

(2021) 10 OHC CK 0037
In the Orissa High Court
Case No : CRLMC Nos. 440, 454 Of 2021

Nitu Gupta And Another

APPELLANT

Vs

State Of Odisha (Vigilance)

RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 156(3), 200, 482
Indian Penal Code, 1860 — Section 120B, 379, 406, 409, 420, 411, 468
Prevention of Corruption Act, 1988 — Section 13, 13(1)(c)(d), 13(1)(d), 13(2)
Negotiable Instruments Act, 1881 — Section 141
Essential Commodities Act, 1955 — Section 10
Prevention of Food Adulteration Act, 1954 — Section 17
Foreign Exchange Management Act, 1999 — Section 42
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21
Orissa Forest Act, 1972 — Section 27(3)(b), 27(3)(c)
Companies Act, 1956 — Section 2(13), 291, 292, 293

Citation : (2021) 10 OHC CK 0037

Hon'ble Judges : S. K. Panigrahi, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S. K. Panigrahi, J.

1. These petitions under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') have been filed with a prayer to quash the proceedings emanating from V.G.R. Case No. 5(c) of 2013 arising out of Balasore Vigilance P.S. Case No. 30 of 2013, for alleged commission of offences u/s 13(2), r/w Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PCA') and u/s 420, 468, 409, 379, 411 and 120-B of Indian Penal Code 1860 (hereinafter referred to as 'IPC') which is pending in the Court of learned Special Judge Vigilance, Keonjhar. As the petition involves the same facts, they are being decided by this common judgment and order.

2. Shorn of unnecessary details, the facts of the present matter are as follows:

i. Upon receiving a reference from the Department of Steel and Mines, Govt. of Odisha, State Vigilance officials conducted an enquiry and joint physical verification of the Uliburu Mines area from 01.07.2013 to 04.07.2013, subsequently a First Information Report (hereinafter referred to as 'FIR') was lodged on 27.07.2013 against the present petitioners and a host of officials of the Mining, Forest and Revenue Departments of the State of Odisha, alleging illegal mining and removal of iron ore from the Uliburu Iron Ore Mines as well as from the surrounding Uliburu Reserve Forest area.

ii. The mining lease hold area leases were held by one B.K. Mohanty and one Jagdish Mishra i.e. the lessees. It was alleged that the state government officials had abused their official position and shown undue favour to the lease holders, their power of attorney holder and others to cause unlawful loss to the state exchequer.

iii. After registration of the FIR, the Vigilance Department took up investigation and a chargesheet was submitted on 31.12.2013. There are 25 accused persons in the chargesheet, wherein Petitioner No. 1 in CRLMC No. 454 of 2021 i.e. Mrs. Nitu Gupta is arrayed as Accused No. 23, Petitioner No. 2 in CRLMC No. 454 of 2021 i.e. Mrs. Kanta Devi Gupta is arrayed as Accused No. 22 and the sole Petitioner in CRLMC No. 440 of 2021 i.e. Mr. Champak Gupta is arrayed as Accused No. 20.

iv. A brief perusal of the chargesheet showcases that one B.K. Mohanty had submitted an application for grant of a mining lease for the Uliburu Iron Mines on 04.08.1978. The said lease was ultimately granted to him over an area of 58.94 Ha. for a period of 20 years from 13.12.1983, and the working of mines was, therefore, valid upto 12.12.2003. The Collector, Keonjhar vide Order No. 459 dated 20.02.1984, granted the surface right over an area of 28.24 Ha. to the said B.K. Mohanty and the possession was thereby delivered.

v. On 18.11.1992, the said B.K. Mohanty filed an application to surrender the mine citing the depletion of saleable grades of ore, however, he seems to have had a change of mind as he filed another application on 14.05.2002 seeking permission to withdraw his previous surrender application.

vi. Thereafter, on 03.12.2003, the said B.K. Mohanty again filed an application for the renewal of his mining lease. After a thorough enquiry and after receipt of recommendations from the Dy. Director of Mines, Joda, District Forest Officer, Keonjhar, Sub-Collector Champua, Collector, Keonjhar, wherein it was broadly recommended that the entire area for which renewal was sought may be granted despite the delay in filing the application for renewal. The application was thereafter forwarded to the Director of Mines, Steel and Mines Department, Odisha on 17.09.2008 for consideration and disposal on merit thereupon.

vii. Meanwhile, pending renewal, the said B.K. Mohanty had executed a registered power of attorney dated 29.12.2003 in favour of one Deepak Gupta, Director of M/s Snehapushp Marketing Private Ltd. as well as the then Director of

Deepak Steel and Power Pvt. Ltd. The aforesaid registered power of attorney executed by said B.K. Mohanty gave the aforesaid Deepak Gupta the power to mine, trade minerals, open bank accounts in the name of B.K. Mohanty and also to conduct mining operations over the entire lease area as held by B.K. Mohanty.

viii. Additionally, prior to the execution of the said Power of Attorney, an agreement for transfer of the mining lease from B.K. Mohanty to M/s Snehapushp Marketing Private Ltd. was entered on 28.12.2003.

ix. It is alleged by the prosecution that the illegal mining operation commenced on 18.01.2004 by the Power of Attorney holder Deepak Gupta, which in the absence of any boundary pillars has extended beyond the lease hold area encroaching upon the reserve forest area.

x. In so far as the mining lease of Jagdish Mishra is concerned, it is seen that Jagdish Mishra was granted the mining lease for mining in the Uliburu Iron Mines over an area of 30.513 Ha. on 28.09.1981 for a period of 30 years. However, due to lack of forest clearance as well as delay in receiving surface right permission for working in non-forest land, the lease was not operational. Therefore, the same got lapsed on 10.01.1995. The said mining lease area is adjacent to the mining lease area of B.K. Mohanty.

xi. Thereafter, the aforesaid Jagdish Mishra executed a registered power of attorney on 17.04.2004 in favour of Deepak Gupta, Director of M/s Snehapushp Marketing Private Ltd. as well as the then Director of Deepak Steel and Power Pvt. Ltd. to manage his mines over an area of 30.513 Ha. at the Uliburu Iron Mines area.

xii. It is alleged in the First Information Report that the Dy. Director of Mines in connivance with his subordinate officials and others, fraudulently and dishonestly allowed the said lessee Deepak Gupta to carry out mining operations in the mining lease area of B.K.Mohanty and Jagdish Mishra since January, 2004 and permitted the dispatch of illegally raised ores from the said mines although, B.K.Mohanty's lease had not been renewed and Jagdish Mishra's lease had lapsed.

xiii. It was further alleged that the common Power of Attorney holder, Deepak Gupta, in connivance with the lessees and officials of the Mining, Forest and Revenue Departments resorted to illegal production of iron ore to the tune of 65,27,741 MT (despite having been accorded permission to extract 47,48,826 MT from B.K. Mohanty's mining lease area). The prosecution has contended that the accused have caused a loss of Rs.1520,39,64,049 to the Government.

xiv. The present petitioners were arraigned as Accused in the present matter as they are the Directors of M/s Deepak Steel and Power Ltd. (i.e. Nitu Gupta and Kanta Devi Gupta, Petitioners in CRLMC No. 454 of 2021) or M/s Snehapushp Marketing Private Ltd. (i.e. Champak Gupta, Petitioner in CRLMC No. 440 of 2021) which had raised, purchased or received the above extracted minerals with the alleged clear knowledge that the minerals had been illegally raised/stolen.

Nitu Gupta is the wife of principal accused Deepak Gupta and became a Director of M/s Deepak Steel and Power Ltd. on 30.10.2007, once he ceased to be a Director of the same. Kanta Devi Gupta is the mother of said Deepak Gupta and became a Director of M/s Deepak Steel and Power Ltd. since its inception. Champak Gupta is the brother of said Deepak Gupta and was a Director and equal shareholder of M/s Snehapushp Marketing Private Ltd.

xv. The allegations levelled against Champak Gupta are that he was physically present at the time of hiring the raising contractor, as well as assisted Deepak Gupta and Hari Charan Gupta (father of the said Deepak and Champak Gupta) along with other day to day activities of the company especially associated with operating the mines. It is further averred that Champak Gupta was one of the Directors of M/s Snehapushp Marketing Pvt. Ltd. He was also involved in selling the alleged illegally raised ores to M/s Deepak Steel & Power Ltd. at a cheaper rate during the period between 2004 to 2009. It was also alleged that as he was the Director of M/s Snehapushp Marketing Pvt. Ltd. since 2001, he was aware of the illegal mining taking place beyond the mining lease area of B.K. Mohanty, in the revoked lease area of Jagdish Mishra and Uliburu Reserve Forest area.

xvi. As for Nitu Gupta and Kanta Devi, they have been arrayed as accused as they allegedly signed cheques on behalf of M/s Deepak Steel & Power Ltd.; signed the financial statements of M/s Deepak Steel & Power Ltd. and are therefore deemed to be in-charge of the affairs of the Company.

3. Learned Counsel for the petitioners Shri H.K. Mund vehemently submits that out of the 145 lessees who were found to have been allegedly involved in illegal mining, only B.K.Mohanty's lease hold area was scrutinised and criminally prosecuted along with a mere handful of others. Save and except in some specific cases, wherein the statute specifically incorporates the principle of vicarious liability, the principle cannot be extended to be applicable to all other Acts. The Indian Penal Code does not envisage the application of the principle of 'vicarious liability' to a person who is not directly charged for the commission of an offence, and a person therefore cannot be made an accused merely by reason of his official position. The counsel further urged that there was a huge difference between being a part of the management of a company and being 'in charge of the affairs of a company'. It was submitted that in order to launch prosecution against the officers of a company, the complainant/prosecution must make specific averments regarding the role played by each of the accused in the complaint which showcase that the officers of the company were 'in charge of the affairs of the company'. Therefore, the role of the accused has to be clearly, unambiguously and specifically mentioned in the complaint. A bald statement shall hold no water. There cannot be an automatic presumption against a Director. It was also put forth by the counsel that section 120-B of the IPC under which the present petitioners have been roped in, is a substantive offence and has to be proven independent of the other offences. The Counsel relied heavily on the decisions of the Hon'ble Supreme Court in Pepsi Foods Ltd. v. Judicial

Magistrate (1998) 5 SCC 749, S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89 and Keki Hormusji Gharda v. Mehervan Rustom Irani (2009) 6 SCC 475.

4. Per contra, Ld. Senior Counsel, Shri N. C. Panigrahi for the State (Vigilance) opposes the petitions on the grounds that Smt. Kantadevi Gupta and Smt. Nitu Gupta were the Directors of M/s Deepak Steel and Power Ltd. during the period from 2004 till 2009. They opened Bank accounts at SBI Barbil, HDFC Bank Rourkela and other banks in the name of the company and, issued cheques against receiving the illegally raised Iron Ore from Uliburu Iron Mines of B.K. Mohanty raised by Sri Deepak Gupta and Sri Hari Charan Gupta during the period from 2004 to 2009 and also, signed the profit and loss account and balance sheet of the company as Directors. They are also the shareholders of the company M/s. Deepak Steel & Power Ltd. and are sharing the profits of the company which led to them dishonestly acquiring assets in their name out of the illegally earned profits by the company, all of which according to the Ld. Sr. Counsel indicates their active involvement in managing the affairs of the Company. As for Champak Gupta, it was urged that he was a Director of M/s. Snehapusph Marketing Pvt. Ltd. from 2001 and continued as such during the relevant period. He is an equal shareholder of M/s. Snehapusph Marketing Pvt. Ltd. and has received profits earned by the said company during the period from 2004 to 2009 during which illegal mining was conducted beyond the mining lease area of B.K. Mohanty; in the revoked lease area of Jagdish Mishra and in the Uliburu Reserve Forest Area and has shown extraction of iron ore of 47,48,826 MT during the period 2003-04 to 2009-10 even though the said company has extracted a quantity of 65,25,738.46 MT thereby, causing gross loss to the State exchequer by under-reporting of about 17 Lakh MT which makes out a specified role attributable to him. The counsel earnestly contended that this Court's powers under Section 482 of the CrPC has to be sparingly and cautiously exercised. The exercise of such powers cannot be whimsical or arbitrary. If the exercise of the inherent power frustrates the ends of justice, the same ought not to be exercised.

5. Heard Ld. Counsels for the parties and perused the materials on record. Before advertng to the facts of the case, it is apposite to refer first to the law applicable to the facts of the present case. It is well settled that though the inherent powers of the High Court under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it has been deemed neither to be feasible nor desirable to lay down an absolute rule which would govern or inhibit the exercise of inherent jurisdiction of the Court under Code of Criminal Procedure, 1973. Nevertheless, it is trite that powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of law. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, ex facie, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the

criminal proceedings. Reference may be made to the Hon'ble Supreme Court's decisions in *R.P. Kapur v. State of Punjab* AIR 1960 SC 866 and *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194.

6. In the case of *State of Haryana v. Ch. Bhajan Lal* AIR 1992 SC 604, the Hon'ble Apex Court has held that an FIR can be quashed at the initial stage where the allegations made, even if taken at their face value and accepted in its entirety, do not prima facie constitute any offence or make out a case against the accused. In a similar vein in the case of *Rishipal Singh v. State of Uttar Pradesh* (2014) 7 SCC 2015, the Hon'ble Supreme Court has succinctly held that the High Court in exercise of its inherent power under Section 482 Cr.P.C., should not allow a vexatious complaint to continue, which would be a pure abuse of the process of law and the same ought to be interdicted at the threshold.

7. The principle relating to the nature and scope of exercise of power under Section 482 of the Cr.P.C. has now, by and large, been crystallized by the Hon'ble Supreme Court in the case of *Shakson Belthissor v. State of Kerala* (2009) 14 SCC 466, relying upon its earlier judgment in the case of *Indian Oil Corpn. v. NEPC India Ltd.* (2006) 6 SCC 736 wherein it has been observed as under;

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few- *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], *CBI v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of

the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

8. The aforesaid proposition of law was again reiterated by the Hon'ble Apex Court in *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* AIR 1988 SC 709

,the Supreme Court has observed as follows:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

9. In the present case, the Petitioners herein have all been charged under Sections-120-B/409/379/420/468/411 of the IPC and under Sections-13(2) r/w 13(1)(c) (d) of the Prevention of Corruption Act. At this juncture, it would be apposite to refer to the relevant statutory provisions and examine the legal position.

10. Section 120-B of the IPC reads as follows;

"120B. Punishment of criminal conspiracy.-(1) Whoever is a party to a criminal conspiracy to:

(1) Commit an offence punishable with death, [imprisonment for life]or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]"

A perusal of Section 120-B IPC makes it clear that an offence of 'criminal conspiracy' is a separate and distinct offence. Therefore, in order to constitute an offence of criminal conspiracy and to attract its rigor, two factors must spring forth from the facts of the case:(i) involvement of more than one person and (ii) an agreement between/among such persons to do or causing to be done an illegal act or an act which is not illegal but is done or sought to be done by illegal means.

11. The expression 'criminal conspiracy' was aptly explained by the Hon'ble Supreme Court in E.G. Barsay v. State of Bombay (1962) 2 SCR 195 . The learned Judge Subba Rao, J. (speaking for the Bench in his distinctive style of writing) said;

"31. ... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts."

Therefore, in order to constitute a conspiracy, 'meeting of minds' of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of conspiracy against the accused or sustain such a charge. Three essential elements must be shown to drive home a charge under Section 120-B of the IPC- a criminal object, a plan or scheme embodying means to accomplish that object, and an agreement between two or more persons to cooperate for the accomplishment of such object.

12. Next, the offence under Section 409 of the IPC, which sought to be invoked, reads as follows;

"409. Criminal breach of trust by public servant, or by banker, merchant or agent.-Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits

criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine"

Section 409 thus postulates that in order to constitute an offence of criminal breach of trust, there must be an "entrustment"; a misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract; and the misappropriation or conversion or disposal must be with a dishonest intention. As held by the Hon'ble Supreme Court in *Sardar Singh v. State of Haryana* (1977) 1 SCC 463, to bring home a charge under Section 409 IPC, three ingredients are to be proved, namely, (i) The accused must be a public servant, banker, merchant or an agent, (ii) He must have been entrusted, in such capacity, with property, (iii) He must have committed breach of trust in respect of such property.

It is thus seen that for constituting an offence of criminal breach of trust, the following ingredients must be satisfied: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

13. In the same vein Section 379 of the IPC reads as follows;

"379. Punishment for theft. -Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The essential ingredient to prove an offence under Section 379 IPC is that the accused persons should have taken the movable property dishonestly. The said property was taken out of the possession of complainant without consent and there was certain movement of the property. As held by the Hon'ble Supreme Court in *Chandi Kumar Das Karmarkar v. Abanidhar Roy* AIR 1965 SC 585;

"6. The offence of theft consists in the dishonest taking of any moveable property out of the possession of another without his consent. Dishonest intention exists when the person so taking the property intends to cause wrongful gain to himself or wrongful loss to the other. This intention is known as *animus furandi* and without it the offence of theft is not complete."

14. Similarly, section 420 of the IPC reads as follows;

"420. Cheating and dishonestly inducing delivery of property.-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being

converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 420 thus deals with cheating and dishonestly inducing delivery of property. The offence of cheating comprises two ingredients: deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person.

Therefore, as also delineated by the Hon'ble Supreme Court in *S.W. Palanitkar v. State of Bihar* (2002) 1 SCC 241, the ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (ii)(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by(ii)(b) the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

15. In the same vein, Section 468 of the IPC reads as;

"468. Forgery for purpose of cheating.-Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 468 deals with forgery for the purpose of cheating. The offence is complete as soon as there occurs forgery with a particular intent. The term 'forgery' as used in the statute is used in its ordinary and popular acceptance. The definition of the offence of forgery declares the offence to be completed when a false document or false part of a document is made with specified intention. The questions to be answered are (i) is the document false, (ii) is it made by the accused, and (iii) is it made with an intent to defraud.

Therefore, in order to constitute an offence of forgery the documents must be made dishonestly or fraudulently. Every forgery postulates a false document either in whole or in part, however small.

16. In order to analyse the Section 411 of the IPC, it is worthwhile to reads as;

"411. Dishonestly receiving stolen property.-Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a

term which may extend to three years, or with fine, or with both."

As laid down by the Hon'ble Supreme Court in *Trimbak v. State of M.P* AIR 1954 SC 39, the essential ingredients to bring home the guilt of a person under Section 411 IPC to prove, (i) that the stolen property was in the possession of the accused, (ii) that some person other than the accused had possession of the property before the accused got possession of it, and (iii) that the accused had knowledge that the property was stolen property.

17. With the above legal position in mind, the controversy at hand may now be adverted to. A bare perusal of the complaint shows that the gravamen of the allegations against the present petitioners is that they were Directors of the M/s. Deepak Steel & Power Ltd or M/s Snehapushp Marketing Pvt. Ltd. and were allegedly actively involved in conniving with the principal accused Deepak Gupta and the officials of the State in the present matter.

18. The rule of criminal liability is derived from the Latin maxim *Actum non facit reum, nisi mens sit rea*, which essentially means that a forbidden act or omission has to be done with a deliberate intent to do it. Trouble arose when the question of 'how to' make a company/ corporation/ corporate entity liable for criminal offences. It is an undenying fact that a company can, in fact, partake or commit a forbidden act or omission, but the vexed question has been as to how the intent of a juristic person can be proved. Therefore, the courts developed what is termed as the 'Doctrine of Attribution'. As per this doctrine, in the event of an act or omission leading to the violation of the law, the *mens rea* i.e. the intent of committing the act would be 'attributed' to all those who were in charge of the company at the time of the commission of the offence.

19. Directors, Managers, key Managerial Personnel were brought to court to account for the contraventions of law performed by them under the guise or the legal façade of the company. This doctrine is akin to what is otherwise termed as 'lifting the corporate veil' in order to examine the ones who are the 'alter ego' of the company.

20. Under the aforesaid principle of "doctrine of attribution" the effort of the courts has been to take legal proceedings against juristic entities to a just and reasonable conclusion. Merely because a corporate entity cannot be imprisoned, taking a view that persons who were in charge of the management of these companies should be left scot-free would have been an unfair and irrational approach. It is with such a backdrop that these aforesaid principles have to be understood. When there is an allegation against a juristic or corporate entity the endeavour is to ascribe or attach liability to those particular persons in charge of the affairs of the company in question, who are actually pulling the strings and running the show. It is for these reasons that the principle of 'doctrine of lifting of corporate veil' was evolved and expounded by the courts of law. Under this principle based on the materials on record, the court pinpoints or identifies the particular persons who were pulling the levers of the machinery that is a juristic

entity. Having identified such persons who were actually directly involved or in charge of the affairs of the company the criminal liability is fastened or is attached to such persons and such persons only. There might be situations where a number of persons constitute the management of a corporate entity however, only by virtue of them holding a position on the management of such entity would not automatically make them liable.

21. It is due to this reason that the courts are compelled to embark upon a journey to lift the veil behind which the persons in the management of the company are crouching behind in order to camouflage or insulate themselves from any liability. Thus, having 'lifted' the so-called veil, liability attaches to those individuals who are identified to be the culprits hiding behind the juristic veil. This is the sum and substance of the principle of the "doctrine of attribution". Similarly, these persons who are identified as the 'will and mind' are called the 'alter ego' of the company as they are the ones who were acting as such and had taken the company down the path of such criminality. It is thus seen that all these principles owe their origin to the principle of 'attribution' and it is this doctrine of attribution which is, the endeavour offastening liability on certain individuals, within the management of the company in question while invoking either of the principles of "lifting of corporate veil" or while identifying the "alter ego" of the defaulting company.

22. As early as 1915 the House of Lords in the celebrated case of Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co Ltd. [1915] A.C. 705 HL, while trying an offence under the Merchant Shipping Act applied the 'doctrine of attribution' to identify Mr. Lennard, who was the owner of the ship and also responsible for the management of the ship, as the "directing mind and will" of the company. Subsequently, in H.L Bolton Co. Ltd., v. T.J Graham and Sons [1957] 1 QB 159., the Court likened companies to a human body and their brain to the directors of the company, and applied the doctrine of attribution to criminal cases. This principle though used and relied upon in India from time to time, was finally discussed extensively and applied by the Hon'ble Supreme Court in Iridium Indian Telecom Limited v. Motorola Inc. (2011) 1 SCC 74.

23. However, with courts across the country increasingly accepting the view that the Directors, Managers, Promoters etc. were the "mind and will" of the company, an unfortunate problem arose wherein all such designated personnel of the company started being prosecuted whether or not they were actually "in charge of the affairs of the company".

24. Coming down heavily on this worrying trend, the Hon'ble Apex Court has, time and again, sternly deprecated this practice and attempted to draw a clear distinction between personnel of a company who are "actively in charge of the affairs of the company" and those who are not. Therefore, a company might not be indictable, but those particular members in charge of it are. In this regard, it would be useful to advert to the observations made by a three-Judge Bench of the Hon'ble Supreme Court in S.M.S. Pharmaceuticals v. Neeta Bhalla (supra),

wherein the Hon'ble Supreme Court held that;

"5. ... a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words 'if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding'. The words 'sufficient ground for proceeding' again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed.

...

8. The officers responsible for conducting the affairs of companies are generally referred to as directors, managers, secretaries, managing directors, etc. What is required to be considered is: Is it sufficient to simply state in a complaint that a particular person was a director of the company at the time the offence was committed and nothing more is required to be said. For this, it may be worthwhile to notice the role of a director in a company. The word 'director' is defined in Section 2(13) of the Companies Act, 1956 as under:

'2. (13) 'director' includes any person occupying the position of director, by whatever name called;'

There is a whole chapter in the Companies Act on directors, which is Chapter II. Sections 291 to 293 refer to the powers of the Board of Directors. A perusal of these provisions shows that what a Board of Directors is empowered to do in relation to a particular company depends upon the roles and functions assigned to directors as per the memorandum and articles of association of the company. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that

there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company."

25. It would also worthwhile at this stage to extract the following observations made in *S.K. Alagh v. State of U.P.* (2008) 5 SCC 662 by the Hon'ble Supreme Court of India;

"19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself."

26. Furthermore, the Hon'ble Supreme Court in *Sunil Bharti Mittal v. CBI* (2015) 4 SCC 609 held;

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

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."

The Hon'ble Supreme Court in *Sham Sunder v. State of Haryana* (1989) 4 SCC 630 observed;

"9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold."

28. In *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668, the Apex Court held;

"13. Where a jurisdiction is exercised on a complaint petition filed in, terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed

to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein 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."

29. The same principle has been unambiguously reiterated in *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.* (2010) 10 SCC 479 and *GHCL Employees Stock Option Trust v. India Infoline Ltd.* (2013) 4 SCC 505.

30. Apart from the conclusion that statutes mandatorily have to contain a provision to fix vicarious liability which in the case of IPC is conspicuously absent. In fact, what flows from the above discussion is that even if a statute contains such an expressed provision, every person connected with the company shall not fall within the ambit of the prosecution. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. The liability therefore arises from being "in charge of and responsible for" the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Liability depends on the role one plays in the affairs of a company and not on designation or status.

31. It is noticed that in enactments where criminal liability sought to be affixed on a company, the provisions usually provide for "offences/contravention by companies". That being the case when an offence is attributed to a company, the same is done on the strength of a statutory prescription, there is no question of any "vicarious liability." All these enactments such as the Negotiable Instruments Act, 1881; Essential Commodities Act, 1955; Foreign Exchange Management Act, 1999 and Prevention of Food Adulteration Act, 1954 specifically provide for "offences/contraventions by companies" and for their prosecution thereunder. Thus, the arguments that are made, time and again, before courts of law as regards to the vicariousness of liability of certain persons in the management of a company, is in essence a misnomer. It is for the simple reason that when the statute itself provides for a provision for the prosecution of a company, the only exercise that has to be done thereafter, is the application of the doctrine of attribution (*supra*) in order to pinpoint or fasten the liability upon the individuals within the larger body of persons occupying the management of the company.

32. Thus, the so called 'vicarious' liability of the Directors/ Key Managerial Personnel cannot be imputed automatically. In the absence of any statutory provision to this effect, if it is to be deemed to be included under the IPC, even then the prosecution would have to make averments with regard to the specific

role played by the accused Directors/ Key Managerial Personnel and demonstrate that such person was "in charge of the affairs of the company" and is directly and intrinsically connected to the crime alleged. One classic example of such an express provision fastening liability on the directors of a company is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.* (2012) 5 SCC 661 also, the principle of "alter ego", was applied only in one direction, as in if a body corporate was being charged with an offence, then the principle would be applied to pinpoint to the group of person(s) who guide the business who had criminal intent, and not vice versa so as to lead to the fallacious conclusion that all the management personnel of the company possessed criminal intent. There has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company. Other examples wherein a specific statutory provision has been created to fasten/affix liability on a company and the directors in charge of it are liable under some specific statutes like Section 10 of the Essential Commodities Act, 1955; Section 42 of the Foreign Exchange Management Act, 1999 and Section 17 of the Prevention of Food Adulteration Act, 1954.

33. It, therefore, appears trite in law that wherever the principle of 'vicarious' liability is deemed to be attracted and a person who is otherwise not personally involved in the commission of an offence is purported to be made liable for the same, it has to be specifically provided in the statute concerned. In my opinion, none of the aforementioned Sections of the IPC incorporate the principle of vicarious liability, and therefore, it becomes all the more incumbent on the prosecution to categorically aver the specific role of each of the accused in the complaint.

34. I shall now delve into the question of whether or not these offences the Petitioners have been charged with are prima facie made out against them hereinunder.

35. The F.I.R. was lodged against the present petitioners on 27.7.2013, in which all of them were arrayed as accused. Champak Gupta, Nitu Gupta and Kanta Devi Gupta along with other co-accused filed W.P.(CrI.) No. 1080 of 2013 with a prayer to quash the F.I.R. on 7.8.2013, wherein an interim order was passed on 22.08.2013 in W.P.(CrI.) No. 1080 of 2013 protecting them from arrest which was extended from time to time. As the charge sheet was filed during the pendency of this petition, W.P.(CrI.) No. 1080 of 2013 was dismissed as withdrawn on 17.01.2014 with the liberty to file a fresh petition for quashing the charge sheet and challenging the order of cognizance. Thereafter, Champak Gupta, Nitu Gupta and Kanta Devi Gupta along with other accused filed CRLMC No. 2516 of 2013 u/s 482 of the Cr.P.C. The same was disposed of on 11.02.2014. On 18.08.2015, Nitu Gupta, Kanta Devi Gupta and Champak Gupta filed ABLAPL No. 12345 and 12343 of 2015 seeking anticipatory bail before this Hon'ble Court. However, on 10.11.2015 the said anticipatory bail applications

were rejected. This being the factual backdrop, the submissions made by the parties have to be appreciated while keeping the facts in mind.

36. The Ld. Sr. Counsel for the State has vehemently opposed the present petition on the ground that since the anticipatory bail petition had been rejected by this Court, therefore, the present petition warrants no interference. However, I find no merit in the same as the factors for consideration of whether or not anticipatory bail should be granted largely vary from the factors for consideration of whether or not this Court should exercise its inherent powers as prescribed under Section 482 of the Cr.P.C. The rejection of the bail application cannot be *stricto sensu* construed as a bar in the nature of *res judicata* in so far as a subsequent petition under Section 482 of the Cr.P.C. is concerned. Ld. Sr. Counsel also submits that since an earlier petition under Section 482 of the Cr.P.C. had been filed by the present petitioners, the same should be a bar against any successive petitions of similar nature preferred by them. This submission however finds no credence in view of the settled position of law in that regard, as laid down by the Hon'ble Apex Court in *Supdt. And Remembrancer of Legal Affairs v. Mohan Singh* (1975) 3 SCC 706 and more recently in *Anil Khadkiwala v. State (NCT of Delhi)* (2019) 17 SCC 294, where the Hon'ble Supreme Court was of the opinion that successive applications under Section 482 Cr.P.C under changed circumstances would be maintainable and dismissal of an earlier application would not act as a bar against any successive application preferred. Ld. Sr. Counsel has also submitted that the Petitioners are deliberately avoiding participation in the trial and are, in effect, causing the delay in the conclusion of the trial. On the other hand, Ld. Counsel for the Petitioner Shri Mund has stated that the Petitioners herein are keen to join the investigation and it is, in fact, the prosecution which is not allowing the completion of the trial on one pretext or the other. He submits that he is instructed to give an unequivocal undertaking that the Petitioners are keen and in fact are unconditionally bound to participate in trial.

IN CRLMC NO. 454 OF 2021 NITU GUPTA& ANR. V. STATE OF ODISHA (VIGILANCE)

37. Now adverting to the charges against Nitu Gupta and Kanta Devi Gupta (Petitioners in CRLMC No. 454 of 2021). Their names find mention in three places of the charge sheet, i.e. (i) that Nitu Gupta and Kanta Devi Gupta were signatories to the Articles of Association and Memorandum of Association of M/s Deepak Steel and Power Pvt. Ltd.; (ii) that Nitu Gupta and Kanta Devi Gupta have occasionally signed financial statements as Directors of M/s Deepak Steel and Power Pvt. Ltd. and (iii) that Nitu Gupta signed certain cheques to making payments to M/s Snehapushp Marketing Pvt. Ltd. Keeping these limited specific averments in mind, it must be examined whether a *prima facie* case is made out even keeping the entirety of the allegations, against the aforementioned two Petitioners for any of the offences they have been charged with.

38. As discussed above, Section 120-B of the IPC is a separate, distinct and

substantive offence. To attract its application, the most vital ingredient to be satisfied would be the existence of an agreement/meeting of mind among persons to do an illegal act or do a legal act illegally. No averment pertaining to any connivance on part of the aforementioned Petitioners is forthcoming from a careful perusal of the materials on record. Therefore, when there is no averment to the effect of demonstrating the existence of any meeting of mind, a charge of conspiracy under the IPC cannot sustain. As has been established above, the meeting of mind is the sine qua non for invoking a charge of conspiracy. In the absence of specific allegations or averments in that regard, omnibus allegations have no value.

39. Moving on to the invocation of Section 409 of the IPC. Criminal breach of trust requires the twin elements of "entrustment" of property and dereliction of duty by breaching the trust reposed with respect to that property in order to stand. In the present case, with respect to the abovementioned two Petitioners, there is no material on record which showcases that any property was "entrusted" to the Petitioners which they have violated so as to come under the purview of the application of the instant Section. Pertaining to Section 379 of the IPC, there is a complete absence of any material on record which points at the dishonest intention of the two abovementioned Petitioners. Without such an intention being categorically showcased, the offence of theft being alleged is to no avail.

40. Next, this Court does not see as to how the charge under Section 420 of the IPC against the Petitioners can sustain. The aforementioned Petitioners were Directors of M/s Deepak Steel and Power Pvt. Ltd. i.e., the company that purchased the iron ores, not the company that sold them. That being the case, it is incredulous how the prosecution has gone so far to charge the Directors of the buyer company for dishonestly inducing delivery of property, an offence which can only be restrictedly applied to the seller company i.e. M/s Snehapushp Marketing Pvt. Ltd or the lessee in question. In so far as invocation of Section 468 IPC against the Petitioners concerned, it cannot be invoked against the abovementioned two Petitioners as there is no specific averment ascertainable from the materials on record. There is no indication in any of the documents hinting at any imputation or allegation against the aforementioned Petitioners indulging in any attempt of forgery with any dishonest intention. It is noted that in so far as the Petitioners in CRLMC No. 454 of 2021 are concerned the allegations made against them are omnibus which reflect a non-application of mind and the allegations made against them fail to disclose any offence but a performance of their statutory duties by virtue of being directors in the M/s Deepak Steel and Power Ltd.

41. Section 411 of the IPC is the only charge invoked against the abovementioned two Petitioners which shows some semblance of reasoning on the part of the prosecution. Be that as it may, even that also doesn't stand. Even a slightly deeper scrutiny of the materials on record that the Petitioners had any

knowledge or intention to commit the said offence, does not indicate their role. The averments made in the charge sheet are limited to three things only. As far as the signing of cheques goes, it has been vehemently submitted by the counsel for the Petitioner that the same is a bald statement and these alleged cheques have not yet been placed on record inspite of the passage of more than 7 years since the chargesheet was filed. The said contention deserves some merit since the records do not indicate any such cheque being a part of the case records.

42. While there can be no manner of doubt that in the "Objects and Reasons" stated for enactment of the Prevention of Corruption Act, 1988 it has been made more than clear that the Act, inter alia, envisages widening of the scope of the definition of "public servant", nevertheless, a very wide understanding of the definition of "public servant" may have the effect of obliterating all distinctions between the holder of a private office or a public office which, in my considered view, ought to be maintained. Therefore, it would be more reasonable to understand the expression "public servant" by reference to the office and the duties performed in connection therewith to be of a public character. As Section 13 of the Prevention of Corruption Act, 1988 clearly envisages 'criminal misconduct by a public servant', by any stretch of imagination the present Petitioners cannot be brought under the purview of the same. Especially, when no averments or specific allegations have been made to bring home the role of the petitioners in CRLMC No. 454 of 2021 so as to connect them with the offence provided under Section 13 of the Prevention of Corruption Act. In order to bring home a charge under the said Act, it is incumbent upon the prosecution to make out a case against the accused therein with the backdrop of the requirements under the Act. Such ingredients which include abusing their position as a public servant so as to obtain for themselves or any other person, any pecuniary advantage or valuable thing is wholly absent insofar as the petitioners in CRLMC No. 454 of 2021 are concerned. That being the case the petitioners in CRLMC No. 454 of 2021 cannot be held liable to have committed the offences under the said provisions of the Prevention of Corruption Act.

43. This Court while dealing with a similar situation in *Balasubramanian Prabhakaran v. State of Odisha (Vigilance)*, 2021 SCC OnLine Ori 147 when presented with an application filed under Section 482 of Cr.P.C. seeking quashment of the charge-sheet filed and the order of cognizance passed under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Sections 420, 379, 120-B of I.P.C. and Section 21 of the MMDR Act, 1957 held that;

"26. In the facts and circumstances narrated above and for the discussion made with reference to the provisions and propositions of law, it would be manifestly unjust to allow continuance of the proceeding against the petitioner. Consequently, the impugned order of cognizance qua the petitioner calls for interference by this Court in exercise of power under Section 482 of Cr.P.C.

27. In the result, this CRLMC is allowed, and the charge-sheet filed and the order

of cognizance passed under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Sections 420, 379, 120-B of I.P.C. and Section 21 of the MMDR Act, 1957 in T.R. No. 80 of 2011 in the court of the learned Special Judge (Vigilance), Keonjhar corresponding to VGR Case No. 59 of 2009 qua the petitioner are hereby quashed."

It is pertinent to mention here that in Prabhakaran (supra) this Court was dealing with a similar situation where the Director of a company which was employed as a raising contractor was sought to be roped in by invoking the principle of vicarious liability. After having dealt with the factual matrix therein and the legal position qua vicarious liability, this Court held that merely because a person was a Director in the company carrying out raising works would not automatically attract liability vicariously in the absence of specific allegations/averment in that regard especially considering that there is no specific provision in the IPC for fixing criminal liability on the Directors of a company.

Similarly, this Court while dealing with another case where liability was sought to be affixed basing on the principle of vicarious liability in a case based on a similar factual matrix relating to charges of illegal mining in Pankaj Kumar v. State of Odisha 292020 SCC OnLine Ori 41 held as under;

"19. In view of such position, it appears that the complaint lodged against the petitioner does not disclose any offence against him. Therefore, in view of the law laid down by the apex court in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 that a prosecution which is based on complaint and does not disclose any offence or is absurd or prohibited by legal bar or mala fide, is bound to be quashed and set aside.

20. In view of the law discussed above, this Court is of the considered opinion that the criminal proceeding so initiated against the petitioner in 2(b) CC No. 20 of 2014 pending in the court of learned J.M.F.C., Barbil is liable to be quashed and the same is hereby quashed. Consequentially, the order dated 04.12.2014 passed by the learned J.M.F.C., Barbil taking cognizance of the offence under Section 27 (3) (b) and (c) of the Orissa Forest Act, 1972 is also quashed."

45. Furthermore, this Court in Dipti Ranjan Patnaik v. State of Odisha (Vigilance) CRLREV No. 831 of 2018, was presented with a Criminal Revision Petition where the petitioners who were the lessees of certain mining lease holding areas in the Unchabali Iron and Manganese Mines, were arrayed as accused persons charged for commission of offences under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988, under Sections 420/379/120-B of the IPC and Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957. The Petitioners therein challenged the order of the trial court wherein their plea for discharge had been rejected. However, relying on the findings of this Court in a W.P.(Crl.) filed on the same set of facts and circumstances, in the instant Criminal Revision Petition, this Court held that as any question of illegality, irregularity, breach, deficiency and deviation did not arise on the part of the

Revisionists therein, the said Criminal Revision Petition had to be allowed and therefore, the Revisionists were discharged from the matter.

46. Therefore, in my considered opinion, in the present case, the complaint does not indicate the existence of any prearranged connivance whereby Nitu Gupta and Kanta Devi Gupta had any knowledge or premeditation in the matter. From a prima facie assessment of all the materials on record including the list of witnesses and the list of documents as well as the contentions of the counsels, there is nothing more than a host of omnibus allegations leveled against the abovementioned Petitioners. There is nothing on record that can sustain the allegations of criminality. In the absence of any specific allegation leveled against Nitu Gupta and Kanta Devi Gupta apart from the fact that they merely signed cheques whose details have not been produced, and that they have signed financial statements of the Company which forms a part of their statutory duty as a Director and does not automatically translate into active knowledge, participation or connivance, I am of the opinion that no prima facie case has been made out against Nitu Gupta and Kanta Devi in respect of offences under Sections 420, 468, 409, 379, 411 and 120-B of the IPC and Sections 13 (2) r/w 13(1)(c)(d) of the Prevention of Corruption Act. Even otherwise in view of the discussion hereinabove dealing with the evolution of the "doctrine of attribution" this Court comes to the irresistible conclusion that given the yardstick adopted by the Hon'ble Supreme Court, the facts/ materials on record of the case in so far as the present Petitioners are concerned compel this Court to exercise its inherent powers under Section 482 of the Code by quashing the complaint against Nitu Gupta and Kanta Devi Gupta to prevent a miscarriage of justice and the abuse of process of court.

IN CRLMC NO. 440 OF 2021 CHAMPAK GUPTA V. STATE OF ODISHA (VIGILANCE)

47. In so far as the question as to whether it is a fit case for quashing of the proceedings emanating from the chargesheet when it comes to Champak Gupta (Petitioner in CRLMC No. 440 of 2021), has to be independently ascertained. Champak Gupta's involvement in the present matter finds mention in the following places upon a perusal of the materials on record as pointed out by the Ld. Sr Counsel for the State (Vigilance) and can be summed up as follows; (i) that Champak Gupta was a director and equal shareholder of M/s Snehapush Marketing Pvt. Ltd. during the period the company was indulging in raising and selling iron ores from the Uliburu Mines alongwith his brother who is the principal accused in the present matter, one Deepak Gupta; (ii) that as a Director of M/s Snehapush Marketing Pvt. Ltd., since 2001, Champak Gupta has been alleged to be aware of the taking over of B.K. Mohanty's mining lease in the Uliburu Mines; (iii) it has been alleged that Champak Gupta was physically present at the time of pointing out which quarry the ores have to be raised from thereby demonstrating a certain degree of knowledge and participation; (iv) that Champak Gupta was a signatory of the banking accounts of M/s Snehapush Marketing Pvt. Ltd. alongwith said Deepak Gupta; (v) that Champak Gupta has

allegedly conducted illegal mining beyond the mining lease area of B.K. Mohanty ; into the revoked lease area of Jagdish Mishra as well as into a part of the Uliburu Reserve Forest area; (vi) that Champak Gupta has allegedly participated in the exercise of undervaluation and presenting of incorrect figures of ore extraction by presenting that 47,48,826 MT iron ore was extracted between 2003-2004 to 2009-2010, even though the accounts of the raising contractor employed by this present petitioner's company shows a higher quantity of extracted iron ore in the aforementioned period; (vii) that Champak Gupta alongwith his father, one Hari Charan Gupta (co-accused) and his brother, one Deepak Gupta was directly managing the mining operations at the Uliburu Mines. Keeping these specific averments in mind, I shall examine whether a case for quashing in this abovementioned petition u/s482 of the Cr.P.C. is made out.

48. Ld. Sr. Counsel for the State (Vigilance) has also drawn the attention of this court to the fact that though the accused persons are also liable under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Forest (Conservation) Act, 1980, they have not been pressed into service in the present charge sheet since the Mining Department and Forest Department have launched separate prosecutions before the Court of JMFC, Barbil.

49. It is inescapable and ex facie clear that there are specific allegations/averments against the aforementioned Petitioner for colluding with the other accused during the period of 2003-2010 with respect to the operation of the mines thereby leading to the present Petitioner being charged under Section 120-B of the IPC. However, whether or not during the said period the accused did commit any illegality or whether any criminality can be ascribed to him is a matter that can be decided only at the trial. It is impermissible for this court at this stage to look into the same in these proceedings.

50. Moving on to the next charge of Section 409 of the IPC, at the cost of repetition, it has to be reiterated that the essence of an offence of criminal breach of trust involves an 'entrustment' of a property and the breach of trust committed must be with respect to such property only. M/s Snehapushp Marketing Pvt. Ltd. of which Champak Gupta was a Director as well as equal shareholder had entered into an agreement with said B.K. Mohanty for transfer of B.K. Mohanty's mining lease in favour of M/s Snehapushp Marketing Pvt. Ltd. As such, there was an entrustment, whether or not there was a criminal breach of trust with respect to that property is a matter to be dealt with at trial. Section 379 of the IPC has been leveled against Champak Gupta, as he was the Director of the company which was raising and selling the ores, if the same were indeed illegally being raised and sold, then one could see the merit of charging the aforementioned Petitioner under this particular Section. However, at this stage, the Court cannot go into the question of whether or not the averment holds good. With regards to the question as to whether a case has been made out against Champak Gupta for the application of Section 420 of the IPC, after examining the settled position of law as well as the materials on record, it is

unclear as to who the abovementioned Petitioner has cheated or dishonestly induced into delivering any property. No specific averment has been made to this effect. A specific averment of falsifying records to undervalue and underreport the total quantity of raised ores against Champak Gupta as the Director of M/s Snehapushp Marketing Pvt. Ltd. has also been made in light of which a charge under Section 468 has been leveled against Champak Gupta.

51. The allegations that M/s Snehapushp Marketing Pvt. Ltd. acting through Champak Gupta indulged in mining activities beyond the lease area of B.K. Mohanty is a matter which can be determined only during the course of trial. Similarly, Ld. Senior Counsel for the State (Vigilance) has also drawn this Court's attention to the contention that the raising contractor i.e. M/s Gurunanak Roadlines was employed by M/s Snehapushp Marketing Pvt. Ltd. to contend the active involvement of Champak Gupta along with Deepak Gupta and Hari Charan Gupta in the mining activities within the quarry. All of these specific averments coupled with contentions/submissions made in that regard, seek to establish a certain degree of participation and make out a case necessitating that the Petitioner stand the test of trial.

52. Given the discussion and going through the material on record as well as examining the position of law, the specific averments against Champak Gupta indicate the presence of allegations of participation, connivance and knowledge. Thus, it is in the interest of justice that he be made to stand the test of trial in order to ascertain the truth.

53. As succinctly held by the Hon'ble Supreme Court recently in Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. and Ors. 2021 SCC OnLine SC 806, when dealing with a similar set of facts and circumstances, it has to be remembered that Section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice.

54. Thus, in view of the discussions and observations hereinabove, CRLMC No. 454 of 2021 is allowed to the extent that the proceedings arising out of V.G.R. Case No. 5(c) of 2013 arising out of Balasore Vigilance P.S. Case No. 30 of 2013 which is pending in the Court of Ld. Special Judge Vigilance, Keonjharin so far as they concern the present petitioners in CRLMC No. 454 of 2021 i.e. Nitu Gupta and Kanta Devi Gupta is quashed and set aside.

55. At the same time, in view of the discussion made hereinabove, I find no ground to interfere, at this stage, under Section 482 Cr.P.C. insofar as CRLMC No. 440 of 2021 filed by Champak Gupta given the specific allegations/averments made against the accused. Resultantly, CRLMC No. 440 of 2021 is dismissed.

56. However, in so far as I.A. No. 363 of 2021 is concerned, it is directed that the Non-Bailable Warrant issued against the Petitioner accused i.e. Champak Gupta shall not be executed.

57. In view of the unequivocal undertaking made by the learned Counsel for the petitioner hereinabove, the said Petitioner is granted 4 weeks time to appear before the court in seisin of the matter to consider any applications that may be made in accordance with law, uninfluenced, by any of the observations made hereinabove.

58. At the cost of repetition, it is emphasized that nothing shall be construed to come in the way or prejudicially affect the fair trial in so far as the Petitioner in CRLMC No. 440 of 2021 is concerned. Ordered accordingly.

The CRLMC is accordingly disposed of.

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