
(2021) 11 TEL CK 0062
In the Telangana High Court
Case No : Criminal Petition No. 5381 Of 2016

M/S.Hetero Group Of Companies A4	APPELLANT
Vs	
State Of Telangana	RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 173(2), 190, 190(1)(b), 200, 204, 228, 397, 468, 482
Indian Penal Code, 1860 — Section 107, 120A, 120B, 409, 415, 420, 477A
Prevention of Corruption Act, 1988 — Section 2(b), 12, 13(1)(c), 13(1)(d), 13(2)
Companies Act, 1956 — Section 209, 211
Evidence Act, 1872 — Section 10

Citation : (2021) 11 TEL CK 0062

Hon'ble Judges : Dr. Shameem Akther, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This Criminal Petition, under Section 482 of Criminal Procedure Code, 1973, is filed by the petitioners/A-4 and A-6, seeking to quash the proceedings against them in C.C.No.8 of 2012 on the file of the Principal Special Judge for CBI Cases, Hyderabad (arising out of FIR No.RC.19(A)/2011-CBI/Hyd, dated 17.08.2011, of CBI, ACB, Hyderabad), wherein, cognizance was taken against the petitioners/A-4 and A-6 for the offences punishable under Sections 120B read with 420 of IPC.

2. Heard the submissions of Sri T.Niranjan Reddy, learned senior counsel appearing for Sri T.Nagarjuna Reddy, learned counsel for the petitioners/A-4 and A-6, Sri K.Surender, learned Special Public Prosecutor for CBI appearing for the sole respondent and perused the record.

3. Learned senior counsel appearing for the petitioners/A-4 and A-6 vehemently contended that the Court below took cognizance against the petitioners/A-4 and A-6 for the alleged offences in a highly mechanical fashion, without adverting to the material placed on record. No valid reasons were recorded in the cognizance

order, which shows clear non-application of mind by the Court below, and as such, the cognizance order is vitiated. The petitioner/A-4 is a Company and the petitioner/A-6 is its Director. The petitioner/A-4, being a 'juristic person' and a 'corporate entity', cannot be charged with the offence of criminal conspiracy under Section 120B of IPC. The allegations in the subject charge-sheet are entirely against the petitioner/A-4 company, which is a corporate entity. The petitioner/A-6 is only a Director and has no personal role to play in taking decisions unilaterally for and on behalf of the petitioner/A-4 company. No vicarious liability for the offences under the Penal Code can be cast upon the Chairman and Managing Director of a company or its Directors, when the accused is alleged to be a company. The allegations in the subject charge-sheet are based on surmises and conjectures and not substantiated by any evidence. There is no iota of material on record to indicate that there was any deceptive intention on the part of the petitioners/A-4 and A-6 at the inception to cheat the State exchequer and as such, there is no prima facie material to attract the provisions of section 420 of IPC. Except making a bald allegation that the petitioners/A-4 and A-6 conspired with A-9 (the then Managing Director of APIIC) and got allotted 75 acres of land at Jadcherla for lesser consideration, there is no material to substantiate the same. The Prize Fixation Committee was constituted to fix the price of the land for 'outright sale on free hold basis' and the said Committee was not competent to determine the lease amount for the lands leased under Special Economic Zones Act, 2005 (for short, 'SEZ Act') and the Rules made thereunder. The subject land was leased to the petitioner/A-4 company by strictly following the statutory procedure prescribed under SEZ Act and the Rules made thereunder. There is no quid pro quo arrangement as alleged. The investments made by petitioner/A-4 company are genuine investments and there is no wrongful gain to the petitioner/A-4 company and corresponding loss to the State Exchequer as alleged. Further, there is no single averment in the charge-sheet that the investments made by the petitioners/A-4 and A-6 in A-1's companies are not genuine investments. The petitioners/A-4 & A-6 are falsely implicated in this case, due to political ramifications. Further, the investigation conducted by CBI is unfair, inasmuch as the CBI failed to segregate the genuine investors, as directed by a Division Bench of this Court in W.P.Nos.794 and 6604 of 2011. Right to fair investigation is a fundamental right and the petitioners/A-4 and A-6 cannot be deprived of the same. It is the bounden duty of the investigating authority to produce all the documents during the investigation, enabling the Court to come to a just conclusion. In the instant case, the investigating authority wantonly withheld the crucial documents, without producing the same before the Court. The petitioner/A-4 company is an 'anchor investor', selected by Central Government under the SEZ Act. Though it is alleged by CBI that the subject land was 'allotted' to the petitioner/A-4 company, but in fact, the subject land was given on 'lease' on 'as is and where is basis' and the petitioner/A-4 company invested huge money for development of the subject leased land, established companies and provided employment to 1100 unemployed persons. The petitioner/A-4 company is getting millions of

foreign money for their investigations in Hyderabad and in fact, it lost several international bids because of this case. Further, it is the discretion of the company, which is running in profits, to invest money in any company of their choice and in any event, it would not amount to commission of offence. The investments made by petitioner/A-4 company in A-1's companies cannot be termed as bribe. There is no fraudulent or dishonest intention on the part of petitioner/A-4 company to constitute offence under Section 420 of IPC. Further, there is no illegality in leasing out the subject land to the petitioner/A-4 company. At the most there can be procedural violations, which, in any event, would not vitiate the entire lease of the subject land. Though as many as four Governments have changed from the date of the lease of the subject land, no Government, at any point of time, either cancelled the lease or taken back the leased land. The learned senior counsel, taking this Court through the statements of several witnesses recorded by the CBI in the subject Calendar Case, particularly the statements of L.W.82 and L.W.83, which are crucial according to him, would submit that nothing is elicited from the statements of the said witnesses as regards the alleged conspiracy between the petitioners/A-4 and A-6, A-1 and his late father, in relation to lease of subject land. The petitioner/A-6 is a respectable person in the society and he is falsely implicated in the subject case and ultimately prayed to allow the Criminal Petition as prayed for. In support of his contentions, the learned senior counsel had placed reliance on the following decisions.

1. Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others (1976) 3 Supreme Court Cases 736.
2. State of Haryana Vs. Ch.Bhajan Lal and others AIR 1992 Supreme Court 604.
3. Pepsi Foods Ltd and another Vs. Special Judicial Magistrate and others (1998) 5 Supreme Court Cases 749.
4. Inder Mohan Goswami and another Vs. State of Uttaranchal and others (2007) 12 Supreme Court Cases 1.
5. Chandran Ratnaswami Vs. K.C.Palanisamy and others (2013) 6 Supreme Court Cases 740.
6. Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and others (2015) 12 Supreme Court Cases 420.
7. Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and another (2017) 7 Supreme Court Cases 760.
8. GHCL Employees Stock Option Trust Vs. India Infoline Limited and others (2013) 4 Supreme Court Cases 505.
9. Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Chcrian and others (2014) 2 Supreme Court Cases 62.
10. S.R.Sukumar Vs. S.Sunaad Raghuram (2015) 9 Supreme Court Cases 609.

11. Maksud Saiyed Vs. State of Gujarat and others (2008) 5 Supreme Court Cases 668.
12. S.K.Alagh Vs. State of Uttar Pradesh and others (2008) 5 Supreme Court Cases 662.
13. Keki Hormusji Gharda and others Vs. Mehervan Rustom Irani and another (2009) 6 Supreme Court Cases 475.
14. Maharashtra State Electricity Distribution Company Limited and another Vs. Datar Switchgear Limited and others (2010) 10 Supreme Court Cases 479.
15. Sunil Bharti Mittal Vs. Central Bureau of Investigation (2015) 4 Supreme Court Cases 609.
16. N.Srinivasan Vs. State of Telangana and another 2017 (1) ALD (CrI.) 413.
17. Matilal Chakravorthy Vs. The King AIR 1949 Calcutta 586.
18. Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi (2003) 5 Supreme Court Cases 257.
19. Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another (2000) 4 Supreme Court Cases 168.
20. International Advanced Research Centre for Powder Metallurgy and new materials (ARCI) and others Vs. Nimra Cerglass Technics Private Limited and another (2016) 1 Supreme Court Cases 348.
21. V.P.Shrivastava Vs. Indian Explosives Limited and others (2010) 10 Supreme Court Cases 361.
22. Ajay Mitra Vs. State of M.P. and others (2003) 3 Supreme Court Cases 11.
23. Bhagwan Swarup Lal Bishan Lal Vs. State of Maharashtra AIR 1965 Supreme Court 682.
24. Central Bureau of Investigation Vs. K.Narayana Rao (2012) 9 Supreme Court Cases 512.
25. Arun Kumar Agrawal Vs. Union of India and others (2013) 7 Supreme Court Cases 1.
26. Pathan Mohammed Suleman Rehmatkhan Vs. State of Gujarat and others (2014) 4 Supreme Court Cases 156.
4. Per contra, the learned Special Public Prosecutor for CBI would contend that a scheme was formulated by A-1 and A-2 in the subject C.C. to collect bribes from various persons and companies under the guise of investments in A-1's companies and in turn extend undue benefits to them by using the official position of father of A-1, the then Chief Minister of Andhra Pradesh. There is illegal gain to A-1's companies and also to the other accused in this case.

Further, the prosecution case is based on oral and documentary evidence. The role of each and every accused cannot be read in isolation. The circumstances of the case are required to be read as a whole and the burden is on the prosecution to prove the circumstances. It would suffice for the prosecution to come up with circumstances, which show that there is a strong suspicion to proceed against the accused. In the instant case, the role of the petitioners/A-4 and A-6 cannot be read in isolation. As per the Inspection Report of Hetero Healthcare Limited submitted by the Government of India, the Articles of Association of M/s.Jagati Publications Limited (A-12) contain prohibitive clauses regarding transferability of shares, whereunder, the Board of M/s.Jagati Publications Limited can decline any transfer, without assigning any reason, except such transfer is in between the family members. With utter disregard to the said clause, shares were sold to outsiders at an exaggerated premium. Without investing a single rupee, an amount of Rs.1246 crores was received by M/s.Jagati Publications Limited towards issuance of shares, which, in fact, was subscribed totally by the outsiders. Further, as per Section 2(b) of Prevention of Corruption Act, 1988 (for short, 'PC Act'), 'public duty' means a duty in the discharge of which the State, the public or the community at large has an interest. There is absolutely no public duty involved in extending undue governmental benefits by the then Chief Minister of Andhra Pradesh to selected persons, who have invested money in the companies floated by his son (A-1). Further, none of the circumstances narrated by the prosecution were disputed by the petitioners/A-4 and A-6. When the prosecution has come up with a case which raises strong suspicion with regard to quid pro quo arrangement viz., extending undue governmental benefits to the petitioners/A-4 and A-6 causing wrongful loss to the State exchequer in lieu of their investments in the companies belonging to A-1, it should be given a chance to adduce evidence to prove its case, which can only be done at the trial of the case. In order to substantiate/validate the so-called investments made by the petitioners/A-4 and A-6 in A-12 company, A-2, who is one of the key conspirators, got prepared an ante-dated report from M/s.Delloitte Touche Tohmatsu India Private Limited with the projections provided by him, A-1 and A-13. The companies which invested money in the companies of A-1 were unduly benefited in one way or the other. Further, the petitioner/A-6, as a Director of petitioner/A-4-Hetero Group of companies, has been participating in the day-to-day affairs of the said group of companies. The petitioner/A-6, in furtherance of criminal conspiracy, got allotted 75 acres of SEZ land at Jedcherla, at a relatively lower rate of Rs.7 lakhs per acre than the price fixed by the Prize Fixation Committee, in gross violation of rules and procedures, resulting in wrongful gain of Rs.8.60 crores to him and his company and corresponding wrongful loss to the State Exchequer. As a quid pro quo to the said undue benefit, the petitioners/A-4 and A-6 invested an amount of Rs.19.50 crores in A-12 and A-13 companies belonging to A-1. All the transactions in question cannot be isolated and confined to the mere acts of the petitioners, but the prosecution case has to be looked into as a whole, which prima facie makes out the offences alleged against the accused. At the stage of

discharge, the Court should not make a roving enquiry into the pros and cons of the matter and weigh the evidence, as if it is conducting a trial. The only aspect which is required to be considered in a petition filed under Section 482 of Cr.P.C., is that on a plain reading of the averments in the charge-sheet and the documents submitted by the investigating agency, whether a prima facie case is made out against the alleged accused or not. Filing of this petition under Section 482 of Cr.P.C., is only a premature attempt by the petitioners/A-4 and A-6 to escape from penal liability. Conspiracies are not hatched in open. By their nature, they are secretly planned and they can be proved by circumstantial evidence. Lack of direct evidence relating to conspiracy has no consequence. The inherent jurisdiction of the High Court under Section 482 of Cr.P.C. is very limited, which can only be exercised in a proper case, either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The Court below rightly took cognizance against the petitioners/A-4 and A-6 for the alleged offences, after considering the material placed before it and after satisfying that there is prima faice case to proceed against the petitioners/A-4 and A-6. All the procedures and guidelines were strictly followed in filing the charge-sheet before the Court below. The Hon'ble Supreme Court, in catena of decisions, deprecated the practice of staying criminal trials and police investigations, except in exceptional cases. The present case do not fall under exceptional cases, where the inherent power under Section 482 Cr.P.C. can be exercised in favour of the petitioners/A-4 and A-6. The submissions made on behalf of the petitioners/A-4 and A-6 does not merit consideration. There are no circumstances to quash the proceedings against the petitioners/A-4 and A-6 and ultimately prayed to dismiss the Criminal Petition. In support of his contentions, the learned Special Public Prosecutor relied on the following decisions.

1. State of H.P. Vs. Krishan Lal Pardhan and others 1987 Criminal Law Journal 709.
2. Ram Narain Poply Vs. Central Bureau of Investigation and others 2003 Criminal Law Journal 4801.
3. State of Tamil Nadu Vs. Mariya Anton Vijay and others (2015) 9 Supreme Court Cases 294.
4. State of Tamil Nadu Vs. J.Jayalalitha (2000) 5 Supreme Court Cases 440.
5. Amit Kapoor Vs. Ramesh Chander and another (2012) 9 Supreme Court Cases 460.
6. Rajat Prasad Vs. Central Bureau of Investigation (2014) 6 Supreme Court Cases 495.
7. B.Venkat Swamy Vs. Vijaya Nehru and another (2008) 6 Supreme Court Cases 260.

5. In reply, the learned senior counsel appearing for the petitioners/A-4 and A-6 would submit that there is no vicarious liability in criminal law. The investigation

conducted by CBI in the instant case is unfair and attended with malice and the same is perfunctory. The investigating authority deliberately omitted certain facts to take into consideration and filed the charge-sheet. Cognizance was taken against the petitioner/A-6 basing on vicarious liability. The petitioner/A-6 is only a Director of petitioner/A-4 company and he cannot be held vicariously liable. Further, statutory provisions of SEZ Act have not been disputed by the learned Special Public Prosecutor. Right to fair trial precedes right to fair investigation.

6. In view of the above rival contentions, the points that arise for determination in this Criminal Petition are as follows:

1. Whether there is sufficient material evidence to proceed against the petitioners/A-4 and A-6 in the subject Calendar Case No.8 of 2012?
2. Whether the Court below is justified in taking cognizance against the petitioners/A-4 and A-6 in the subject Calendar Case No.8 of 2012 for the offences punishable under Sections 120B r/w 420 of IPC?
3. Whether continuation of proceedings against the petitioners/A-4 and A-6 would amount to abuse of process of Court and whether the proceedings against the petitioners/A-4 and A-6 in the subject Calendar Case can be quashed as sought for, in the interest of justice?

POINT Nos.1 to 3:-

7. The submissions made by learned counsel for both sides as well as the material placed on record reveals that pursuant to the common order, dated 10.08.2011, passed by the erstwhile High Court of Andhra Pradesh in W.P.No.794 of 2011 filed by Mr.P.Shankar Rao, the then MLA, Secunderabad Cantonment, and W.P.No.6604 of 2011 filed by Mr.K.Yerrannaidu and two others, the Central Bureau of Investigation (CBI) registered a Crime in RC 19(A)/2011-CBI/HYD on 17.08.2011, against Sri Y.S.Jagan Mohan Reddy, the then Member of Parliament, Kadapa, and 73 others, for the offences punishable under Sections 120B, 420, 409 & 477A of IPC and Section 13(2) r/w 13(1)(c)&(d) of PC Act. The petitioner/A-4 is M/s.Hetero Group of Companies (M/s.Hetero Drugs Limited and M/s.Hetero Labs Limited) and the petitioner/A-6 is the Director of petitioner/A-4 group of companies in the subject Calendar Case No.8 of 2012. The main allegations against them are that they conspired with the other accused in the subject C.C. and got allotted an extent of 75 acres of land at Jadcherla, at a low cost of Rs.7 lakhs per acre as against the cost of Rs.15 lakhs per acre fixed by Price Fixation Committee, which resulted in wrongful gain to the petitioner/A-4 company and corresponding wrongful loss to the State Exchequer. The petitioners/A-4 and A-6 invested Rs.19.50 crores in A-12 (M/s.Jagati Publications Private Limited) and A-13 (M/s.Janani Infrastructure Private Limited) companies, belonging to A-1 (Mr.Y.S.Jagan Mohan Reddy), who prevailed upon his father (the then Chief Minister of Andhra Pradesh) to extend the undue benefit to petitioners/A-4 and A-6.

8. There is record to show that the then Andhra Pradesh Industrial Infrastructure Corporation (APIIC) acquired land admeasuring 954 acres situated at Jadcherla Village, to develop it as 'Green Industrial Park' (GIP). The Vice-Chairman and Managing Director of APIIC (A-9) obtained approval from the then State Government and submitted proposals to the Ministry of Commerce, Government of India, for development of Special Economic Zone ('SEZ') in an extent of 250 acres out of the acquired land. Vide proceedings, dated 27.10.2006, the Government of India gave formal approval on certain terms and conditions and the APIIC accepted the same on 14.11.2006. The Price Fixation Committee, in its meeting held on 13.07.2006, after examining the information furnished by the Zonal Office, Shamshabad, Engineering Department and Finance Department etc., fixed the price at Rs.15 Lakhs per acre, with validity till 31.12.2006. A-9 approved the said proposal on 14.08.2006. At a later point of time, the Price Fixation Committee revised the land cost to Rs.20.235 lakhs per Acre. On 17.11.2006, the petitioner/A-6, Director of petitioner/A-4 company, along with A-7 (Managing Director of M/s.Aurobindo Pharma Limited), addressed letters to APIIC requesting for allotment of 75 acres of land to each company @ Rs.7 lakhs per Acre. A-9, by abusing his official position, in order to facilitate the companies, on the same day i.e., 17.11.2006, processed the letters of the two companies. Though a note file was put up indicating the price @ Rs.15 Lakhs per acre as fixed by the Price Fixation Committee, in view of instructions given by the then Chief Minister, the land value for these two companies was finalized @ Rs.7 lakhs per acre and offer letters were issued in the name of A-3 and petitioner/A-4 companies for allotment of 75 Acres of land each, on lease basis, at a lease premium of Rs.7 lakhs per acre and annual lease rental was fixed @ 1%. A-9 signed the offer letters on the same day and by abusing his official position and breach of trust, personally took those letters to the then Chief Minister, who in turn, handed over those letters to the parties on the same day. A-9 signed the note in confirmation of his decision on 18.11.2006, i.e., on the next day of handing over the offer letters to the A-3 and petitioner/A-4 showing allotment of 75 acres of land to each company. Though M/s.Lee Pharma Limited approached APIIC for allotment of land in SEZ on 13/14.11.2006, its application was not processed along with the applications of A-3 and petitioner/A-4 companies. A-3 company paid entire lease premium amount of Rs.5.25 crores for 75 acres of land by March 2007, whereas, the petitioner/A-4 company paid Rs.3,88,75,000/- only. On 13.06.2007, the Ministry of Commerce, Government, issued Gazette Notification for Pharmaceutical Formulation SEZ for 250 acres of land. Mr.T.L.Ramachandran (LW-3), the then Chief General Manager (Projects), APIIC, indicated in the note file to allot 75 acres of land to A-3 and to restrict allotment of land of 50 acres only to the petitioner/A-4 company, since they paid the amount equivalent to the said extent only. Accordingly, on 19.07.2007, letter allotting 50 acres of land was issued in favour of the petitioner/A-4 company. By enclosing cheque for balance amount, the petitioner/A-6, the Director of petitioner/A-4 company, vide letter, dated 01.08.2007, requested for allotment of 75 acres of land. Accordingly, revised allotment letter was issued on 26.10.2007

allotting 75 acres of land to the petitioner/A-4 company. A-9 allotted huge extents of land of 75 acres each to A-3 and petitioner/A-4 companies, without proper assessment of requirement of land, on the pretext that extents and rates were decided by the then Chief Minister. The Audit Enquiry Report, dated 23.10.2008, observed that due to allotment of land at arbitrary rates without considering the rate fixed by the Price Fixation Committee from time to time, it has resulted in undue benefit to the allottees and corresponding loss of Rs.6,13,13,850/- by each of the companies to APIIC, which is a Governmental organization. It clearly establishes quid pro quo arrangement between the petitioners/A-4 and A-6 and A-9 and the then Chief Minister, at the instance of A-1 and A-2. Further, the proposal for development of SEZ was kept in dark by not publishing in newspapers, as stipulated in APIIC regulations, with a view to show undue favour to A-3 and petitioner/A-4 companies. After obtaining formal approval from SEZ, the requests of A-3 and petitioner/A-4 companies were considered without assessment of their requirement of land. Without any basis, the rate per acre was cut down to half of the price, i.e., Rs.7 Lakhs per acre as against Rs.15 lakhs per acre (fixed to encourage Anchor Units for 50 Acres or till 31.12.2006), which was further revised to Rs.20.235 Lakhs per acre, with effect from 01.01.2007. The allotments and rates in respect of A-3 and petitioner/A-4 companies were decided by A-9 at the instance of the then Chief Minister, in gross violation of the procedure contemplated. The price per acre in respect of other allotments was decided by Plot Allotment Committee as per the rates fixed by the Price Fixation Committee. Allotment of lands by violating the existing norms, regulations etc., and deliberately reducing the price per acre on the plea that the allotments were made on "as is where is basis" caused wrongful gain to A-3 and petitioner/A-4 companies to a tune of Rs.8.60 Crores each and corresponding loss to APIIC, and in furtherance of criminal conspiracy, A-9 committed criminal breach of trust by allotting the lands to A-3 and petitioner/A-4 companies in gross violation of rules and regulations. In view of favour extended by A-9 and the then Chief Minister, the petitioner/A-4 group of companies have invested an amount of Rs.19.50 crores in A-12 and A-13 companies belonging to A-1, who is the son of the said Chief Minister. For the said investment of Rs.19.50 crores, A-12 and A-13 companies have issued several share certificates on various dates for whooping premiums in the names of various companies belonging to the petitioner/A-4 group of companies.

9. There is also material evidence to show that though M/s.Jagadisan and Company and M/s. Deloitte company have valued A-12 company, but they have not suggested any premium per share and A-12 company, on their own, have fixed the share premium at Rs.350/- without any rationale and with an intention to solicit huge investments, though the said company was yet to commence business and make profits. A-2, one of the key conspirator, had approached M/s.Delloitte Touche Tohmatsu India Private Limited, and got valued A-12 company at a very high value and got prepared an ante-date report, thereby created a falsified report. The main object of A-1 and A-2 is to

accept bribes in the name of investments from various companies and persons for extending undue official favours to them by prevailing upon the then Chief Minister, who is the father of A-1. There is no equity base for A-12 company. The total project cost and the means of finance envisaged were also not specified by A-12 company. Further, there was no shareholder agreements, detailing the rights of the investors like anti-dilution protection and pre-emptive rights etc., which are standard safeguards for investment in an unlisted company. Further, there was no agreement, a defined dividend policy, or any other form of returns for the investors. Hence, investing huge amount in such a company is nothing but bribing them for deriving undue benefits in another form. Thus, the material evidence on record demonstrates that the petitioners/A-4 and A-6, in criminal conspiracy with the then Chief Minister and A-9, got allotted 75 Acres of land each at SEZ, Jadcherla, without following rules and regulations at a price, which is much below the rate fixed by Price Fixation Committee, and thereby wrongfully gained an amount of Rs.17.20 Crores and caused corresponding wrongful loss, i.e., Rs.17.20 Crores to the State Exchequer.

10. The material on record further reveals that the report of M/s.Jagadisan & Company was ante-dated as 12.07.2007 at the instance of A-2, which was actually completed in the month of January, 2008. The main reason for ante-dating the report was to justify the high premiums already received by A-12 company. The petitioner/A-4 company invested a total of Rs.15 crores in A-13 company and Rs.4.50 crores in A-12 company. As on the date of first instalment of investment of Rs.2 crores in A-13 company, the petitioner/A-4 company had sufficient balance to invest almost the entire amount of Rs.15 crores, had it been a genuine investment, the petitioner/A-4 would have invested the entire amount. Further, as on the date of first instalment of investment of Rs.1 crore in A-12 Company, the petitioner/A-4 company had sufficient balance to invest the total amount of Rs.4.50 crores. However, the investments were specifically made on the dates during which, the proposal for allotment of 75 acres of land was under process. Though A-12 company was not making any profits, it did not make any attempt to withdraw the money, which indicate that the money invested was towards bribe and the investor company did not expect any returns/profits. A-1 accepted illegal gratification, under the guise of investments in his companies, influenced his father who was the then Chief Minister, for the purpose of doing official favour by abusing his official position for getting the land allotted in SEZ by flouting the established norms and thereby unduly benefitting the investor companies.

11. There is also material to show that though Rs.5.25 crores was paid by the petitioner/A-4 company to A-13 company by 07.08.2007, shares (2,45,535) were allotted on 13.03.2008, i.e., after a gap of seven months from the date of remittance of Rs.5.25 crores. The petitioner/A-4 company did not bother to get share certificates immediately after payment of Rs.5.25 crores. It waited for seven months to get the share certificates, which indicates that the investor company was not having any interest to procure the share certificates as well

as profitability of investment. The petitioner/A-4 company's entire free reserves were to the tune of Rs.182 crores as on 31.03.2006 and was locked up as a net working capital to the tune of Rs.234 crores and the company's indebtedness as on 20.07.2006 stood at Rs.144 crores and at that stage, the company required full liquidity, hence the investment of Rs.6.75 crores cannot be categorized as a bona fide investment. Further, the payment is not in accordance with the Memorandum of Association of the company and ultra vires the power of the company. There are gross violations of several provisions of Companies Act on the part of petitioner/A-4 group of companies in the process of the so-called investments. The petitioner/A-4 group of companies has not received any invitation from A-12 and A-13 companies regarding allotment of shares. The available financial resources considering the bank borrowings and repayment burden comes to nil and hence, the investment of Rs.9.5 crores by M/s. Hetero Labs (one of the petitioner/A-4 group of companies) cannot be treated as a genuine investment. Further, the investment cannot be treated as genuine investment as the same was not meant for the promotion of the objectives or to secure high dividend and thereby corporate powers were abused. The investment of Rs.1 Crore by M/s.Hetero Healthcare Limited (one of the petitioner/A-4 group of companies) cannot be categorized as a bona fide investment, as the said company suffered cash losses during the years 2006-2007 and 2007-2008 respectively. The investments prima facie do not appear in the nature of investment and thus violative of Sections 209 and 211 of Companies Act, as the accounts do not represent true and fair view. In the statements of one Mr.E.Surya Narayana Reddy (L.W.82), the Investigating Agency found that the petitioner/A-6 and A-7 used to meet the then Chief Minister at his Camp Office for the benefits received and that A-1 and A-2 were present during such meetings, which would clearly establish criminal conspiracy in the quid pro quo dealings between the said accused.

12. Several contentions were raised by the petitioners/A-4 and A-6 in support of their case. Before proceeding further, it is apt to discuss the decisions relied by the learned senior counsel for the petitioners/A-4 and A-6. Learned senior counsel, while highlighting the scope of Section 482 of Cr.P.C, relied on Smt.Nagawwa's case (1 supra), Bhajan Lal's case (2 supra), Pepsi Foods Ltd's case (3 supra), Inder Mohan Goswami's case (4 supra), Chandran Ratnaswami's case (5 supra), Mehmood Ul Rehman's case (6 supra) and Mahendra Singh Dhoni's case (7 supra). The purport of the principles laid down in all these decisions is that where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, the proceedings against the accused can be quashed or set aside. There cannot be any dispute with regard to the said preposition of law. Further, the principles laid down in the above mentioned judgments is nothing but reiteration of the law laid down by the Hon'ble Apex Court in Bhajan Lal's case (2 supra).

13. On the aspect of taking cognizance of the matter, learned senior counsel

appearing for the petitioners/A-4 and A-6 relied on GHCL Employees Stock Option Trust's case (8 supra), Sarah Mathew's case (9 supra), and S.R. Sukumar's case (10 supra). In GHCL Employees Stock Option Trust's case (8 supra), it was held that that summoning of accused in a criminal case is serious matter, hence, criminal law cannot be set into motion as a matter of course; the order of Magistrate summoning the accused must reflect that the learned Magistrate has applied his mind to the facts of the case and the law applicable thereto; the Magistrate has to record his satisfaction with regard to existence of prima facie case on the basis of specific allegations made in the complaint and enclosures made thereto. In Sarah Mathew's case (9 supra), it was held that sectional headings have a limited role to play in the construction of statutes; for computing period of limitation under Section 468 of Cr.P.C. the relevant date is that of filing of the complaint and not the date when cognizance is taken; although penal statutes must be strictly construed, however, looking to the legislative intent, the provisions of Chapter XXXVI of Cr.P.C., have been harmoniously construed, so as to strike a balance between the right of the complainant and the right of the accused; Chapter XXXVI of Cr.P.C. is part of the Criminal Procedure Code, which is a procedural law, and it is well settled that procedural laws must be liberally construed to serve as the handmaid of justice and not as its mistress. In S.R. Sukumar's case (10 supra), it was held that 'cognizance' has a reference to the application of judicial mind by the Magistrate; under Section 200 of Cr.P.C., when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith; it is neither practicable nor desirable to define as to what is meant by taking cognizance; whether the Magistrate has taken cognizance of the offence or not will depend upon the facts and circumstances of particular case.

14. There cannot be any dispute with regard to the law laid down in the aforementioned decisions on the aspect of taking cognizance of the matter. However, it is equally settled law that at the time of taking cognizance of offence(s), the Court has to consider only the averments made in the complaint or in the charge-sheet filed and that it is not open for the Court to sift or appreciate the evidence at that stage, with reference to the material, and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is also well settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only required to be satisfied that there are sufficient grounds for proceeding against the accused.

15. In the instant case, learned senior counsel for the petitioners/A-4 and A-6 vehemently contended that no valid reasons were recorded in the cognizance order, which shows clear non-application of mind by the Court below, and as such, the cognizance order is vitiated. There is no force in the said submission. A

Magistrate, while issuing summons, need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. The word 'cognizance' means 'become aware of' and when it is used with reference to a Court/Judge, it connotes 'to take notice judicially'. Cognizance is taken of cases and not of persons. Under Section 190 of Cr.P.C., it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At that stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction, as the sufficiency of evidence for conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding against the accused, then the Magistrate is empowered to issue process under Section 204 of Cr.P.C. In so far as taking cognizance based on the police report, the Magistrate has the advantage of the charge sheet, statement of witnesses and other evidence collected by the investigating officer during investigation. Evidence and material so collected are sifted at the level of the Investigating Officer and thereafter, charge sheet would be filed. The Court thus has the advantage of the police report along with the material placed before it by the police. Under Section 190(1)(b) of Cr.P.C., where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. Furthermore, in the cases of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process and the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon and subject to satisfaction of the Magistrate considering the police report and other documents enclosed thereto and satisfying himself that there is sufficient ground for proceeding against the accused. In case, if the charge sheet is barred by law or where there is lack of jurisdiction or when the charge sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge sheet and not for taking on file. In the instant case, cognizance for the alleged offences was taken against the petitioners/A-4 and A-6 by taking into consideration the charge sheet and the documents filed along with it by the investigating officer. Under these circumstances, the order issuing process without explicitly recording reasons for the same does not suffer from any illegality. The submissions made in this regard are unsustainable.

16. With regard to vicarious liability, learned senior counsel appearing for the petitioners relied on Maksud Saiyed's case (11 supra), S.K. Alagh's case (12 supra), Keki Hormosuji Gharda's case (13 supra), Maharashtra State Electricity Distribution Company Limited's case (14 supra), Sunil Bharathi Mittal's case (15 supra) and N. Srinivasan's case (16 supra). In Maksud Saiyed's case (11 supra), the Hon'ble Apex Court held as follows:

"Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for

attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

17. In Sunil Bharti Mittal's case (15 supra), the Hon'ble Supreme Court held as follows:

"A corporate entity is an artificial person which acts through its Officers, Directors, Managing Director, Chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual, who would act on behalf of the Company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is a cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so."

18. The other judgments relied by the learned senior counsel for the petitioners/A-4 and A-6 on vicarious liability are not relevant and as such, they are not discussed in detail.

19. Based on the principles laid down in the above judgments, the Hon'ble Apex Court, in a recent judgment rendered in K.Sitaram and another v. CFL Capital Financial Service Ltd. & Another JT 2017 (6) SC 52, held that "no doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual, who would act on behalf of the company, that too, when the criminal act is that of conspiracy. Thus, an individual, who has perpetrated the commission of an offence on behalf of the company, can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated in those cases is where the statutory regime itself attracts the Doctrine of Vicarious Liability."

20. In the instant case, the petitioner/A-6 is the Director of petitioner/A-4 group of companies and has been participating in the business and day-to-day affairs of the petitioner/A-4 group of companies. The petitioner/A-6, in furtherance of criminal conspiracy, got allotted 75 acres of SEZ land at Jedcherla, at a relatively lower price of Rs.7 lakhs per acre than the price fixed by the Prize Fixation Committee, in gross violation of rules and procedures, resulting in wrongful gain of Rs.8.60 crores to him and his company and corresponding wrongful loss to the

State Exchequer. As a Quid-Pro-Quo to the above undue benefit, the petitioners/A-4 and A-6 invested an amount of Rs.19.50 crores in A-12 and A-13 companies in the name of M/s.Hetero Drugs Limited, M/s.Hetero Labs Limited, M/s.Hetero Healthcare Limited and also in the name of petitioner/A-6. In the given facts and circumstances of the case, the acts done by the petitioner/A-6 in his capacity as Director of petitioner/A-4 group of companies will have binding effect and the allegations made against the petitioners/A-4 and A-6 needs to be examined in the light of the law laid down in K.Sitaram's case (34 supra). For the specific overt acts, both the petitioners/A-4 and A-6 are proceeded against for the offences punishable under Section 120B r/w 420 of IPC. For the said reasons, it is difficult to accept the contention of the learned senior counsel appearing for the petitioners/A-4 and A-6 that the petitioner/A-6 is not liable for prosecution for the alleged offences.

21. Learned senior counsel, in support of his contention that the allegations made in the charge-sheet do not constitute any offences, much less offences punishable under Sections 420 & 120B of IPC, relied upon Matilal Chakrawarty's case (17 supra), Hira Lal Hari Lal Bhagwati's case (18 supra), Hridaya Ranjan Prasad's case (19 supra), Nimra Creglass Technics Pvt Ltd's case (20 supra), V.P. Srivastava's case (21 supra), Ajay Mitra's case (22 supra), Bhagwan Swarup Lal's case (23 supra) and K.Narayana Rao's case (24 supra). The purport of the principles laid down in all these decisions is that in order to constitute an offence under Section 420 of IPC, it must be shown that the person who parted with the property was cheated and thereby dishonestly induced to deliver property; to bring home the charge of conspiracy within the ambit of Section 120B IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act; it is difficult to establish conspiracy by direct evidence; to hold a person guilty of cheating under Section 415 of IPC, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property; to quash the prosecution at the initial stage, the test to be applied by the Court is as to whether uncontroverted allegations as made in the complaint establish the offence; The High Court, being superior Court of the State, should refrain from analyzing the material which are yet to be adduced and seen in their true perspective; The distinction between mere breach of contract and cheating would depend upon the intention of the accused at the time of alleged inducement; A guilty intention is an essential ingredient of the offence of cheating, in other words, 'mens rea' on the part of the accused must be established before he can be convicted of an offence of cheating; There is no difference between the mode of proof of offence of conspiracy and that of any other offence, it can be established by direct evidence or by circumstantial, but Section 10 of Evidence Act introduces the doctrine of Agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators.

22. There cannot be any dispute with regard to the law laid down in the aforementioned decisions. Here, it would be appropriate to dwell upon the

offences alleged against the petitioners/A-4 and A-6 in detail. The petitioners/A-4 and A-6 are being proceeded for their alleged commission of offences of criminal conspiracy and cheating. Section 120B of IPC provides for punishment for criminal conspiracy. The definition of 'criminal conspiracy' is provided in Section 120A of IPC, which reads as follows:

120A- 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".

23. Broadly, the elements of criminal conspiracy can be stated to be (a) an object to be accomplished; (b) a plan or scheme embodying means to accomplish that object; (c) an agreement or understanding between two or more accused persons whereby, they become definitely committed to cooperate with each other for accomplishment of the object by the means embodied in the agreement or by any effectual means; (d) in the jurisdiction, where the statute required an overt act. To prove criminal conspiracy, there must be evidence, direct or circumstantial, to show that there was an agreement between two or more persons to commit an offence. There must be meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence. Where the conspiracy is to be inferred from the circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused, beyond reasonable doubt. The circumstances of a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. The prosecution must show that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy. It is common experience that direct evidence to prove conspiracy is rarely available. It is a matter of inference and the inferences are normally deduced from acts of parties in pursuance of a common intention between the conspirators. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. The agreement may be express or implied, or partly express and partly implied. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place. It is necessary to show meeting of minds, consensus to affect an unlawful purpose. Further, there is no difference between

the mode of proof of the offence of conspiracy and that of any other offence. It can be established by direct or circumstantial evidence.

24. Further, to constitute the offence of cheating (i) there should be fraudulent or dishonest inducement of a person by deceiving him; (b) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or the person so induced should be intentionally induced to do or to omit to do anything which, he would not do or omit if he were not so deceived; (c) the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

25. Keeping in view the aforementioned prerequisites of the offences referred supra, if we look at the charge sheet allegations, it is specifically alleged in the charge-sheet that the petitioner/A-4, who is the Director of petitioner/A-6 group of companies conspired with the other accused in the subject C.C. and got allotted an extent of 75 acres of land at Jadcherla, at a low cost of Rs.7 lakhs per acre as against the cost of Rs.15 lakhs per acre fixed by Price Fixation Committee, which resulted in wrongful gain to the petitioner/A-4 company and corresponding wrongful loss to the State Exchequer; A-9 was instrumental in getting the lands leased to the petitioner/A-4 group of companies, at the instance of the then Chief Minister of Andhra Pradesh, by flouting the rules and regulations; As a quid pro quo to the said undue benefit, the petitioners/A-4 and A-6 invested Rs.19.50 crores in A-12 and A-13 companies, belonging to A-1, who is the son of the then Chief Minister of Andhra Pradesh. A-1 floated A-12 company with an objective of conducting media business with ill-gotten wealth; As on 31.03.2010, A-12 company had a paid up capital and share premium of Rs.844.129 crores invested by various shareholders, including the petitioners/A-4 and A-6. All the shareholders, including the petitioners/A-4 and A-6, have subscribed to the shares of A-12 company at a uniform price of Rs.350/- per share, though the A-12 company is yet to start business and make profits; To fix the share premium of A-12 company @ Rs.350/- per share, A-2, one of the key conspirator, had approached M/s.Delloitte Touche Tohmatsu India Private Limited, and got valued A-12 company at a very high value and got prepared an ante-date report, thereby created a falsified report; though as per the Articles of Association of A-12 company contain prohibitive clauses regarding transferability of shares, shares were sold to outsiders at an exaggerated premium; the subscribers of A-12 company include several small companies, which were not having any profits to their credit; most of the shareholders are alleged to be benamis of A-1; A-12 company continued to receive investments from some companies at the same premium, i.e., @ Rs.350/- per share, for two years, making total investment of Rs.1246 crores, though the said venture alleged to have accumulated losses of Rs.349 crores during the period of these investments; Thus, A-1, without investing single rupee in A-12 company, had

accumulated Rs.1246 crores by way of subscriptions from various companies, including the petitioner/A-4 company.

26. In view of the material placed on record, it is too early to decide as to whether there is a deceptive intention on the part of the petitioners/A-4 and A-6 at the inception to cheat the State Exchequer. The material placed on record by the CBI prima facie indicates conspiracy in between the petitioner/A-4 and A-6 and the other accused in getting allotted 75 acres of land at Jadcherla for lesser consideration. Further, it is too early to comment on the aspect as to whether the investments made by the petitioners/A-4 and A-6 companies in A-12 and A-13 companies are genuine investments or not and the same is required to be decided in accordance with the procedure established under law.

27. Learned senior counsel for the petitioners/A-4 and A-6 also relied on Arun Kumar Agrawal's case (25 supra) and Pathan Mohammed Suleman Rehmatkhan's case (26 supra), in support of his contention that the Government is not accountable to the Courts in respect of policy decisions. It is settled law that the Courts would not ordinarily interfere with the policy decisions of the executive, unless the same can be faulted on the grounds of mala fides, unreasonableness, arbitrariness or unfairness, in which case, the policy would render itself to be declared unconstitutional.

28. In Krishan Lal Pardhan's case (27 supra) relied upon by the learned Special Public Prosecutor, the Hon'ble Apex Court, in paragraph No.8, held as follows;

8. We also find that the order of the Special Judge suffers from some other infirmities. The first grievous error committed by him is in failing to comprehend the offence of criminal conspiracy and mistakenly treating the acts done in pursuance of the conspiracy as the offence of conspiracy itself. Because of this erroneous perception the Special Judge has vivisected the conspiracy into three different sets of acts and viewed in isolation the conspiratorial acts of the accused involved in each transaction and concluding that the other conspirators stood absolved of the offences. In the opinion of the Special Judge every one of the conspirators must have taken active part in the commission of each and every one of the conspiratorial act and only then the offence of conspiracy will be made out. Such a view is clearly wrong. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences. The learned Judge is, therefore, wrong in taking the view that the offences complained of constitute three different sets of acts and should, therefore, be treated as individual acts and judges in that limited perspective.

(Emphasis supplied)

29. In Ram Narain Poply's case (28 supra) relied upon by the learned Special

Public Prosecutor, the Hon'ble Apex Court held as follows:

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

30. In Mariya Anton Vijay's case (29 supra), relied by the learned Special Public Prosecutor, the Hon'ble Apex Court, advertent to the facts of the said case, held as follows:

"These were some of the material questions, which had a bearing over the issues involved the case. Admittedly, these factual questions could be answered one way or the other on the basis of evidence to be adduced by the parties in the trial, but not otherwise. In other words, none of the aforementioned questions were capable of being answered without of the aid of evidence to be adduced by the parties, by mere reading of FIR, Final report, charge sheet, for the first time by the High Court in exercise of its inherent jurisdiction. Similarly, the High Court had no jurisdiction to appreciate the materials produced like an appellate Court while hearing the petition under Section 482 of the Code or/and Revision Petition under Section 397 *ibid*.

31. In J.Jayalalitha's case (30 supra) relied by the learned Special Public Prosecutor, the Hon'ble Apex Court held as follows:

We would choose to refrain from dealing with the above contention, lest any comment made by us may turn out to be detrimental to one or the other side of the case. Nevertheless, it is for the prosecution to explain how certain relevant sheets were found missing and whether respondent had any knowledge of and also why the respondent should have caused them to be removed. This is not the stage for weighing the pros and cons of all the implications of the materials nor for sifting the materials presented by the prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are "groundless" or whether "there is ground for presuming that the accused has committed the offences." Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial.

32. In Amit Kapoor's case (31 supra) relied by the learned Special Public Prosecutor, the Hon'ble Apex Court, having discussed the scope of jurisdiction under Section 397 and Section 482 of Cr.P.C. and the fine line of jurisdictional distinction, enlisted the principles with reference to which the Courts should exercise such jurisdiction, as follows:

- 1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
- 2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
- 3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
- 4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.
- 5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.
- 6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.
- 7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.
- 8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.
- 9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist.

33. In Rajat Prasad's case (32 supra) relied upon by the learned Special Public Prosecutor, the Hon'ble Apex Court held as follows:

"...The offence of abetment defined by Section 107 of the IPC or the offence of criminal conspiracy under Section 120A of IPC would, thus, require criminal intent on the part of the offender like any other offence. Both the offences would require existence of a culpable mental state which is a matter of proof from the surrounding facts established by the materials on record. Therefore, whether the commission of offence under Section 12 of the PC Act read with Section 120B IPC had been occasioned by the acts attributed to the accused appellants or not, ideally, is a matter that can be determined only after the evidence in the case is recorded.

...The inherent possibilities of abuse of the operation as videographed, namely, retention and use thereof to ensure delivery of the favours assured by the receiver of the bribe has to be excluded before liability can be attributed or excluded. This can happen only after the evidence of witnesses is recorded. Also, merely because in the charge-sheet it is stated that the accused had undertaken

the operation to gain political mileage cannot undermine the importance of proof of the aforesaid facts to draw permissible conclusions on basis thereof as regards the criminal intent of the accused in the present case."

34. In B.Venkat Swamy's case (33 supra) relied by the learned Special Public Prosecutor, the Hon'ble Apex Court, held as follows:

The law relating to circumstantial evidence has been highlighted by this Court in a large number of cases. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

35. The word 'Quid Pro Quo', is alien to criminal law. It is not defined anywhere in criminal law. According to Merriam Webster Dictionary, 'Quid Pro Quo' means "something given or received for something else". According to the Oxford Learner's Dictionary, 'Quid Pro Quo' means "a thing given in return for something else". According to the British Dictionary, 'Quid Pro Quo' means "a reciprocal exchange or something given in compensation, especially an advantage or object given in exchange for another". 'Quid Pro Quo' is a latin phase used in English to mean an exchange of goods or services, in which one transfer is contingent upon the other, i.e., "a favour for a favour", "give and take" or "tit for tat". In every contract, there should be a consideration flowing from each side for each other and the Latin maxim 'Quid Pro Quo' signifies that part of the contract. The consideration will make both the parties oblige to do something or abstains from doing something, as per the wish and/or desire of the other. However, if such consideration is paid for the illegal act or the act which is legally performed by illegal means with a criminal intent to confer benefits at the cost of public at large, it would attract an offence. Keeping the above in mind, if we look at the facts of the case on hand, the alleged lease of 75 acres of land in favour of the petitioner/A-4 group of companies for lesser price of Rs.7 lakhs by A-9 at the instance of the father of A-1 by flouting the rules and procedures, and in return, the petitioners/A-4 and A-6 investing huge amount of Rs.19.50 crores in the companies floated by A-1, more particularly in A-12 company which was yet to start business and make profits, is prima facie nothing but abuse of political office by the then Chief Minister of Andhra Pradesh and conferring undue official benefit on the petitioners/A-4 and A-6 in utter disregard to the Doctrine of Public Trust.

36. Further, though it is contended on behalf of the petitioners/A-4 and A-6 that the prosecution wantonly withheld some crucial documents without producing the same before the Court to come to a just conclusion, the petitioners/A-4 and A-6 could not name those documents which are alleged to be withheld by the prosecution. The contention of the petitioners/A-4 and A-6 that the petitioners/A-4 and A-6 have invested huge amount in development of the subject land, established companies and provided jobs to unemployed youth would not absolve

their criminal liability and cannot be a ground to quash the proceedings in the subject Calendar Case against them. Though it is the prerogative of a company to invest money in the company of its choice, but the said investments should be genuine, reasonable, in accordance with law and not as a Quid Pro Quo. Though it is contended on behalf of the petitioners/A-4 and A-6 that the subsequent Governments neither cancelled the lease of the subject land nor taken back the subject land, the said aspect cannot be a ground to quash the proceedings against the petitioners/A-4 and A-6 in the subject Calendar Case.

37. On a perusal of the allegations which are pointed out in the foregoing paragraph Nos.7 to 11, it cannot be said that the allegations made do not constitute offences under Sections 120B read with 420 of IPC against the petitioners/A-4 and A-6. Further, it cannot be held that if those allegations are uncontroverted, it results in innocence of the petitioners/A-4 and A-6. The allegations leveled in the charge-sheets have to be examined in detail and decided in accordance with the procedure established under law. At this moment, this Court is only concerned as to whether there are valid grounds to quash the proceedings in the subject C.C. against the petitioners/A-4 and A-6 by exercising inherent jurisdiction under Section 482 of Cr.P.C.

38. Here, it is apt to state that though the inherent power of this Court under Section 482 of Cr.P.C. is very wide, the said inherent power should be exercised sparingly and with circumspection. Generally, criminal proceedings are not to be scuttled at the initial stage. Only in exceptional cases, where non-interference would result in abuse of process of law and would jeopardize the interest of the alleged accused, the Court has to invoke its inherent power under Section 482 of Cr.P.C. When a prosecution is sought to be quashed at an initial stage, the test to be applied by the Court is as to whether the uncontroverted allegations, as made in the complaint/FIR/charge-sheet, prima facie establish the case. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and when this Court is inclined to put a halt to the known procedure of law by exercising its inherent power under Section 482 of Cr.P.C., it should be done on proper circumspection and with great care and caution. Unjustified interference in any criminal proceedings by this Court, even at the preliminary stage, may result in obstruction in progress of the inquiry in a criminal case, which may not be in the public interest. This Court has no jurisdiction to appreciate the evidence in the proceedings under Section 482 of Cr.P.C. The inherent power of this Court under Section 482 Cr.P.C. is very wide, but conferment of such wide power requires the Court to be more cautious. In other words, wider the power, higher the need for caution and care while exercising such power. It casts an onerous and more diligent duty on the court. In fact, the Hon'ble Supreme Court, in catena of decisions, deprecated the practice of staying criminal trials and police investigations, except in exceptional cases.

39. Before parting, it is apt to observe that the prosecution case is that A-1 and

A-2 have formulated a scheme to collect bribe under the guise of investment from companies and persons who wanted Governmental benefits by way of land allotments, mining leases and other benefits by misusing the official position of father of A-1 and in furtherance of the said conspiracy, A-1, with active connivance of A-2, established A-12 and A-13 companies. Various companies and individuals started investing money in A-12 company, including the petitioners/A-4 and A-6, much before commencement of business by it. In all, 11 charge sheets were filed by CBI and the investment solicited by A-12 company is Rs.1246 crores, wherein, A-1 did not even invest a single rupee. In this deep rooted conspiracy in between the accused in the subject Calendar Case, the ultimate sufferers are the public at large. Valuable Government land, which is meant to be used for public good, was clandestinely given away to selected persons for a lesser consideration by the persons in power by flouting the rules and regulations, causing huge loss to the State Exchequer, in lieu of their investments in the companies floated by A-1. This deep rooted conspiracy can be well termed as serious economic fraud against the State. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view such crimes with a permissive eye unmindful of the damage done to the national economy and interest.

40. It has been contended on behalf of the petitioners/A-4 and A-6 that the investigation conducted by CBI is unfair, inasmuch as the CBI failed to segregate the genuine investors, as directed by a Division Bench of this Court in W.P.Nos.794 and 6604 of 2011. In the instant case, in view of the specific allegations against the petitioners/A-4 and A-6, they are made as accused in the subject case and are being proceeding for the offences under Sections 120B r/w 420 of IPC. The other Directors of the petitioner/A-4 group of companies are not made as accused. This indicates that the investigating agency has applied its mind and is being proceeded against the petitioner/A-6 for the offences punishable under Sections 120B r/w 420 of IPC, so also the petitioner/A-4 company, which cannot be faulted.

41. For the foregoing discussion and in view of the material evidence available on record, this Court is of the considered opinion that the proceedings against the petitioners/A-4 and A-6 in the subject Calendar Case No.8 of 2012 cannot be quashed by exercising inherent power under Section 482 of Cr.P.C. No grounds, much less valid grounds, are made out to quash the proceedings against the petitioners/A-4 and A-6. There is sufficient material evidence to proceed against the petitioners/A-4 and A-6 in the subject Calendar Case No.8 of 2012. In the given circumstances of the case, the Court below is justified in taking cognizance against the petitioners/A-4 and A-6 in the subject Calendar Case for the offences punishable under Sections 120B r/w 420 of IPC. It cannot be said that

continuation of proceedings against the petitioners/A-4 and A-6 would amount to abuse of process of Court. Even in the interest of justice also, it is not a fit case to grant the relief as sought for. The petitioners/A-4 and A-6 are required to be proceeded in accordance with law. The contentions raised on behalf of the petitioners/A-4 and A-6 do not merit consideration. The criminal Petition is devoid of merit and is liable to be dismissed. The trial Court shall not get influenced by the observations made above.

42. Accordingly, the Criminal Petition is dismissed. The interim stay granted by this Court on 18.04.2016 and which is being extended from time to time, stands vacated.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.