddy (A-2) got the beneficiaries persuaded to invest in his companies, i.e., A-12 and A-13 by purchasing shares on high premium and thereby, A-1 and A-2 and Late Y.S.Rajasekhara Reddy, hatched a conspiracy to defraud the Government with the help of A-9, A-10, A-7, A-3, A-8, A-5, A-6 and A-4 and were benefited out of the above said nefarious deal. Thereby, they are liable for hatching and joining conspiracy u/s 120B IPC.

14. The specific allegations made against the accused in the second charge sheet dated 23.04.2012 are as follows.

A-1, who was the Director and the Chairman of M/s.Jagathi Publications Pvt. Ltd., (A-3) started receiving investments from individuals from Aug 2007 onwards although there was no Board Discussions/Resolutions to the effect of fixing the share premium of Rs. 350/- per share.

A-1, in conspiracy with A-2, engaged M/s.Delloitte Touche Tohmatsu India Pvt. Ltd., after January, 2008 by a letter for valuating A-3 company and got the company evaluated at a very high value. Based on the verbal agreement with A-2 during Nov. 2007, the valuation of A-3 Company was initiated by M/s.Delloitte Touche Tohmatsu India Pvt. Ltd. The final report of M/s.Delloitte Touche Tohmatsu India Pvt. Ltd., regarding valuation of A-3 company was issued in April 2008 and A-3 company paid the professional fee for valuation in May, 2008. This clearly establishes that the valuation report of M/s.Delloitte Touche Tohmatsu India Pvt. Ltd., was not prepared on 16.11.2007, but it is dated as 16.11.2007 as if prepared on that day on the directions of A-2 in conspiracy with A-1 to justify the investments already solicited from August, 2007 onwards from various individuals and companies.

A-1, in conspiracy with A-2, got evaluated A-3 company at a very high value by providing exaggerated and false projections to M/s.Delloitte Touche Tohmatsu India Pvt. Ltd, although no share premium was prescribed by M/s.Delloitte Touche Tohmatsu India Pvt. Ltd. A-1 in conspiracy with A-2 unilaterally fixed the share premium at high value of Rs. 350/- per share with the sole intention of soliciting huge investments into A-3 company.

A-3 Company, represented by A-1, despite several requests from the investors, vise Madhav Ramchandra and A.K. Dandamudi for return of investments made by them or the dividends accrued over a period of time, did not pay heed to their request nor returned the money and thereby A-1, as the then director of A-3 company, has cheated the investors.

15. The specific allegations made against the accused in the third charge sheet dated 07.05.2012 are as follows:-

Late Y.S.Rajasekhara Reddy, the then Chief Minister of A.P., committed an offence u/s 11 of the Prevention of Corruption Act, 1988, by prevailing over A-5 to materialize the nefarious deal of approving the layout plan of M/s.RPCIL (A-6) represented by A.Ayodhya Rami Reddy (A-4) by circumventing the guidelines laid down by VUDA Master Plan - VMR - 2021 detrimental to the interest of the Government. By obtaining wrongful gain, A-4 ensured circuitous investment of Rs. 10 crores in M/s.Jagathi Publications (A-3), through M/s.TWC and M/s.ERES.

A-1, in pursuance of the criminal conspiracy with A-2 dishonestly and fraudulently obtained wrongful gain of Rs. 10 crores as gratification in A-3 company from A-4 and in turn, allotted shares of A-3 company to the companies, i.e., M/s.TWC and M/s.ERES with highly inflated value of Rs. 360/- per share. Since the later obtained wrongful gain in Green Belt Matter pertaining to M/s.RPCIL (A-6) from the Government. The ultimate beneficiary of the quid-pro-quo

payment was A-1 who was the Chairman/Director of A-3 company. He, thereby, committed offences under Sections 120B, 420 IPC.

A-1, ensured causing of wrongful gain to M/s.RPCIL (A-6) represented by A-4 in the matter of reducing the Green Belt area from 250 Mts. To 50 Mts. by prevailing upon his father Late Y.S.Rajasekhara Reddy, the then Chief Minister to take decision to that effect during the meeting dated 23.11.2005. Based on the said decision, A-5, the then Vice-Chairman of VUDA, accorded approval to the layout plan of M/s. RPCIL (A-6) with reduced Green Belt Area confining it to 50 Mts. Inside the green belt area of M/s.RPCIL (A-6) in contravention of the decision dated 20.06.2005 followed by the GO No. 345 notifying the VUDA Master Plan, 2020. A-1 has obtained gratification of Rs. 10 crores as reward in the form of investments in A-8 from M/s.TWC and M/s.ERES through the funds of M/s.RAMKY Infra and M/s.Ramky Estates. Sri A.Ayodhya Rami Reddy, represented by M/s.RPCIL and also M/s.Ramky Infra and M/s.Ramky Estates. Thereby, A-1 has committed offence u/s 9 of the PC Act, 1988, for obtaining gratification for influencing his father in the aforesaid matter as quid-pro-quo.

16. The CBI filed a charge sheet on 31.03.2011 against A1 and 12 others. Second charge-sheet was filed on 23.04.2012 and the third charge-sheet was filed on 07.05.2012 in the same First Information Report. The Special Court constituted under the provisions of the Prevention of Corruption Act, 1988 Act (hereinafter referred to as "Special Court") has taken cognizance of the first charge sheet on 27.04.2012 and issued summons to the accused and others. The accused received summons and he was to appear before the Special Court on 28.05.2012. It is also a fact that the elections are scheduled to be held for 18 Assembly and one Parliamentary Constituency on 12.06.2012 and the accused had been in election campaign. In the meanwhile, the CBI served a notice upon the accused u/s 41 A(1) Cr.P.C. requiring him to appear before the Investigating Officer on 25.05.2012. Challenging the said notice, the accused filed W.P.No.15751 of 2012 and this Court disposed of the said writ petition by order, dated 23.05.2012, directing the CBI to act fairly and in strict compliance of Section 41 A(1) Cr.P.C. It is not in dispute that in compliance of the said notice, the accused appeared before the CBI on 25.05.2012, 26.05.2012 and 27.05.2012. It is also not in dispute that the accused was arrested on 27.05.2012. On the next day, he was produced before the Court along with a remand report and also an application seeking the custody of the accused. The learned Special Judge remanded the accused to the judicial custody u/s 309 Cr.P.C., on the ground that the CBI has already filed charge sheet and he has taken cognizance of the offences against the accused. However, the request of the CBI to give the custody of the accused to it has been rejected. In the above referred circumstances, these matters have been filed and argued.

17. Some of the allegations made in the remand report of the accused are as follows.

18. That the accused Nimmagadda Prasad (FIR accused A-12) invested Rs.

854.50 Crore in the companies belonging to Accused No. 1. Nimmagadda Prasad disposed of some of these investments and as on date still left with investment of about Rs. 505.00 Crores in the group companies of A-1. During this period, Government of Andhra Pradesh headed the then Chief Minister Dr. Y.S. Rajasekhara Reddy doled out many favours in the form of awarding of VANPIC Project; shipyard; green field airport at Ongole; various undue concessions were extended to the project in the form of alienation of huge chunks of assigned/ Government land to the companies floated by accused Nimmagadda Prasad. Exemptions were granted in the form of stamp duty and registration charges, seignior age fee etc. On 31.03.2008, "Vanpic Ports Pvt. Ltd." (SPV) was incorporated with accused Nimmagadda Prasad and M/s. Matrix Enpot Holdings Pvt. Ltd. As the original subscribers to the memorandum without any involvement / mention of RAK and RAK entered into the said private company subsequently. That in the month of June, 2008, "Vanpic Ports Pvt. Ltd." Informed Government of Andhra Pradesh about requirement of 28,000 Acres of land for development of VANPIC Project and also submitted a draft concession agreement. Accused Mopidevi Venkata Ramana Rao (who was arrested on 24.05.2012 in the case and presently in police custody) the then Minister for Infrastructure and Investments Department was aware of this requirement, and approved the cabinet memorandum containing proposals for awarding of VANPIC Project withholding many important aspects related to the project such as total extent of land decided for the VANPIC Project. He, in furtherance of criminal conspiracy, also approved placing the draft concession agreement having many contradictory provisions which are detrimental to the Government of Andhra Pradesh and out-rightly advantageous to the concessionaire, when compared to the cabinet memorandum. The Council of Ministers in its meeting held on 30.06.2008 accorded permission for awarding of VANPIC Project on BOOT basis whereas the concession agreement approved by the Minister and submitted along with the Cabinet Memorandum contains provisions making the allotment of Ports on BOOT basis, whereas the industrial corridor on a Build Own and Operate (BOO) basis apart from several other inconsistencies. The concession agreement contains many provisions which have been included intentionally which are detrimental to the interest of the Government of Andhra Pradesh in particular and to the public at large. Investigation revealed some more such crucial provisions in the concession agreement, one such is the provision for dilution of RAK share to 26% facilitating entry of another private company by name Navayuga Engineering Company Limited into the SPV i.e., "Vanpic Ports Pvt. Ltd." Cornering 65% equity and getting control of it defeating the objective of awarding the project on Government to Government (G2G) basis without going through the open competitive bidding. That while making payments directly to the land owners/assignees in lieu of lands, Nimmagadda Prasad exaggerated the total expenditure at about Rs. 450.00 Crores against actual payment of about Rs. 150.00 Crores. The final destinations/beneficiaries of Rs. 300.00 Crores are to be ascertained. During interrogation of Nimmagadda Prasad, it was revealed that at the instance of late Y.S. Rajasekhara Reddy, Nimmagadda Prasad made

investments to the tune of Rs. 854.50 Crores in companies of Y.S. Jagan Mohan Reddy. M/s. Pioneer Infrastructure Holding Limited has invested Rs. 23.00 Crores in M/s. Carmel Asia Holdings Private limited by subscribing to the shares at a high premium of Rs. 252/- per share, against the face value of Rs. 10/- per share. M/s. Pioneer Infrastructure Holding Limited has invested Rs. 45.00 Crores in M/s. Jagati Publications Private Limited by subscribing to the shares at a high premium of Rs. 350/- per share, having face value of Rs. 10/- each per share.

19. Heard Sri Susheel Kumar, Sri Ranjit Kumar and Sri C. Padmanabha Reddy, learned Senior Counsel representing Sri S.Niranjana Reddy, learned counsel for the accused and Sri Harin P. Raval, learned Additional Solicitor General of India and Sri P. Keshava Rao, learned Standing Counsel for CBI on behalf of the CBI.

20. In view of the above rival contentions, the points that arise for consideration in these petitions are:

1. Whether a single offence or distinct offences have been made out from the allegations made in FIR, three different charge-sheets and remand report of the accused in this case.
2. Whether CBI is justified in filing separate charge-sheets?
3. Whether the Special Judge is justified in taking cognizance on different charge sheets?
4. Whether any prejudice would be caused to the accused by separate trials?
5. Whether the accused is entitled to bail u/s 167(2)(a)(i) and (ii) Cr.P.C where in a case the police failed to file charge sheet within 90 days or 60 days as the case may be?
6. Whether the arrest of the accused is illegal?
7. Whether the remand of the accused u/s 309 Cr.P.C is correct?
8. Whether the accused can be given to CBI custody?
9. To what relief?

Since Point No. 1 is important, it is being taken up for consideration at the first instance.

POINT NOS. 1 and 2:

21. Sri Susheel Kumar, learned Senior Counsel appearing on behalf of the accused, submitted that as per the directions of this Court, the CBI conducted preliminary enquiry and subsequently as per the orders of the Division Bench of this Court, the CBI registered the case and having regard to the allegations made therein and having considered that it pertains to a single conspiracy, the CBI has issued one FIR. His main submission is that the motive of entire conspiracy is to secure funds in the Companies of A-1. There may be several investors, but the

main allegation is that A-1 influencing his father late Dr. Y.S. Rajasekhara Reddy, the then Chief Minister of the State of Andhra Pradesh, benefited several individuals and companies in allotment of lands in SEZs, in issuing licenses etc., and since the object of conspiracy is one and A-1 and A-2 are common in all the charge sheets filed by the CBI, the offence is one (report to be filed u/s 173(2) Cr.P.C. will be referred as "charge-sheet" for the sake of convenience). It is further submitted that when the offence is one, the police after arresting the accused must complete investigation within 90 days under sub-section 2 of Section 167 Cr.P.C. It is also his submission that A2 in this case was arrested on 02.01.2012 and to see that he would not get the benefit of bail, the CBI hurriedly filed charge sheet on 31.03.2012 under sub-section 2 of Section 173 Cr.P.C. His main submission is that once the CBI filed charge sheet, it is deemed that investigation is completed. He has also referred to several decisions of this Court also the Supreme Court in support of his contention that where incomplete charge sheet has been filed, the same cannot be treated as a report filed under sub-section (2) of Section 173, thereby enables the accused to get the benefit of bail. His further submission is that the CBI has categorically mentioned in the first charge sheet that it is original and nowhere whispered that further investigation is pending. It is also his submission that the CBI never sought the permission of the Court to proceed with the further investigation under sub-section (8) of Section 173 and according to senior counsel, sub-section (8) of Section 173 comes into play only when the police secure additional evidence. His main contention is that, admittedly, the CBI has filed second charge sheet and third charge sheet subsequently and this fact by itself shows that their earlier representation before the Special Judge that the investigation had been completed is incorrect and misleading the Court.

22. Sri C. Padmanabha Reddy, learned senior counsel submitted that if separate charge sheets are permitted to file in respect of separate transactions it will lead to absurd situation and the accused will be forced to face trial in one case while the other cases will be pending against him and he will be forced to disclose his defence resulting in great prejudice to him and also may give rise to conflicting and contradicting judgments. He further submitted that once charge sheet is filed, investigation is over and no further charge sheets can be filed.

23. Sri Harin P. Raval, learned Additional Solicitor General of India appearing for CBI argued that as seen from the allegations made in the First Information Report and different charge-sheets already filed, the offences are distinct offences, but not one. He has also referred to several paras of the order of the Division Bench and submitted that the allegations pertaining to different transactions require a detailed probe and that during the course of investigations, some of them may be found to be incorrect. It is also his submission that the FIR did not contain all the details and it is not an encyclopedia. He has also referred to the contents of the charge-sheets and remand report of the accused. According to the Learned Additional Solicitor General of India, as seen from the FIR, there are 71 named accused and at

Sl.No.72, the accused are shown as Directors / Promoters of unknown companies, at Sl.No.73, as unknown public servants of Government of Andhra Pradesh and at Sl.No.74, as unknown others. According to Mr. Raval, the investigation done so far revealed only a tip of iceberg, when compared to the magnitude of the offence and large-scale corrupt practices. According to him, the transactions covered by the charge-sheet already filed are different and distinct from the transactions in which investigation is still pending. Mr. Raval had also referred to the allegations that a total of Rs. 797 crores have been allegedly raised by the accused-A.1 in M/s. Sandoor Power Company Limited. He had also referred to the allegations made with reference to M/s. VANPIC Projects Private Limited and submitted that more than 15,000 acres of land was allotted in Prakasam District, violating all the norms by giving several concessions under Stamps and Registration Act. According to Mr. Raval, it is also alleged that M/s. Jagathi Publications continued to receive investments at the same premium making a total investment of Rs. 1,246 crores though it was allegedly accumulating losses of Rs. 349 crores. He has also referred to Paragraphs 83, 85, 89, 90 and 91 of the First Information Report in support of his contention that at different point of times, distinct offences took place. Thus, Mr. Raval has taken me through the allegations in different charge-sheets, remand reports in support of his contention that separate and distinct offences have been alleged and, therefore, the CBI is justified in filing separate charge-sheets. His submission that separate charge-sheets were filed in several cases though one single FIR was issued initially, has not been disputed across the Bar. Reference is also made to the case of P.V. Narsimha Rao Vs. State (CBI/SPE), He has also referred to definition of "charge" u/s 2(b) Cr.P.C. and "police report" u/s 2(r) Cr.P.C. and Sections 154, 156, 170, 173 Cr.P.C. in support of his contention that separate FIR is not necessary for filing separate charge-sheets. Sri Raval further referred to Chapter XVII Cr.P.C. and also referred to Sections 218, 219, 221, 222, 223 Cr.P.C. and submits that no prejudice would be caused to the accused when separate charge-sheets are filed and the accused may ask for joint trials. He has also argued that there are certain foreign transactions and there is allegation of money laundering which require separate investigation. His main submission is that ill-gotten money has been routed through several channels and it was got back and re-invested in the companies of A-1. Thus, according to Mr. Raval, where in a case from the allegations made against the accused, separate and distinct offences have been made out, separate charge-sheets can be filed and the Special Judge, having regard to the material placed before him, may take cognizance of the offences alleged.

Section 154 Cr.P.C. is as follows:-

Section 154 - Information in cognizable cases:-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such

information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Section 173(1) & (2) are as follows:-

Section 173 - Report of police officer on completion of investigation :-

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

1[(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody u/s 170.

1[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence u/s 376, 376A, 376B, 376C or 376D of the Indian Penal Code(45 of 1860).]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

24. "Offence" has been defined u/s 2(n) of Code of Criminal Procedure, 1973 ("the Code", for brevity) which is as follows:-

"Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of the Cattle-trespass Act, 1871 (1 of 1871).

Section 33 of IPC is as follows.

33. "Act", "Omission":- The word "act" denotes as well as a series of acts as a single act; the word, "omission" denotes as well a series of omissions as a single omission.

Criminal conspiracy has been defined u/s 120A IPC as follows.

120-A. Definition of criminal conspiracy:- When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation:-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

25. It is to be seen that a singular word "Offence" has been used in the above referred definition and in the above sections. However, it is clear that in a single transaction, there may be series of acts such as beating twenty times with a stick, causing ten stab injuries, but all such acts have to be treated as part of one offence. The allegations in a report may constitute several acts resulting in registration of a case under different penal provisions such as 324, 326, 307, 342 etc., in one FIR and different charges may have to be framed. But what is to be seen is whether they all form part of one offence or whether the offences are distinct. The alleged facts, date, time, place of occurrence etc., have to be carefully examined to know whether it is one offence or distinct offences have been made out.

26. The expression distinct offence means a different offence. It means the offences having no connection with each other.

27. The facts of the case in Banwari Lal Jhunjunwala and Others Vs. Union of India (UOI) and Another, relied upon by the learned counsel for the accused,

reveal that the firm entered into a contract with the Director General of Supplies and Disposals for supply of heavy quantity of bottom boards for railway wagons of certain specified varieties of hard wood, to the Central Railway Administration. The prosecution alleged that the wood actually supplied was of inferior quality and that one of the appellants before the Supreme Court and other officers issued false inspection notes certifying the quality of the wood to be per specification and on the basis of these false inspection notes heavy loss incurred to the Government of India. The Apex Court, on facts, came to the conclusion that the cheating was in pursuance of the conspiracy entered into between the various accused. The object of the conspiracy was to obtain the full contract price from the Government on supplying material of inferior quality from that undertaken to be supplied under the contract and it was held that the offence of cheating contemplated by the conspirators was one offence and that was of obtaining, by cheating, the full amount due under the contract for the material supplied. The Apex Court observed as follows:-

The question is, what is meant by "every distinct offence? "Distinct" means "not identical". It stresses characteristics that distinguish while the word "separate" would stress the "two things not being the same". Two offences would be distinct if they be not in any way inter-related. If there be some interrelation there would be no distinctness and it would depend on the circumstances of the case in which the offences were committed, whether there be separate charges for those offences or not.

29. It has to be seen that the objective of obtaining entire money in the above referred case is in pursuance of the terms of the single conspiracy entered into between the accused.

30. Learned counsel for the accused has also relied on the judgment in P.V. Vijayaraghavan and others v. C.B.I. and another¹. In this case revision petitioners were accused in a case and the said case was registered on account of the death of one Sub-Inspector of Police by gunshot wounds. After arrest of the accused, 90 days period was over and the investigator filed a final report for the offences u/s 120B read with 302 I.P.C. and Section 302 read with 34 I.P.C. An additional charge sheet was filed for the offences u/s 120B read with 201 I.P.C. and Section 201 I.P.C. read with 34 I.P.C., on 15.02.1984. Meanwhile, the accused moved bail application contending that no valid charge sheet was filed within 90 days. The Kerala High Court observed as follows:

An occurrence of transaction may involve commission of only one offence, or it may involve several offences. When a police officer receives information about the commission of a cognizable offence, and records the same, he is said to register a case, sometimes called a Crime Case. "Case", understood in this general sense means the case before the police officer arising from the information placed before him regarding an occurrence in which an offence or offences are committed. "Case" relates to the transaction of which information is given and not merely one of the offences committed during the course of the

transaction.

31. It was further observed that:

Investigation is to be of a case, that is, all the facts and circumstances of a case which would mean all the offences involved therein. Therefore, when Section 173 speaks of completion of investigation, it must ordinarily be taken to refer to completion of investigation of all the facts and circumstances relating to the case, whether the transaction involves one offence or plurality of offences.

32. In that case, the Hon''ble Kerala High Court was dealing with a case in which there was only one conspiracy in a murder case at the stage of grant of bail. It has to be seen that the offences u/s 120B, 302 read with 34 IPC, u/s 302 read with 201 IPC and u/s 201 read with 34 IPC are so connected it cannot be said that they are distinct offences.

33. Learned counsel for the accused has also relied on the decision of the Apex Court in Sri K. Khetwani Vs. State of Maharashtra AIR 1957 SC 1250. In that case, the accused were tried of an offence punishable u/s 120B read with Section 409 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. In that case, it was alleged that;

in pursuance of the conspiracy, a number of licences in the name of several companies which had no existence were prepared, that some of these were actually issued and that two of those licences issued were in the name of M.L. Trading Company, Bombay, and were delivered to the appellant by Prabhakar Karmik, PW 20, a postman, on May 15, 1959. The appellant denied having received any such licences and to have conspired with Nelson and Shingrani.

34. In that case, it was argued that the charge of conspiracy framed against the appellant was a charge of a single conspiracy while the facts proved establish the existence of not only a single conspiracy but of at least eight conspiracies, each single conspiracy being related to the issue of licences to one particular company. The charge of conspiracy as laid is therefore not established. The Apex Court observed that the finding that the various firms to whom licences were issued were fictitious is not questioned and the conspiracy was a general conspiracy to keep on issuing licences in the names of fictitious firms and to share the benefits arising out of those licences when no real independent person was the licensee. It was further observed that mere fact that the license was issued in making out a case of the appellant and other conspirators to be a case of eight different conspiracies each with respect to the licences issued by one particular fictitious company does not vitiate the charge. The Apex Court finally upheld the conviction.

35. Their Lordships have distinguished the case between R. Vs. Griffiths [1965] 2 All. E.R. 448, wherein, it was held as follows:-

Great reliance is placed on the case reported as R. Vs. Griffiths in support of the contention that the facts established make out the case of eight conspiracies

instead of single conspiracy charged. That case is very much different. In that case, a supplier of lime and his book-keeper and various individual farmers were charged with conspiring to commit fraud and obtain money by false pretences from the Ministry of Agriculture and Fisheries and Food on account of lime subsidy. It was established that there was link as between one farmer and another. None of them was in contact with another. Neither was any farmer shown to have known that any other of the farmers was contracting for the supply of lime by the supplier. It was, in these circumstances, that it was held that to constitute one conspiracy between all the farmers and the supplier of lime there had to be evidence from which it could be inferred that each farmer knew that there had to be evidence from which it could be inferred that each farmer knew that there was or was coming into existence a scheme to which he attached himself, to which there was other parties and which went beyond the act that he agreed to do so that all would be shown to have been acting in pursuance of the common criminal purpose and that therefore there was no evidence of conspiracy between all farmers as distinct from evidence of a number of separate conspiracies between the supplier of lime, his book-keeper and one or other of the farmers. The farmers were genuine persons in that case. Each farmer approached the supplier of lime and happened to be a party to the fraud committed in regard to supply of lime to him. In the instant case, there is no such genuine independent company which directly approached the two public servants for its own benefit.

36. Learned counsel for the accused has further relied upon the decision of the Apex Court in *Abhay Singh Chautala Vs. C.B.I.*, In that case, separate charges were framed against the appellants for the offences under Sections 19 and 13(1) (e) & (2) of the Prevention of Corruption Act, 1947. It was held that both the accused while working as Members of Legislative Assembly were having disproportionate assets other than their known source of income and charges were framed against them. As far as this case is concerned, the said decision appears to be not applicable to the present facts of the case.

37. Learned Additional Solicitor General has relied on the judgment of the Apex Court in *Mohd. Husain Umar Kochra etc. Vs. K.S. Dalipsinghji and Another etc.*, The Apex Court observed as follows:-

In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New

techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only.

38. The Apex Court finally held that there was a single general conspiracy to smuggle gold into India from foreign countries.

39. Thus, it has to be seen that the Full Bench of the Apex Court categorically observed that where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy.

40. The above observation of the Apex Court is squarely applicable to the facts of the case on hand.

41. Learned Additional Solicitor General has further relied upon the judgment of the Apex Court in *Ram Lal Narang Vs. State (Delhi Administration)*². In that case, an FIR was registered against two persons. The Apex Court observed that;

An FIR was registered at Delhi against two persons viz., Malik and Mehra u/s 120B read with Sections 406 and 420 IPC and after completing the investigation the CBI filed a charge sheet in the Court of Special Magistrate, Ambala against them alleging that the two conspirators dishonestly obtained possession of a pair of precious antique pillars by making false representation to the Magistrate and substituted them by fakes. While charges could not be framed due to absence of the accused in the Court, on an application u/s 494 Cr.P.C. moved by the Public Prosecutor, the Magistrate permitted withdrawal of the case and discharged the accused. Subsequently, the genuine pillars were found in a ware house in London. An FIR was then registered in Delhi u/s 120B IPC read with 411 IPC and Section 25(1) of the Antiquities and Art Treasures Act, 1972 against one Narang and his two brothers. The charge sheet recited that as a result of conspiracy between the Narang brothers, Malik and Mehra, the fake pillars, which were made by two well known sculptors at the instance of the Narangs, were substituted by Malik and the genuine ones transported to Bombay and finally smuggled out to London by the Narangs. The Magistrate at Delhi issued process for appearance of the Narangs. A petition was then moved before the Magistrate for dropping the proceedings against them on the ground that the entire second investigation was illegal as a case on the same facts was already pending before the Ambala Court and that the Delhi Court acted without jurisdiction in taking cognizance of the case pursuant to a report of the police based upon such illegal investigation. The Magistrate held that question to be decided by the High Court u/s 186 Cr.P.C. The Narangs thereupon filed appeals u/s 482 Cr.P.C. to the High Court which were dismissed.

Before the Supreme Court two points came up for consideration; (1) Whether the two conspiracies, which were the subject-matters of two FIRs and two charge-sheets, were the same and therefore, there was an implied bar to the power of police to investigate into the subsequent FIR and the power of the Court at Delhi to take cognizance of the case upon the report of such information; and (2) What was the duty of the police on discovering that the conspiracy, which was the subject matter of the earlier case, was part of a larger conspiracy; whether the police acted without jurisdiction in investigating or in continuing to investigate into the case and whether the Delhi Court acted illegally in taking cognizance of the case.

42. It was finally held as follows:-

The question is not whether the nature and character of the conspiracy has changed by the mere inclusion of a few more conspirators as accused or by the addition of one more among the objects of the conspiracy. The question is whether the two conspiracies are in substance and truth the same. Whether the conspiracy discovered later is found to cover a larger canvas with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions.

The facts and circumstances of the present case and a comparison of the two FIRS and the two charge-sheets show that the conspiracy which was the subject-matter of the second case could not be said to be identical with the conspiracy which was the subject matter of the first case. The conspirators were different. Malik and Mehra alone were stated to be the conspirators in the first case while the Narang brothers were alleged to be the principal conspirators in the second case. The objects of the two conspiracies were different. The alleged object of the first conspiracy was to obtained possession of the pillars from the Court by charting and to misappropriate them. The alleged object of the second conspiracy was the disposal of the stolen property by exporting the pillars to London. The offence alleged in the first case was Section 120B read with section 420 and Section 406 IPC, while the offences alleged in the second case were Section 120B read with Section 411 IPC and Section 25 of the Antiquities and Art Treasures Act, 1972. When the investigation commenced a second time, apart from the circumstance that the property involved was the same, the link between the conspiracy to cheat and to misappropriate and the conspiracy to dispose of the stolen property was not known. The conspiracies which are the subject-matter of the first case may, perhaps, be said to have turned out to be part of the conspiracy which is the subject-matter of the second case.

43. Learned Additional Solicitor General has further relied upon the judgment of the Apex Court in *Sangeetaben Mahendrabhai Patel V. State of Gujarat* Criminal Appeal No. 645 of 2012 dt. April 23, 2012. In this latest judgment the Apex Court covered the entire case laws. In the circumstances, it can be safely relied upon. The brief facts of the case are as follows;

Respondent No. 2 filed a complaint dated 22.10.2003 i.e., Criminal Case No. 1334 of 2003 u/s 138 of N.I. Act on the ground that the appellant had taken hypothecation loan of Rs. 20 lakhs and had not repaid the same. In order to meet the said liability, the appellant issued cheque bearing No. 29447 and on being represented, the cheque has been dishonoured.

Subsequent thereto on 6.2.2004, the respondent No. 2 filed an FIR being I.C.R.No.18 of 2004 under Sections 406/420 read with Section 114 of Indian Penal code, 1860 (hereinafter referred as IPC) with the Sidhpur Police Station for committing the offence of criminal breach of trust, cheating and abetment etc.,

In the criminal case No. 1334 of 2003 filed u/s 138 of N.I. Act, the trial Court convicted the appellant. Aggrieved, appellant preferred Appeal No. 12 of 2006, before the District Judge wherein, he has been acquitted. Against the order of acquittal, respondent No. 2 has preferred Criminal Appeal No. 1997 of 2008 before the High Court of Gujarat which is still pending consideration.

Appellant filed an application u/s 482 Cr.P.c., seeking quashing of ICR No. 8 of 2004 in Criminal Case No. 5 of 2004, pending before the Chief Judicial Magistrate, Patan, on the grounds, inter-alia, that it amounts to abuse of process of law. The appellant stood acquitted in criminal case u/s 138 of N.I. Act. Thus, he cannot be tried again for the same offence. In the facts of the case, doctrine of double jeopardy is attracted. The High Court dismissed the said application.

44. The Apex Court referred to the judgment of Maqbool Hussain Vs. The State of Bombay, . The Apex Court further held as follows;

In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e., doctrine of autrefois acquit or Section 300 Cr.P.C. or Section 71 IPC or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge".

Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution u/s 138 N.I. Act, the mens rea i.e., fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable u/s 420 IPC is a serious one as the sentence of 7 years can be imposed. In the case under N.I. Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person

who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under N.I. Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under N.I. Act can only be initiated by filing a complaint. However, in a case under the IPC such a condition is not necessary.

There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.

45. Thus, it is observed that even if there may be some overlapping of facts, subsequent case is not barred.

46. Having regard to the allegations made in the FIR, in three different charge sheets and in the remand report of the accused, it is clear that the transactions are different. The persons or companies, who got benefits, are different. Transactions pertain to different dates, different places, different G.Os., issued by different departments and thus it is clear that they pertain to different transactions. When the transactions are different, the offences are distinct notwithstanding the fact that the allegations may be substantially similar and even if ultimate beneficiary is one. Thus, it is clear that distinct offences have been alleged, even if A-1 and A-2 may be the common conspirators in all the distinct offences. It has to be seen that there is no common design or a common intention of all of them to work in furtherance of the common design. In order to constitute a single conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Here the object of the companies involved in the transaction and persons who got benefits is only to secure benefits by pouring their money by way of investments in the companies of A-1 and thereby to get individual separate benefits. Thus, the beneficiaries in one transaction have no concern or connection with the beneficiaries in the other transactions, though all the persons are alleged to have made investments in the companies of A-1.

47. The Apex Court, in Mohd. Hussain Umar Kochra etc's case (6 supra) has categorically held that where different groups of persons cooperate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. So, the above observation of the Apex Court seems to be squarely applicable to the case on hand. It is also not in dispute that where distinct offences have been made out, out of a single FIR, the action of the CBI filing different charge sheets has been approved by the Supreme Court in several cases. Therefore, it has to be held that filing of different charge sheets with regard to distinct offences by the CBI is permissible.

48. As far as the judgments relied by the learned senior counsel for the accused and learned Additional Solicitor General of India on the point of filing report u/s 173 (2) Cr.P.C. in T.V. Sarma Vs. Smt. Turgakamala Devi and Others, P.S. Prasad Vs. State of Andhra Pradesh and Another, Dinesh Dalmia Vs. C.B.I., State of

Maharashtra Vs. Sharadchandra Vinayak Dongre and Others, Julakanti Brahma Reddy Vs. State of A.P. 2002 (2) ALD (CrL.) 660, Bhartendu Pratap Singh Vs. State of U.P. and Another, Hemant Dhasmane Vs. Central Bureau of Investigation and Another, , Chonampara Chellappan and Others Vs. State of Kerala, and on the point of further investigation u/s 173(8) Cr.P.C. in State of A.P. Vs. A.S. Peter, , K. Chandrasekhar Vs. The State of Kerala and Others, and State of Punjab Vs. Central Bureau of Investigation (2011) 9 SCC 182 are concerned, it has to be seen that in the instant case, the main point that came up for consideration is whether the allegations made in the FIR and in the Charge-sheet already filed are distinct offences from the offences that have been made out in the Remand Report of the accused.

49. In view of the above discussion, there is no need to discuss the above referred decisions in detail. It is also made clear that further investigation will not mean fresh investigation or re-investigation.

50. In view of the above discussion, it is clear that distinct offences have been made out from the allegations made in the FIR and three different charge-sheets and the remand report of the accused in this case and the CBI is justified in filing separate charge-sheets in respect of distinct offences. Point Nos.1 and 2 are answered accordingly.

POINT No. 3

51. The learned senior counsel have relied on the judgment in the case Abhinandan Jha and Others Vs. Dinesh Mishra, , Hareram Satpathy Vs. Tikaram Agarwala and Others, and Raghubans Dubey Vs. State of Bihar, on the point of taking cognizance of the offence. The sum and substance of all these decisions go to show that the Magistrate, on consideration of the material placed before him, if he is satisfied that a prima facie case has been made out, he may take cognizance of the alleged offences and he may or may not agree with the allegations made therein.

52. The apex Court in case State of Bihar and Another Vs. P.P. Sharma, IAS and Another, observed as follows:

The Magistrate is empowered to consider the report and on satisfying himself that the accused prima facie committed the offence, take cognizance of the offence and would issue process or warrant to the accused, if on bail, to appear on a date fixed for trial or to commit him for trial to the Court of Session. It is not incumbent upon the Magistrate to accept the report of the investigating officer that there is no sufficient evidence or reasonable ground to connect the accused with the commission of the crime; he may direct further investigation or suo motu the investigator may himself submit supplemental charge-sheet u/s 173 (8) if he subsequently becomes aware of certain facts or itself or through a subordinate Magistrate to make further enquiry or to take cognizance of the offence upon consideration of the material so placed before him and take further steps as aforesaid. Then only proceedings in a criminal case stand commenced.

Taking cognisance of the offence is coterminous with the power of the Police to investigate in the crime.

53. Chapter XIV of Cr.P.C. deals with the conditions requisite for initiation of proceedings. Section 190 Cr.P.C under the said Chapter is as follows.

190. Cognizance of offences by Magistrate:- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under subsection(2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

54. Taking of cognizance means to take notice of judicially. It means Magistrate"s applying mind to the offence alleged for the purpose of proceeding in a particular way. It is a judicial function. The Magistrate may accept the report as it is and take cognizance with regard to alleged offences or he may take cognizance with regard to offences that according to him, have been made out from the allegations. There cannot be any doubt to say that the Magistrate takes cognizance of the offence and not the offender. The allegations may be similar or the object of one or two accused in all the charge sheets may be the same, but where it appears that distinct offences have been made out nothing prevents the Magistrate from taking cognizance separately on separate charge-sheets, i.e., report filed u/s 173(2) Cr.P.C. It is also made clear that when the Magistrate takes cognizance, he takes cognizance with reference to the offences that have been alleged in the charge sheet only though the FIR may contain some other offences. The Magistrate may take cognizance if he is satisfied that a prima facie case has been made out against the accused from the contents of the report under sub-section (2) of Section 173 Cr.P.C., even while investigation may be pending with regard to other distinct offence alleged in the FIR. Merely because investigation with regard to some other distinct offences is pending, that does not come in the way of the Magistrate (in this case the Special Judge) to take cognizance.

55. Now it has to be seen under what circumstances, the criminal proceedings can be quashed. Learned Additional Solicitor General of India had relied on the judgment in the case between Satya Narayan Sharma Vs. State of Rajasthan, In that case, the Apex Court was dealing stay of proceedings u/s 19(3)(c) of the Prevention of Corruption Act, 1988. Since we are not dealing with the said provision, i.e., stay of proceedings under the said Act, the above referred

decision is not relevant for the purpose of this case.

56. Learned Additional Solicitor General of India appearing for the CBI had relied on the judgment in the case between State of Orissa and Another Vs. Saroj Kumar Sahoo, In that case, the Apex Court observed that under three circumstances, inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is also observed that inherent jurisdiction under this section, the court does not function as a court of appeal or revision.

57. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. Of course, it was also observed that the Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to "abuse of the process of court. In the instant case, admittedly, there are no such circumstances to quash the proceedings.

58. The law appears to be well settled. It is clear that even if there is some irregularity in any of the proceedings, that cannot be a ground to quash the proceedings, the decisions relied by both the learned counsel on this point need not be discussed in detail.

59. Thus the Special Judge is justified in taking cognizance on different charge-sheets. This point is answered accordingly.

POINT No. 4

60. The proviso to Section 218 Cr.P.C would apply in a case where distinct offence for which the accused is charged is being tried before the same Court. The accused can seek appropriate remedies under Sections 218, 219 and 220 Cr.P.C and may be tried at one trial.

61. When distinct offences have been made out, the same has to be dealt with u/s 218 Cr.P.C., which reads as under:-

Section 218 and 219 Cr.P.C. is as follows:-

Section 218 - Separate charges for distinct offences :-

(1) For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Section 219 of the Code reads as under:-

When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial, for any number of them not exceeding three.

62. Therefore, where more than one offences have been committed in one series of acts so connected together as to form the same transaction, the accused may be charged with, and tried at one trial, for every such offence u/s 220 Cr.P.C.

63. Therefore, it appears that no prejudice could be caused even separate charge sheets have been filed.

POINT No. 5

Section 167(2)(a)(i) and (ii) is as follows:-

Section 167 - Procedure when investigation cannot be completed in twenty-four hours:-

(1)

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the

accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be to released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

64. The law has been well settled and there cannot be any doubt to say that where in a case if the police failed to complete investigation and file charge sheet u/s 167(2) Cr.P.C. within the stipulated period, the accused would be entitled to bail. But, in view of my above findings on point No. 1, where, in a case distinct offences have been alleged and investigation is completed in respect of some of the distinct offences, even though investigation may be pending in respect of other distinct offences, the police is empowered to file separate charge-sheets in respect of the distinct offences in which investigation is completed. However, it has to be kept in mind that where the police have knowledge that the accused is involved in distinct offences, then they are bound to show the arrest of the accused in all the distinct offences with regard to which they have knowledge either from the contents of the FIR or from the investigation done by them till then. They have to complete investigation within the statutory period in all the cases if the accused is involved in distinct cases. If they do not complete investigation in respect of the arrested accused, he would be entitled to bail u/s 167(2) Cr.P.C. Of course, a situation may arise where in a case after completion of investigation in a particular case, the police may come to know about a distinct offence committed by the accused with regard to which they had no knowledge when they arrested the accused or when they filed report under sub-section (2) of Section 173 Cr.P.C. on earlier occasion, and a question may arise as to whether the accused can be again arrested or not. Since this kind of situation did not arise in the present case, no further discussion is necessary. The police have to complete investigation within the prescribed period with reference to the distinct offences in which they arrested the accused. Thus, from the date of arrest of the accused, if the police failed to complete investigation within the prescribed period with regard to the offence in which he is arrested, he has to be released on bail, even though the investigation with regard to other distinct offences is still pending.

65. This point is answered accordingly.

POINT No. 6

66. W.P.No.16128 of 2012 has been filed mainly on the ground that arrest of the accused is unlawful and contrary to the statutory principles. The specific case of the petitioner is that the arrest of the accused is preventing him from carrying out election campaign and therefore violating his right to move about freely guaranteed under Article 19(1)(g) and 19(1)(a) of the Constitution of India and thereby right to liberty guaranteed under Article 21 of the Constitution of India, is violated.

67. The main submission of Sri Padmanabha Reddy, learned Senior Counsel, is

that when the petitioner/accused has complied with the notice issued u/s 41A(1) Cr.P.C., causing arrest of the accused is wholly untenable in law and that arrest cannot be made unless there are exceptional circumstances justifying the arrest. It is also his submission that notice u/s 41(A) Cr.P.C. is issued when the arrest of the accused is not intended. His main submission is that the accused cannot be deprived of his fundamental rights guaranteed by the Constitution. It is vehemently argued that the CBI never felt it necessary to arrest the accused prior to 27.05.2012 and that the timing of the notice indicates that the CBI has chosen to unlawfully arrest the petitioner/accused in view of the ensuing bye-elections whereby the CBI wanted to prevent the accused from carrying out the campaign in the bye-elections. It is also submitted that expressing such fears, the accused filed anticipatory bail petition in CrI.M.P.No.1039 of 2012 before the Special Judge, but the said petition was dismissed by the learned Special Judge on 24.05.2012 and the learned Special Judge observed that the accused need not harbor any apprehensions since the Court has already taken cognizance of the case on the charge sheet filed by the CBI. It is submitted that reasons shown for arrest of the accused are alien to Section 41(A) Cr.P.C. It is further submitted that the grounds shown in the arrest, that there is a probability and possibility of the accused interfering with the course of investigation and tampering the evidence on account of his status as a Member of Parliament and as President of a political party, are untenable. It is further submitted that mere allegations of tampering the evidence will not suffice, unless evidence is produced to substantiate the same.

68. The sum and substance of the arguments of Sri Ranjit Kumar, learned Senior Counsel for the accused, is that the FIR was issued on 17.08.2011 and A-2 was arrested on 03.01.2012 and that the accused was never called by the CBI from the date of registration of the case till the date of issuing notice u/s 41A Cr.P.C on 23.05.2012. His main submission is that the CBI Court has already taken cognizance on the first charge sheet and issued summons to the accused to appear before the Special Court for CBI Cases on 28.05.2012 either in person or through an Advocate and in the above circumstances the accused is deemed to be in the custody of the Special Court and only to prevent the accused from participating in the election campaign he was summoned by the CBI. It is also argued that challenging the said notice, the accused filed a writ petition and this Court while disposing of the said writ petition has categorically directed the CBI to act fairly and in strict compliance of Section 41A Cr.P.C. Learned senior counsel has referred to the arrest memo and submits that the apprehension of the CBI is that the accused may influence the witnesses is baseless. His main submission is that the ground that the accused may tamper or influence the witnesses only refers to future tense and on mere belief of the Arresting Officer that the accused may tamper the evidence, he cannot be arrested. It is vehemently argued that the timing of arrest of the accused clearly indicates the mala fides of the CBI. It is also submitted that though it is alleged in the remand report that the accused during the course of examination by the investigating

agency did not reveal any material facts as to his complicity in commission of the offence and information with regard to the respective roles of the remaining co-conspirators, no such allegation is made in the arrest memo. It is also argued that no person can be compelled to give a confession implicating himself and no person can be compelled to be a witness against himself under Article 20(3) of the Constitution of India.

69. Sri Harin P. Raval, learned Additional Solicitor General, has argued that A-2 and another accused Brahmananda Reddy were arrested and they were given to CBI custody and that they revealed certain vital information and in the above circumstances the accused was issued notice u/s 41A Cr.P.C. It is submitted that the accused was giving evasive replies and in the above circumstances for conducting proper investigation and to prevent him from threatening the witnesses and tampering with the evidence, the arrest of the accused became necessary. It is further argued that when the CBI confronted certain information to him, he came to know what is within the knowledge of the CBI. It is vehemently argued that huge amounts have been routed through foreign countries and again reached the companies of the accused. Mr. Raval placed the CD files before the Court and submits that the CD file reveals that certain witnesses who gave statements u/s 161(3) Cr.P.C., subsequently refused to give statements u/s 164 Cr.P.C when they were summoned for the said purpose and some of the witnesses stated that the accused influenced them. It is argued that the accused had been building pressure on the witnesses and that the investigating agency felt it difficult to complete the investigation if the accused is not arrested. It is also his submission that there are no mala fides in arresting the accused. It is also argued that, the fact that he was not arrested till three charge-sheets were filed, reveal that the CBI was acting fairly. According to him, when mala fides is alleged the same must be against the named person and specific and such person must be made as party in person to the proceedings. He has further submitted that the allegation of mala fides if vague cannot be accepted. It is also submitted that Mopidevi Venkata Ramana Rao, sitting Minister, Government of A.P., had been arrested few days before the arrest of the accused and this clearly shows that the CBI has been making investigation without coming under the influence of anybody. He has referred to Section 41(1)(b)(ii)(b) and (d).

70. Now it has to be seen whether the arrest of the accused has violated the fundamental rights guaranteed under Articles 19, 21 of the Constitution of India.

71. In support of his contentions on this point, reliance has been placed on the judgment in the case between Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, wherein, it was observed as follows:-

personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However. Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law.

72. Reliance has also been placed on the judgment in the case between Union of India and another Vs. W.N. Chadha, wherein, it was observed as follows:-

Though there are certain rights conferred on the accused to be enjoyed at certain stages under the Code of Criminal Procedure, such as Sections 50, 57 and 16, which are all in conformity with the "Right to Life" and "Personal Liberty" enshrined in Article 21 and the valuable safeguards ingrained in Article 20 of the Constitution of India for the protection of an arrestee or detenu in certain cases, but so long as the investigating agency proceeds with his action or investigation in strict compliance with the statutory provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation, as the case may be, in accordance with the provisions of the Code of Criminal Procedure.

73. Reliance has also been placed on the judgment in the case between The State of Bombay Vs. Kathi Kalu Oghad and Others, In the said case, the Apex Court, considering the meaning of "to be a witness", observed as follows:-

.....Giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness". "To be a witness" means imparting knowledge in respect of relevant fact, by means of oral statements or statements in writing, by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation.

74. It was further observed that "mere questioning of accused person by police officer resulting in voluntary statement which may ultimately turn out to be incriminatory is not "compulsion" ".

75. The Apex Court further observed as follows:-

The information given by an accused person to a police officer leading to the discovery of a fact which may or may not prove incriminatory has been made admissible in evidence by S. 27 of the Evidence Act. If the self-incriminatory information has been given by an accused person without any threat, that will not be hit by the provisions of cl. (3) of Art. 20 of the Constitution for the reason that there has been no compulsion. Thus, the provisions of S. 27 of the Evidence Act are not without the prohibition aforesaid, unless compulsion had been used in obtaining the information.

76. Therefore, the contention that the rights of the accused guaranteed under Articles 20 and 21 of the Constitution of India are being violated, has no force.

Section 41(1)(b)(ii)(b) and (d) Cr.P.C. is as follows.

41. When police may arrest without warrant:- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

a).....

b).....

ii) the police officer is satisfied that such arrest is necessary-

a).....

b) for proper investigation of the offence; or

c)

d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

Section 41A is as follows.

41A. Notice of appearance before police officer:- (1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

78. Section 41A empowers the police officer to arrest the accused when he appeared before him in pursuance of the notice issued u/s 41A where the police officer is of the opinion that the accused ought to be arrested. In the arrest memo it is mentioned by the investigating officer as follows.

I have reasonable grounds to believe that the accused person wields enormous influence by virtue of his status as a Member of Parliament and the Chief of YSR Congress Party and as such he is in a position to influence the witnesses and tamper with the evidence. Therefore, Y.S. Jagan Mohan Reddy (A-1), S/o late Dr. Y.S. Rajasekhara Reddy is placed under arrest today i.e., 27.05.2012 at 19.15 hrs for conducting proper investigation of the offence; to prevent him from causing the evidence of the offence to disappear or tampering such evidence and to prevent him from making any inducement, threat or promise to the witnesses and persons acquainted with the facts and circumstances of the case and dissuade them from disclosing such facts.

79. Thus, the reasons shown in the arrest memo of the accused are that (1) Since he is in a position to influence the witnesses and tamper with the evidence, arrest became necessary; (2) for conducting proper investigation of the offence and (3) to prevent him from causing the evidence of the offence to disappear. Since the allegations made in the FIR reveal several distinct offences and so far the investigation is completed in respect of certain offences shown in the charge sheets 1 to 3 and investigation with regard to other distinct offences is in progress, the contention of the Investigating Officer that the arrest of A-1 is necessary for conducting further investigation cannot be ignored. It is an admitted fact that recently Nimmagadda Prasad, Brahmananda Reddy and the sitting Minister Mopidevi Venkata Ramana Rao have been arrested and those circumstances show that there are no mala fides in arresting the accused and it cannot be said that the accused alone is targeted during the course of elections. As far as the allegation of tampering of evidence or influencing the witnesses is concerned, the CD file discloses that some of the witnesses refused to give statements u/s 164 Cr.P.C when summoned and some of the witnesses seem to have stated that they came under the influence of the accused.

80. It is a fact that the accused is a Member of Parliament. It is also a fact that he is the President of a Political Party. It is also not in dispute that in 18 Assembly Constituencies and one Parliamentary Constituency, elections are scheduled to be held on 12.06.2012. Of course, the time of the arrest raises a suspicion that to prevent the accused from participating in the election campaign, he was summoned and subsequently taken into custody.

81. As far as mala fides are concerned, the settled legal position is that when mala fides have been attributed, the same must be specific and against the named person. When the allegations of mala fides are vague, no credence can be given to such allegations.

82. The Apex Court while dealing with mala fides, in the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, observed as follows:

50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

83. Whatever it may be, the truth or otherwise of such allegations cannot be

verified at this stage. Since the investigation with regard to other distinct offences is in progress and for conducting proper investigation, it appears that the arresting officer is justified in arresting the accused. This point is answered accordingly.

POINT No. 7

84. The learned Special Judge, holding that the CBI has filed full fledged charge sheet and he has taken cognizance of the offences and issued summons to the accused, the remand of the accused must be only u/s 309 Cr.P.C and the accused cannot be remanded u/s 167(2) Cr.P.C. Mr. P. Raval submitted that the order of the learned Special Judge is not based on record. His main submission is that the learned Special Judge failed to understand that the investigation with regard to other distinct offences is in progress. It is further submitted that the learned Special Judge failed to appreciate the offences alleged in the three charge sheets filed by the CBI and the offences alleged in the remand report. His main submission is that when the remand report reveals distinct offences other than the offences mentioned in the charge sheet already filed, the learned Special Judge ought to have remanded the accused to judicial custody u/s 167(2) Cr.P.C.

85. Sri Susheel Kumar, learned Senior Counsel, vehemently argued that the remand report of A-1 is nothing but a copy of the remand report of A-2 filed on 03.01.2012 and that the same allegations that have been made against the accused herein were made against A-2.

86. There cannot be any doubt to say that many of the allegations made in the remand report seems to be the allegations made in the FIR and also in the remand report of A-2, but that is not the point to be considered at this stage. What is to be seen is whether the offences alleged in the remand report against A-1 are separate and distinct offences from the offences that have been alleged in the charge sheets already filed. Since the offences referred in the remand report of the accused appear to be distinct, the contention of the CBI that it is proceeding with the investigation has to be accepted. When the CBI is conducting investigation with regard to distinct offences the CBI is justified in seeking remand of the accused u/s 167(2) Cr.P.C.

87. The learned Special Judge without looking into the allegations made in the remand report came to a wrong conclusion that the CBI has filed full fledged charge sheet and remanded the accused u/s 309 Cr.P.C. The same is clearly erroneous. The CBI never stated that it was seeking the remand of the accused with reference to the offences made out in the charge sheets already filed.

88. In the circumstances, the remand of the accused shall be treated as remand u/s 167(2) Cr.P.C.

POINT No. 8

89. Learned counsel for the accused argued that FIR was issued on 17.08.2011 and nobody was arrested till 02.01.2012. According to him, A-2 alone was

interrogated for about 300 hours before his arrest and after his arrest, he was taken into police custody but, nothing could be elicited from A-2 and therefore no purpose would be served by giving the accused (A-1) to the custody of the CBI. The main contention of the learned counsel for the accused is that the CBI cannot extract confession from the accused and that the CBI cannot force the accused to be a witness against himself. The next submission is that the accused had right to maintain silence. It is also argued that since the accused is remanded u/s 309 Cr.P.C he cannot be given to CBI custody. It is further argued that the accused is Member of Parliament and President of Political Party and that the purpose of the CBI appears to be mala fide and if he is given to CBI custody, the accused would be put to harassment and the CBI may misuse the custody. Mr. Raval submitted that the CBI has been making fair investigation and the accused did not cooperate with the CBI when he appeared in pursuance of the notice issued u/s 41A and that the investigation with regard to other distinct offences in progress and that the facts as to how huge amounts have been routed through, have to be confronted. It is submitted that the CBI never intended to extract any confession from the accused nor CBI intends to ask the accused to be a witness against himself and the question of harassing him does not arise. It is submitted that the accused was arrested on 27.05.2012 and he made an endorsement on the arrest memo protesting the arrest and stating that since he received summons from the Special Court, he cannot be arrested. It is contended that the accused never complained in his endorsement on arrest memo or when he was produced before the Special Judge on 28.05.2012 that he was ill-treated by the CBI. Thus, it is argued that the apprehensions of the learned counsel for the accused are baseless.

90. It is also not in dispute that no person can be forced to be a witness against himself, but however, the CBI has a right to seek custody of the accused for making investigation. It has to be seen that the CBI arrested Nimmagadda Prasad, Brahmananda Reddy and Mopidevi Venkata Ramana Rao, the sitting Minister recently and claims that certain facts as to how Rs. 846 Crores routed through and ultimately reached the companies of A-1 have to be verified. The CBI claims that they have certain information from Nimmagadda Prasad and Brahmananda Reddy and the same has to be confronted with the accused.

91. It appears that the CBI is justified in making further probe and the investigating agency has a right to take the accused into custody for the purpose of investigation u/s 167(2) Cr.P.C. The right of investigating agency to take the accused into their custody for the purpose of investigation, particularly, in the offence of like this nature cannot be scuttled and this Court is not inclined to curtail the right of investigating agency in proceeding with the investigation to elicit the truth or the links or the ways as to how huge amounts of money have been routed through from one company to another or from one country to other country and how it ultimately reached the companies of A1. When highly influential persons having money or muscle power are involved it will be difficult task for investigating agency to unearth the truth. There cannot be any doubt to

say that the accused (A-1_ has a right to maintain silence. He cannot be compelled to be a witness against himself. Any confession extracted by the police is inadmissible in law. Sections 25, 26 and 27 of the Evidence Act, protects the interest of the accused. The only exception is Section 27 of the Indian Evidence Act., i.e., only the information leading to discovery of a fact. It is often alleged that the police misuse their powers and accused are tortured and harassed during police custody. I hope and trust that the police would come out of this criticism. Every person even if he is alleged to have committed an offence is basically a human being and has to be treated with dignity. No person should be unnecessarily harassed or tortured.

92. Learned counsel for the accused relied on the judgment of the Apex court in the case between Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, in support of his contention that a person can be deemed to have been surrendered to the police when he offers some information leading to discovery u/s 27 of the Indian Evidence Act, 1973 and since the accused appeared before the CBI in pursuance of the notice issued u/s 41A Cr.P.C., he cannot be given to CBI custody. In the above referred case, their Lordships" were dealing with the issue of grant of anticipatory bail to the accused and observed as follows:-

An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person released on bail.

93. In that case, an anticipatory bail application of the accused was opposed on the ground that police custody u/s 167(2) Cr.P.C. was sought. The Apex Court, referring to the principal laid down in the case between State of U.P. Vs. Deoman Upadhyaya, wherein, it was observed that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed to have surrendered himself to the police. It was however, observed that the broad foundation of this rule is stated to be that Section 46 of the Cr.P.C. does not contemplate any formality before a person can be said to be taken in custody : submission to the custody by word or action by a person is sufficient.

94. In the instant case, it is not the case of the accused that he himself approached the CBI and offered to give information leading to discovery of facts.

95. For the same preposition, learned counsel for the accused has also relied on the judgment of the Madras High Court in the case between State by Deputy Supdt. of Police, "Q" Branch CID Vs. Sundaramoorthy,

96. Reliance has also been placed on the judgment in the case between Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, . In this decision, it was held that the police custody can be given for a period of first fifteen days of judicial custody. It was also held that since investigation is completed and only for the purpose of knowing the particulars of

the absconding accused, the accused cannot be remanded to the police custody. In that case, investigation was completed. The purpose for seeking custody was different. So, on facts, the said judgment appears to be not applicable to the facts of the case on hand.

97. We cannot forget the fact that economic offences destroy the economic fabric of this Country and all such offences have to be dealt with iron hand. Not only fair and proper investigation has to be done, but honest investigation has to be done in depth and all ill-gotten wealth, wherever it is hidden in any form i.e., either in the form of shares, currency, gold, diamonds etc., have to be unearthed and all ill-gotten wealth must be confiscated in the interest of the nation. When millions of poor people are suffering with hunger and millions of youth with unemployment and the entire economy of the country is shattered by economic offences of huge magnitude, such economic offences cannot be compared with ordinary offences. In fact, they have to be treated separately. In fact, the Central Government should consider their aspect seriously and enact necessary laws or amend the existing laws.

98. In view of the above, it should be held that the accused can be given to CBI custody.

99. Before parting with this judgment, I am inclined to observe as follows:-

1. I am in complete agreement with the suggestions of Sri Susheel Kumar, learned senior counsel that where several distinct offences have been reported, the investigating agencies should issue separate FIRs u/s 154(1) Cr.P.C.

2. I am also in agreement with his argument that the accused should be entitled to bail u/s 167(2)(i) Cr.P.C. wherein in a case, the police fail to file report u/s 173(2) Cr.P.C., within stipulated period.

3. It is also made clear that wherein a case the accused involved in several distinct offences which are within the knowledge of investigating agency, his arrest must be shown in all such distinct offences, i.e., he is deemed to have been arrested in all such cases.

4. If the investigating agency file the report u/s 173(2) Cr.P.C. in some distinct offences, but fails to file in some other distinct offences, the accused would be entitled to bail in all other cases in which, report u/s 173(2) Cr.P.C. is not filed.

5. All political parties should have equal opportunities to participate in election campaigns and propaganda and no one should be unnecessarily arrested and harassed, except, where in, his arrest is bonafidely required for the purpose of investigation.

6. Necessary steps have to be taken to remove the feeling that the police will torture the accused in the police custody.

7. The CBI should do honest investigation and they should never allow a situation which gives an impression that they are not acting bonafidely. They

must find out all the details as to how the entire ill-gotten money routed and reached the ultimate destiny.

8. Great responsibility lies on all those leaders who are at the helm of the affairs and who decide the destiny of this great Nation and people to see that investigating agencies like CBI and ACB work honestly and independently.

9. It is for the Parliament to make necessary laws or amendments to the present laws for investigating the economic offences and to confiscate the entire ill-gotten money to the State so that the same is used for education, health etc., of the people of the Country and for the development of this great Nation.

POINT No. 9

100. In the result, Criminal Petition No. 4743 of 2012 filed by C.B.I. seeking custody of the accused-A.1 is allowed and the accused-A.1 shall be given to C.B.I. custody for a period of five (5) days from 03.06.2012 to 07.06.2012 from 10:30 a.m. to 5:00 pm every day. The other conditions imposed by the Principal Special Judge for C.B.I. Cases, Hyderabad while giving A.2 to C.B.I custody shall be followed by the C.B.I. in respect of the accused-A.1 also.

101. Similarly, Criminal Petition No. 4744 of 2012 filed by C.B.I., stands allowed as prayed for holding that the remand of the accused A.1 shall be treated as remand u/s 167(2) of Cr.P.C.

102. Consequently, W.P.No.16128 of 2012 and Criminal Petition Nos.4593, 4594, 4742, 4768, 4769, 4770, 4771, 4772 and 4773 of 2012 stand dismissed. As a sequel, all the miscellaneous petitions, if any, filed in all these petitions, shall stand closed.