

(2015) 06 OHC CK 0024

In the Orissa High Court

Case No : CRLMP No. 1152 of 2014 and CRLMC No. 5020 of 2014

Prakash Mishra

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 161, 482
Penal Code, 1860 (IPC) — Section 120-A, 120-B, 161
Prevention of Corruption Act, 1988 — Section 13, 13(1)(d), 13(2), 4(1), 5

Citation : (2015) CriLJ 4330 : (2015) 2 ILR Ori 57 : (2015) 2 OLR 93

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Advocate : Sanjit Mohanty, Senior Advocate, S.P. Panda, R.R. Swain, D. Panda, A. Panda, B.P. Das and S.N. Das, for the Appellant; R.K. Mohapatra, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.C. Parija, J.—These two applications have been filed under Articles 226 and 227 of the Constitution of India and Section 482 Cr.P.C. respectively, for quashing of the F.I.R. registered as Bhubaneswar Vigilance P.S. Case No. 35, dated 20.9.2014, under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 120-B of the Indian Penal Code, corresponding to V.G.R. Case No. 35 of 2014, pending in the Court of the learned Special Judge, Vigilance, Bhubaneswar.

2. Shri S.K. Das Mohapatra, Deputy Superintendent of Police, Vigilance Cell, Cuttack, lodged a written report before the Superintendent of Police, Vigilance, Bhubaneswar, which was registered as Bhubaneswar Vigilance P.S. Case No. 35, dated 20.9.2014, under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 ("P.C. Act" for short) and Section 120-B of the Indian Penal Code ("I.P.C." for short), which reads as under:--

"A Vigilance enquiry was taken up to verify the allegation that officials of Odisha State Police Housing and Welfare Corporation (OSPH and WC), Bhubaneswar, made 100% payment of the cost of cement and steel to different suppliers prior to the supply during the period from 2006-07 to 2009-10 without any security and without ensuring the delivery of the materials, and thereby allowed pecuniary advantages to the aforesaid suppliers by abusing their official positions.

During enquiry, it is found that OSPH and WC, Bhubaneswar is a registered company under Indian Companies Act, 1956. Shri Prakash Mishra was then Chairman-cum-Managing Director from 1.9.2006 to 3.7.2009 and Shri Rabindra Kumar Patnaik was the Financial Advisor from 6.10.2005 to 2.9.2009 of OSPH and WC, Bhubaneswar.

Shri Prakash Mishra, the then CMD of the OSPH and WC without any authority and without approval of the Board of Directors of OSPH and WC approved the proposal dtd. 14.09.2006 and the minutes of the tender/purchase committee meeting of OSPH and WC Ltd. held on 20.10.2006 for issuance of supply order centrally from the Head Office for procurement of steel and cement on 20.10.2006 and 29.10.2006, superseding the previous orders for issuance of supply order by the Project Managers of the Zonal Offices of OSPH and WC to show undue pecuniary favour to the suppliers Shri Mishra, again by abusing his official position and in connivance with Shri Rabindra Kumar Patnaik, Financial Advisor of OSPH and WC issued one Office Order No. 7395/OPHWC dt. 03.11.2006 with an intention to show undue official favour to the supplier companies of steel and cement by authorising the Financial Advisor to make full payment of price to the suppliers before supply of Steel and Cement, without obtaining any security from the suppliers and without prior or subsequent approval of the Board of Directors of OSPH and WC.

As per the orders of CMD and delegation of power to the Financial Advisor of OSPH and WC Shri Rabindra Kumar Patnaik sanctioned 100% payment of price to different suppliers of cement and steel as per the supply orders issued in favour of the suppliers.

Enquiry also revealed that the aforesaid payments were made to the suppliers against the supply orders which contained the following terms and conditions.

- 1) Supply of the materials should be despatched to sites immediately and delivery will be made within 7 days from the issue of the supply order.
- 2) Supply Bills along with challans after duly countersigned by Joint Manager/DM may be submitted to the Head Office for adjustment against advances.

Though the conditions of each supply order for supply of the materials within 7 days of receipt of the orders, it is alleged that some of the suppliers failed to supply the same within the stipulated time. On the other hand as per the orders of Shri Prakash Mishra, CMD, Shri Rabindra Kumar Patnaik, Financial Advisor of OSPH and WC, in abuse of their official position, continued to make further full

payment of price to the cement and steel suppliers against further orders without ensuring the delivery of steel and cement for which full payments were made earlier.

Even by the end of the financial year 2006-07 Shri Prakash Mishra and Shri Rabindra Kumar Patnaik did not take steps to ensure that the different steel and cement suppliers, (to whom they have already made 100% payment of price of Rs. 9,20,01,730/-), had actually supplied the ordered quantities of cement and steel. In a similar manner, Shri Prakash Mishra and Shri Rabindra Kumar Patnaik sanctioned 100% payment of price in advance to different suppliers of steel and cement as follows:- Rs. 18,23,05,447/- for the year 2007-2008, Rs. 26,69,78,952/- for the year 2008-2009 and Rs. 3,73,18,127/- for the year 2009-2010 without any security and without ensuring that the ordered consignment were supplied to OSPH and WC.

Thus for the financial year from 2006-2007 to 2009-2010 Shri Prakash Mishra as CMD, OSPH and WC failed to ensure that the suppliers of cement and steel who had already received payment of full price of the consignments, had actually delivered those consignments. The advance payments of price remained unreconciled and unadjusted even after the completion of the financial year. Consequently, Shri Prakash Mishra and Shri Rabindra Kumar Patnaik did not finalise the accounts for the financial years 2006-2007, 2007-2008, 2008-2009 and 2009-2010, within the stipulated period of six months after the completion of the corresponding financial year.

In this manner, a total sum of Rs. 57,86,03, 256/- (19,84,05,290.00)(cement) + Rs. 38, 01,97,966.00 (steel) was paid as 100% payment of price to the aforesaid cement and steel suppliers before supply of the quantity of steel and cement without keeping any security and thereby, the aforesaid amounts were released by means of cheques/DDs in favour of the suppliers, without supplies against the earlier payments made to the suppliers. It is alleged that taking advantage of such glaring omissions and commissions some suppliers have supplied the materials long after the receipt of the full payment, without adhering to the terms and conditions of supply orders, and thereby earned interest on full payment received from OSPH and WC. Furthermore, even after a lapse of 4 to 7 years, OSPH and WC failed to furnish the bills, vouchers and other vital details regarding the supply of the consignments against which full payment was already made and it is alleged that some of the suppliers may not have actually supplied the ordered quantities of cement and steel. Thus, by acting in the aforesaid manner, without any authority, Shri Prakash Mishra and Shri Rabindra Kumar Patnaik abused their official position and allowed pecuniary advantage to the suppliers against the financial interests of OSPH and WC.

Enquiry further revealed that a Special Audit was conducted by the Finance Deptt., Govt. of Odisha from 25.10.2010 to 08.06.2011 as there were huge payments towards cement and steel supplied by different suppliers to OSPH and WC that remained unreconciled for a very long time corresponding to the period

from 2006-2007 to 2009-2010. The Special Audit revealed that even though 100 % payments were made to the cement and steel companies, there were no record of the receipt of the corresponding consignments for which full payments were already made, such advance payment remained un-reconciled for a long period even beyond the closure of the financial year and there is an outstanding amount of Rs. 727.52 lakhs lying against the suppliers.

Thus it has been alleged that Shri Prakash Mishra, the then CMD, OSPH and WC, Bhubaneswar and Shri Rabindra Kumar Patnaik, the then Financial Advisor, OSPH and WC, Bhubaneswar entered into a criminal conspiracy and in pursuance to the said conspiracy abused their official positions, without prior or subsequent approval of the Board of Directors passed orders for 100% payment of price without any authority against the financial interests of OSPH and WC and thereby showed undue pecuniary advantage to the cement and steel suppliers and others and as such they are liable for committing offences of criminal conspiracy and criminal misconduct U/s. 13(2) r/w 13(1)(d) P.C. Act, 1988/120-B IPC.

It is, therefore, requested for registration of a Criminal case against Shri Prakash Mishra, Shri Rabindra Kumar Patnaik and others U/s. 13(2) r/w 13(1)(d) P.C. Act, 1988/120-B IPC for a detail investigation."

3. Shri Sanjit Mohanty, learned Senior Advocate appearing for the writ petitioner Prakash Mishra (in CRLMP No. 1152 of 2014) submitted that the writ petitioner is a serving officer of Indian Police Service ("IPS" for short) of 1977 batch, belonging to the Orissa cadre, presently serving as the Director General of Central Reserve Police Force ("CRPF" for short), New Delhi. During his illustrious career spanning over 36 years, the petitioner had served in various important and sensitive posts both under the Central Government and the State Government, which are as follows:--

4. It is submitted that while the writ petitioner was serving as the Director General, National Disaster Response Force, New Delhi, keeping in view his unimpeachable integrity and impeccable track record and his seniority in service, a request was made by the State Government for accepting the post of Director General of Police ("D.G.P." for short), Orissa. Accepting such offer, the writ petitioner returned to the State and joined as the D.G.P., Orissa, in 2012. During his tenure as the D.G.P., Orissa, the writ petitioner took several measures to enhance the efficiency, preparedness and morale of the Orissa Police to counter the serious problem of left wing extremism in the State. During his tenure as the D.G.P., the State could recover from severe reverses it had suffered earlier and large parts of the State were cleared of the Maoist problem.

5. Subsequently, during his tenure as D.G.P., Orissa, he came to realize that the ruling political establishment were not very happy with his strict and upright way of functioning and in order to avoid any clash with the political establishment in power, the writ petitioner applied to the State Government for being spared for central deputation to the Union of India. Accepting such request of the writ

petitioner, the State Government vide letter dated 18.12.2013 recommended his name for deputation to the Union of India. However, due to ensuing general election in the State, the writ petitioner could not be relieved. Immediately after the election results were announced, the State Government vide its letter dated 28.5.2014, withdrew the recommendation for central deputation of the writ petitioner earlier made, on the plea that there is severe shortage of IPS officers in Orissa at the D.G. level and therefore it is not possible to spare the services of the writ petitioner for central deputation.

6. It is submitted that subsequently an enquiry was made by the Union of India regarding availability of the writ petitioner for being posted as the Special Secretary (Internal Security), in the Ministry of Home Affairs, Government of India. Immediately after receipt of such request, the writ petitioner was removed from the post of D.G.P., Orissa and posted as the Chairman-cum-Managing Director, Orissa State Road Transport Corporation, which is not even a post under the Police Department.

7. It is further submitted that on 9.7.2014, a letter was addressed by the State Government to the Ministry of Home Affairs, Government of India, wherein it was stated that the name of the writ petitioner has been removed from the offer list for central deputation and that there is a Vigilance enquiry pending against him. It is submitted that despite such communication from the State Government, on the insistence of the Ministry of Home Affairs, Government of India, the writ petitioner was relieved from the State and was posted as the Special Secretary (Internal Security), in the Ministry of Home Affairs, Government of India. Subsequently, he has been appointed as the Director General of CRPF, New Delhi, where he is continuing as such till date.

8. Learned counsel for the writ petitioner submitted that the main thrust of the allegation in the impugned F.I.R. is that while the writ petitioner was posted as the Chairman-cum-Managing Director ("CMD" for short), Odisha State Police Housing and Welfare Corporation ("Corporation" for short), Bhubaneswar, from 01.9.2006 to 03.7.2009, he had approved the payment of 100% advance towards cost of cement and steel to different suppliers prior to the supply during the period from 2006-07 to 2009-10, without any security and without ensuring the delivery of the materials and thereby allowed pecuniary advantage to the said suppliers by abusing his official position. It has also been alleged that the writ petitioner had entered into a criminal conspiracy with the other petitioner Rabindra Kumar Pattnaik (in CRLMC No. 5020 of 2014) and in pursuance of such conspiracy, they have abused their official positions and passed orders for 100% payment of price without approval of the Board of Directors of the Corporation and thereby showed undue pecuniary advantage to the cement and steel suppliers and others and as such they are liable for commission of offences of criminal misconduct and criminal conspiracy under Section 13(2) r/w Section 13(1)(d) of the P.C. Act and Section 120-B I.P.C.

9. It is submitted that the aforesaid allegations are false and baseless and have

been made with the mala fide intent and oblique motive of victimizing the writ petitioner, inasmuch as, the Vigilance Department in its subsequent counter affidavit filed pursuant to the direction of the Court, has admitted that the practice of making payment of 100% of the price of cement and steel to the manufactures/suppliers was in vogue since early Nineties and continued even after the writ petitioner left the Corporation. Learned counsel for the writ petitioner has relied upon paragraphs-12, 13 and 14 of the said counter affidavit filed by the Vigilance Department, which are extracted below:--

"12. That with respect to the practice and procedure adopted by the Odisha State Police Housing and Welfare Corporation for procurement of cement before 01.9.2006, i.e. prior to the petitioner joining as CMD of the Corporation, has been ascertained by the Vigilance Department from the Corporation. Up to 28.10.2003, the cement was procured from IDCOL, L&T, ACC and OCL on company's offered price. Their offered price was inclusive of transportation and delivery at site. After receiving indent from the zonal offices the offers were collected from the above mentioned reputed companies. On finalization of rate the procurement was made directly from the Cement Companies against the advance payment. The companies were paid 100% advance as per their terms of supply which was sanctioned at Head Office and paid to the companies along with supply order. The advance accounts was settled at Head Office after receipt of delivery challan and bills following due procedure. But on 27.10.2003 Shri B.B. Mohanty, the then CMD vide Office Order No. 7066 on getting complaints from APM and DPM of the Corporation about receiving steel and cement in delay resulting in delay in execution of the project work and in order to expedite the construction work and ensuring commission of utilization certificate to prevent surrender of funds as huge amount of advances remained unadjusted ordered to the DPM and APM to procure the required cement and steel at approved rates and terms and conditions directly.

From 28.10.2003 onwards the central policy of procurement of cement was decentralized and Dy. Project Managers (Asst. Engineers) were allowed to purchase cement directly from the approved suppliers namely L&T, Lafarge, ACC and OCL. The lowest negotiated rates were finalized through tender process district wise and party wise respectively which included transportation charges. The advance was sanctioned at the Head Office and paid to the Dy. Project Managers, account basing on their requisition for purchase of cement for the project undertaken by them. The advance account was settled at Head Office after receipt of challan and bills following due procedure. Such practice continued up to 31.3.2006.

During beginning of financial year 2006-07 again tender committee invited offers from the reputed manufacturing companies like ACC, Lafarge, OCL and L and T etc. and rate were finalized district wise for supply of cement. But companies failed to supply the cement due to increase the rate of cement in the open market. Considering the situation, the rates were finalized by enhancing the

rates of cement by obtaining offers from the companies in case to case basis. The advances were sanctioned at Head Office as per the terms and conditions offered by the Companies.

13. That so far as procedure and practice prevailed during the incumbency of the present petitioner from 01.9.2006 to 03.7.2009 in regard to procurement of Steel and Cement as well as payment of advance are concerned, it is submitted that to satisfy the top quality requirement of cement and steel it was decided to procure the materials from reputed manufacturing company like SAIL, RINL (VIZAG) for steel rod and from M/s. Lafarge India, M/s. OCL, M/s. Ultratech and M/s. ACC Ltd. for cement. In this connection, the CMD has authorized the Financial Advisor to sanction advance payment to the cement and steel supplier. Approximately an amount of Rs. 59.00 crores was paid to different steel and cement suppliers, out of which an amount of Rs. 7.72 crores approximately remained unsettled/unadjusted as found by special audit.

14. That in regard to the practice and procedure adopted by the Corporation for procurement of Cement after the petitioner demitted office on 03.7.2009 onwards it is submitted here that during the middle of July 2009 (up to 13.7.2009) the system of central purchase was discontinued and Jt. Managers of the Division were authorized to purchase the cement from the approved suppliers in the approved rate. The advances were sanctioned by Joint Managers at Division level and the advance accounts were settled at the division level. However, the system for finalization of rates on quarterly basis continued at Head Office. Head Office of this Corporation continued to obtain offer from the approved suppliers and negotiate the rates district wise for a period of three months. The same system is continuing so far. Moreover to streamline the system, further instructions have been issued to field divisions on 15.10.2014."

10. It is submitted that in his capacity as CMD of the Corporation, the writ petitioner had taken a decision that all purchases of steel and cement would be made directly from the Head Office. It was also decided that purchase of steel shall be from public sector undertakings, like SAIL and RINL and cement from renowned branded manufacturers, like Ultratech, OCL, L&T, ACC etc. The said decision was taken in the best interest of the Corporation and to ensure quality and cost benefit. It is submitted that as the CMD of the Corporation, the writ petitioner had full financial power and authority to take such a decision. Moreover, all such purchases of steel and cement were made in a most transparent manner, after inviting tenders from the intending bidders and accepting the lowest price offered.

11. It is submitted that the decision to purchase steel and cement from the branded manufacturers directly at the most competitive price yielded excellent results and for the first time, the Corporation earned huge profits and accumulated losses were wiped out. The Corporation continued to earn huge profits consistently during the tenure of the writ petitioner, which is evident from the Annual Reports of the Corporation for the relevant years.

12. It is accordingly submitted that the practice and procedure of making payment of 100% advance towards cost price of cement and steel was being followed much prior to the writ petitioner joining the Corporation and such practice continued even after the writ petitioner demitted office in July, 2009. The writ petitioner had only streamlined the procedure and made it more effective and transparent.

13. It is further submitted that the reconciliation of accounts of the Corporation pertaining to outstanding advances against the suppliers is not the responsibility of the writ petitioner, as the CMD of the Corporation. Moreover, as has been clarified by the Home Department, the findings in the audit report are based on the accounts maintained by the Corporation and such findings cannot be taken as final, unless the same are duly enquired into and established by the Corporation. In the present case, as the adjustment and reconciliation of the accounts of the Corporation for several years, including the tenure of the writ petitioner, is still under progress, the initiation of the criminal proceeding based on the observation made in the audit report cannot be sustained in law.

14. It is further submitted that prior to the lodging of the impugned F.I.R., a preliminary enquiry was undertaken by the Vigilance Department and during such enquiry, a query was made to the Home Department of the State Government, which is the Administrative Department of the Corporation, seeking clarification with regard to the observations made in the Special Audit Report pertaining to reconciliation of huge outstanding amount as advance against which supplies have not been made. It is submitted that the Home Department in its communication dated 24.09.2014 addressed to the Superintendent of Police, Vigilance Cell, Odisha, Cuttack, intimated that the findings of the audit team incorporated in the Special Audit Report are based on the accounts maintained by the Corporation at their level and such findings of an audit cannot be taken as final, unless the same are duly enquired and established by the auditee, i.e. the Corporation. The Home Department further clarified that it does not have any authority to suo motu initiate any action unless any specific reference is made by the Corporation to the Department/Government for intervention. However, even before receipt of such clarification, the Vigilance authorities have rushed to register the impugned F.I.R. on 20.09.2014, for the reasons best known to them.

15. It is further submitted that the preliminary enquiry has been conducted by the Vigilance authorities in a most perfunctory manner, with the oblique motive of initiating a criminal proceeding against the writ petitioner, irrespective of the materials collected during such enquiry. In this regard, it is submitted that during enquiry, no statement of any witness has been recorded and even the writ petitioner has not been afforded an opportunity to produce the relevant records/documents and explain his position. Further, though the details of the advances received and supplies made by various manufacturers/suppliers had been sought for by the Enquiring Officer, without even waiting for their response, the

impugned F.I.R. has been lodged in a most hurried manner, as if to meet a predetermined deadline.

16. Learned counsel for the writ petitioner further submitted that the purported preliminary enquiry has been conducted by the Vigilance authorities in gross violation of the procedures and guidelines laid down in Circular Order No. 6/96 of the Vigilance Department.

17. Learned counsel for the writ petitioner submitted that as the allegations made in the impugned F.I.R. are vague and baseless and does not disclose commission of any cognizable offence, the same is liable to be quashed. In support of his contention, learned counsel has relied upon a decision of the apex Court in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, AIR 1982 SC 949 : (1982) 1 CompLJ 217 : (1982) CriLJ 819 : (1982) 1 SCALE 38 : (1982) 1 SCC 561 : (1982) 3 SCR 121 , wherein the Hon''ble Court has held that a F.I.R., which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.

18. In this regard, he has also relied upon the often quoted decision of the apex Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , wherein the Hon''ble Court has held that a FIR can be quashed at the initial stage where the allegations made, even if 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. Hon''ble Court has further held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, quashing of such a proceeding even at the initial stage is justified.

19. Coming to the allegation of criminal misconduct under Section 13(1)(d) of P.C. Act, learned counsel for the writ petitioner submits that the pecuniary advantage alleged to have been gained by the writ petitioner must be by (i) corrupt or illegal means, (ii) abuse of power and (iii) in the discharge of duty without any public interest. It is submitted that in the present case, the basic ingredients of the alleged offence of criminal misconduct is not made out, as has been held by the apex Court in *C.K. Jaffer Sharief Vs. State (Through CBI)*, AIR 2013 SC 48 : (2013) CriLJ 341 : (2013) 1 Crimes 43 : (2013) 1 RCR(Criminal) 187 : (2012) 11 SCALE 71 : (2013) 1 SCC 205 . In this regard, it is submitted that the impugned F.I.R. does not disclose the names of the beneficiaries who have received the pecuniary advantage or the extent of such pecuniary gain and corresponding loss to the Corporation. Moreover, there is no allegation in the F.I.R. of any criminal intent or mens rea on the part of the writ petitioner, which is essential to make out the offence of criminal misconduct, as has been held by the apex Court in *A. Subair Vs. State of Kerala*, (2009) CriLJ 3450 : (2009) 8 JT

415 : (2009) 8 SCALE 585 : (2009) 6 SCC 587 : (2009) 10 SCR 1058 . Further, the actus reus as alleged in the impugned F.I.R. does not satisfy the requirements of law laid down by the apex Court in R. Balakrishna Pillai Vs. State of Kerala, (2003) 3 JT 120 : (2003) 2 SCALE 560 : (2003) 9 SCC 700 : (2003) 2 SCR 436 .

20. As regard the allegation of criminal conspiracy made in the F.I.R., learned counsel for the writ petitioner submits that except bald allegations, there is no material available on record to even suggest that there was any agreement or meeting of mind between the two petitioners to do an illegal act or an act by any illegal means and therefore, the offence of criminal conspiracy under Section 120-B I.P.C. is not made out at all.

21. It is accordingly submitted that as the impugned F.I.R. has been lodged on false, vague and baseless allegations with the mala fide intent and oblique motive to cause harm and damage to the reputation of the writ petitioner and as the allegations made therein and the evidence collected in support of the same do not make out a case against the petitioners, the continuance of the same would be an abuse of the process of the Court and therefore, the same is liable to be quashed.

22. Shri A.K. Mohapatra, learned counsel appearing for the petitioner Rabindra Kumar Pattnaik (in CRLMC No. 5020 of 2014) submitted that the petitioner is a 1986 batch officer of Orissa Financial Service ("OFS" for short) and was posted as Financial Advisor of the Corporation with effect from 06.10.2005 and continued till 02.09.2009. Thereafter, he was posted as the Director, Madhusudan Das Regional Academy of Financial Management, Govt. of Orissa and at present he has been posted as Addl. Secretary in the School and Mass Education Department of the State Government. He has an unblemished service career with outstanding CCRs and his name has been recommended for selection/promotion to the Indian Administrative Service ("IAS" for short) by the Finance Department of the State Government.

23. As regard the allegations made in the impugned F.I.R., learned counsel for the petitioner submits that the same are solely based on the observations made in the Special Audit Report and admittedly, unreconciled and/or unadjusted outstanding advance amounts reflected in the said audit report has been mechanically replicated in the F.I.R., which is not supported by any materials on record. In this regard, it is submitted that subsequent to the Special Audit Report, there has been further reconciliation of the accounts pertaining to outstanding advances to steel and cement suppliers and as per the compliance report of the year 2014, the outstanding advance against the said suppliers has been shown as Rs. 494.79 lakhs. In this regard, he has also referred to the clarification given by the Home Department, which is the Administrative Department of the Corporation, wherein it has been categorically stated that the findings of the audit incorporated in the audit report are based on the account maintained by the Corporation at their level and that the findings of the audit

report cannot be taken as final, unless the same are duly enquired and established by the auditee, i.e. the Corporation.

24. It is submitted that in a meeting chaired by the writ petitioner, it was decided that the procurement shall be done centrally by the Corporation as per the indent placed by the Project Managers of different zones. Accordingly, offers were invited from reputed manufacturers and the Tender Committee considered those offers and accepted the minimum price offered by such manufacturers, which is a non-trade price, i.e. much less than the market price. Further, the manufactures/suppliers were required to supply the materials directly to the work site in different zones and on receipt of such materials, compliance was required to be furnished to the Head Office. It is because of non-compliance by the zonal offices with regard to the reconciliation of the accounts, the outstanding has been pointed out in the Special Audit Report. It is submitted that the process of adjustment and/or reconciliation of the accounts of the Corporation for past years pertaining to payment of advance towards cost price to manufactures/suppliers of steel and cement, in respect of different projects is still under progress and the same is yet to be finalized.

25. Learned counsel for the petitioner further submits that similar practice has been followed even after 2009, but the Vigilance authorities have chosen not to take note of such fact while lodging the impugned F.I.R., and they have intentionally confined it to the period covering the tenure of the petitioners only. It is accordingly submitted that as the allegations made in the F.I.R. do not prima facie constitute any offence and the same appears to have been lodged in utmost haste and with oblique motive, the continuance of the criminal proceeding would be an abuse of the process of Court.

26. Learned counsel for the petitioner while reiterating the legal stand taken by the writ petitioner, has relied upon the decision of the apex Court in *Rajiv Thapar and Others Vs. Madan Lal Kapoor*, (2013) 2 AD 69 : (2013) CriLJ 1272 : (2013) 1 Crimes 169 : (2014) 1 DMC 644 : (2013) 2 JT 209 : (2013) 1 RCR(Criminal) 911 : (2013) 1 SCALE 665 : (2013) 3 SCC 330 : (2013) AIRSCW 784 : (2013) 1 Supreme 435 , wherein the Hon''ble Court has laid down the steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power of the High Court under Section 482 Cr.P.C. He has also relied upon the decision of the apex Court in *Rishipal Singh Vs. State of U.P.*, AIR 2014 SC 2567 : (2014) AIRSCW 3810 : (2014) 8 SCALE 298 : (2014) 7 SCC 215 in support of his contention 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 the law and the same has to be interdicted at the threshold.

27. Coming to the allegation under Section 13(1)(d) of the P.C. Act, it is submitted that in order to make a person criminally accountable, it must be proved that an act, which is forbidden in law, has been caused by his conduct and that act was accompanied by a legally blameworthy attitude of mind. It is

accordingly submitted, the dishonest intention, which is the gist of the offence under Section 13(1)(d) of the P.C. Act is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant.

28. It is accordingly submitted that in the instant case, there being no material on record to prima facie establish the fact that petitioners had any criminal intention or mens rea while sanctioning payment of full price to the manufacturers/suppliers of cement and steel, no offence can be attributed to them.

29. In response, Shri L.N. Rao, learned Senior Advocate appearing for the Vigilance Department submits that after unearthing prima facie material during the preliminary enquiry, disclosing cognizable offences under Section 13(2) r/w Section 13(1)(d) of the P.C. Act and Section 120-B of I.P.C., the impugned F.I.R. has been lodged and therefore no interference is warranted at this initial stage. It is further submitted that a perusal of the allegations made in the F.I.R. clearly establishes the complicity of the petitioners in the said offences and as the F.I.R. prima facie makes out commission of cognizable offences by the petitioners, no interference is warranted at this stage. In this regard, learned counsel for the Vigilance Department has relied upon the decision of the apex Court in Bhajanlal (supra) and reiterates that the power of quashing a criminal proceeding at the stage of F.I.R. should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases, only when the allegations made in the F.I.R., even if they are taken at their face value and accepted in its entirety do not prima facie constitute an offence. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R.

30. Learned counsel has also relied upon the decision of the apex Court in Indian Oil Corporation Vs. NEPC India Ltd. and Others, AIR 2006 SC 2780 : (2006) 4 CTC 60 : (2006) 6 JT 474 : (2006) 7 SCALE 286 : (2006) 6 SCC 736 : (2006) 3 SCR 704 Supp : (2006) AIRSCW 3830 : (2006) 6 Supreme 66 , in support of his contention that 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. Further, 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 the prayer for quashing of a complaint.

31. Relying upon a decision of the apex Court in Superintendent of Police, C.B.I. and Others Vs. Tapan Kr. Singh, AIR 2003 SC 4140 : (2003) CriLJ 2322 : (2003) 4 JT 26 : (2003) 3 SCALE 777 : (2003) 6 SCC 175 : (2003) 3 SCR 485 : (2003) 2 UJ 906 : (2003) AIRSCW 2133 : (2003) 3 Supreme 349 , learned counsel submits that the true test at the stage of F.I.R. is whether the information furnished provided a reason to suspect the commission of a cognizable offence and not that the police officer recording it must be convinced/satisfied that a

cognizable offence has been committed. It is further submitted that the High Court should not go into the merits and demerits of the allegations made in the F.I.R. merely because the accused alleges malus animus against the author of F.I.R.

32. Learned counsel has also relied upon the decision of the apex Court in *State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others*, (2004) CriLJ 598 : (2003) 9 JT 284 : (2003) 9 SCALE 704 : (2004) 1 SCC 691 : (2004) 1 UJ 165 , wherein the Hon"ble Court has held that at the stage of quashing of F.I.R., it is not permissible for the High Court to look into the materials, the acceptability of which is essentially a matter for trial. While exercising inherent jurisdiction under Section 482 Cr.P.C., it is not permissible for the Court to act as if it was a trial Judge.

33. Reference has also been made to the decision of the apex Court in *R. Kalyani Vs. Janak C. Mehta and Others*, (2009) CLT 272 : (2008) 12 JT 279 : (2009) 1 SCC 516 , in support of his contention that if the allegations made in the F.I.R. disclosed commission of an offence, the Court shall not go beyond the F.I.R. and pass an order in favour of the accused.

34. Coming to the contention of the petitioners that in the absence of criminal intention or mens rea, no offence can be attributed to them, learned counsel for the Vigilance Department has relied upon a decision of the apex Court in *Ajoy Acharya Vs. State Bureau of Inv. against Eco. Offence*, (2013) 10 AD 125 : (2013) CriLJ 4763 : (2013) 13 JT 26 : (2013) 4 RCR(Criminal) 443 : (2013) 11 SCALE 496 , wherein the apex Court has held that the question of abuse of office and whether any pecuniary advantage has flown to the public servant under Section 13(1)(d) of the P.C. Act, which are a mixed question of law and fact should be decided at the time of trial. It is submitted by the learned counsel that the apex Court while returning such finding, has taken note of its earlier decision in *C.K. Jaffer Sharief (supra)*, which has been heavily relied upon by the learned counsels for the petitioners.

35. Learned counsel for the Vigilance Department submits that during investigation several incriminating materials have been found on scrutiny of various documents during preliminary enquiry, which support the allegations made in the F.I.R., which are as follows:--

"I. Note sheet dated 23.4.2007 of the corporation prepared by its officials which related to making advance payments to the supplier companies. The Note Sheet showed that intimation was given by the Deputy Project Manager, Jeypore for the delay in supply of materials by Ultratech Cement Co. though full payment was made in advance to them. This was brought to the notice of the accused No. 1 who was CMD of the Corporation at the relevant time. However, inspite of the above, no action was taken by him in this regard.

In addition to above, the accused No. 2 who was authorized by accused No. 1 to make advance payments went on to approve another round of advance payment

to Ultratech Cement Co.

II. AG Audit Reports for the year 2008-09 (for the period 2007-08), and for the year 2009-10 (for the period 2008-09) wherein the AG has severely criticized and demanded explanations for huge outstanding of advances to steel and cement suppliers. The reports also note that undue favours had been made to the cement suppliers by the Corporation.

Although it has been argued that all the outstandings mentioned in the AG Audit Reports have been settled, that claim stands falsified by letter dated 11.11.2014 (filed by accused No. 1) which discloses the position of outstanding as on 30.9.2014.

III. It was also found out that no verification of performances of the supplier companies was done after huge advances was forwarded to them.

IV. Though the petitioner decided to make 100% advance payments to the supplier companies before supply of materials, adequate policies/guidelines were not framed to prevent non-supply or delayed supply thereby ensuring supply within the time specified.

V. Proper accounts for the Corporation were not maintained during the tenure of accused No. 1 as CMD of the Corporation.

VI. No periodical verification of stock was conducted by the Corporation officials to ensure that the supplies against which 100% advance payment had been made were received.

VII. Accused No. 1 during his tenure did not inform the Board of Directors of the huge outstanding towards the advances made to the suppliers.

VIII. Timely audit of the accounts of the Corporation during the tenure of accused No. 1 was not ensured."

36. It is accordingly submitted that as there are sufficient materials to prima facie establish the allegations made in the F.I.R., which constitute cognizable offences, no interference is warranted at this initial stage when the investigation is under progress and all facts are yet to come on record.

37. Learned Government Advocate appearing for the State with reference to the affidavit filed by the Home Department submits that the Superintendent of Police, Vigilance Cell, Cuttack, vide his letter dtd. 08.09.2014 (Annexure-A/1) had sought for clarification on the points detailed in the questionnaire. It is submitted that the Home Department vide letter dated 24.09.2014 (Annexure-B/1) furnished its clarification, which reads as follows:

38. Learned Government Advocate fairly submits that the impugned F.I.R. appears to have been lodged even prior to the receipt of the reply/clarification of the Home Department, which had been sought for by the Vigilance authorities.

39. The legal position is well settled that when a prosecution at the initial stage

is asked to be quashed, the tests to be applied by the Court are as to whether the uncontroverted allegations as made prima facie establish the offence. Section 482 does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of court, to allow any action which would result in injustice and prevent promotion of justice and in exercise of such powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report or the complaint, the court may examine the question of fact. When a report or complaint is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

40. In the case of *State of Karnataka Vs. L. Muniswamy and Others*, AIR 1977 SC 1489 : (1977) CriLJ 1125 : (1977) 2 SCC 699 : (1977) 3 SCR 113 , the Supreme Court has observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding

ought not to be permitted to degenerate into a weapon of harassment or persecution. The Supreme Court observed in that case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. The aforesaid ratio of the case has been followed in a large number of subsequent cases of apex Court and other Courts.

41. In the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, AIR 1988 SC 709 : (1988) CriLJ 853 : (1988) 1 Crimes 780 : (1988) 1 JT 279 : (1988) 1 SCALE 261 : (1988) 1 SCC 692 : (1988) 2 SCR 930 , 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."

42. The scope of exercise of power under Article 226 of the Constitution and Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice were set out in some detail by the Supreme Court in the case of Bhajan Lal (supra), the Hon"ble Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

43. In the case of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, AIR 2005 SC 9 : (2005) CriLJ 92 : (2004) 9 SCALE 177 : (2005) 1 SCC 122 , the Supreme Court has observed as follows:--

"It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

44. In the case of Rajiv Thapar (supra), the Hon"ble Court while considering the scope and ambit of the inherent jurisdiction of the High Court under Section 482 Cr.P.C., has held as under:--

"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stage before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 Cr.P.C., at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 Cr.P.C. the High Court has to be fully satisfied that the material produced by the accused is

such that would lead to the conclusion that his/their defence is based on sound, reasonable and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations leveled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C;

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. Step five: If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

45. In *Satish Mehra v. State (NCT of Delhi)* and another, (2012) 13 SCC 614, while considering its earlier decisions with regard to the exercise of inherent power by the High Court under Section 482 Cr.P.C., the apex Court has held as

under:--

"14. The power to interdict a proceeding either at the threshold or an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations leveled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually come on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

46. In the case of *Rishipal* (supra), while dealing with the inherent power of the High Court under Section 482 Cr.P.C., the apex Court has held as follows:--

"13. What emerges from the above judgments is 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 in the complaint prima facie establish the case. The courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuance of the criminal proceeding results in miscarriage of justice or when the court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact."

47. Section 13 of the P.C. Act provides for criminal misconduct by a public servant. Such an offence of criminal misconduct by a public servant can be said to have been committed if in terms of Section 13(1)(d), a public servant abuses its position and obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for

any person any valuable thing or pecuniary advantage without any public interest. Sub-Section (2) of Section 13 provides that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

48. In *A. Subair (supra)*, while dealing with the essential ingredients of Section 13(1)(d) of P.C. Act, the apex Court has held as under:--

"14. Insofar as Section 13(1)(d) of the Act is concerned, its essential ingredients are:

(i) that he should have been a public servant;

(ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and

(iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

15. In *C.K. Damodaran Nair Vs. Govt of India*, AIR 1997 SC 551 : (1997) CriLJ 739 : (1997) 1 Crimes 75 : (1997) 2 JT 495 : (1997) 1 SCALE 126 : (1997) 9 SCC 477 : (1997) 1 SCR 107 : (1997) AIRSCW 477 : (1997) 1 Supreme 478 , this Court had an occasion to consider the word "obtained" used in Section 5(1)(d) of Prevention of Corruption Act, 1947 (now Section 13(1)(d) of the Act, 1988), and it was held : (SCC p.483 para 12)

"12. The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Sections 5(1)(a) and (b) - and not under Sections 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment"."

The legal position is no more *res integra* that primary requisite of an offence under Section 13(1)(d) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1)(d) cannot be held to be established."

49. In *R. Balakrishna Pillai (supra)*, the apex Court while considering the

provisions of Section 5(1)(d) of P.C. Act, 1947, which is similar to Section 13(1)(d) of P.C. Act, has observed as under:--

"43. To consider yet another aspect, the general principle of criminal jurisprudence is that element of mens rea and intention must accompany the culpable act or conduct of the accused. In respect of this mental element generally, Blackstone's Criminal Practice (ibid., A-2.1, p-18) describes it as under:

"In addition to proving that the accused satisfied the definition of the actus reus of the particular crime charged, the prosecution must also prove mens rea i.e. that the accused had the necessary mental state or degree of fault at the relevant time. Lord Hailsham of St. Marylebone said in *Director of Public Prosecutions v. Morgan*, (1976 AC 182), AC at p. 213: The beginning of wisdom in all the "mens rea" cases ... is as was pointed out by Stephen, J. in *Tolson (R. v. Tolson)*, (1889) 23 QBD 168, QBD at p. 185, that "mens rea" means a number of quite different things in relation to different crimes." Thus one must turn to the definition of particular crimes to ascertain the precise mens rea required for specific offences."

The author then comments:

"Criminal offences vary in that some may require intention as the mens rea, some require only recklessness or some other state of mind and some are even satisfied by negligence. The variety in fact goes considerably further than this in that not only do different offences make use of different types of mental element, but also they utilise those elements in different ways."

It is clear thus that the accused must have the mental state or degree of fault at the relevant time. It may of course differ from crime to crime according to the definition thereof. The matter of degrees may also differ. That is to say, generally the mental state and the criminal act must coincide. The criminal act may be one which may be intended by the wrongdoer. It is as well known that mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the accused. As indicated earlier, situation varies in respect of different kinds of crimes as in some of them even negligence or careless act may constitute an offence or there may be cases of presumptions and putting the accused to proof to the contrary. In the case in hand we have found that there is no sale of energy to M/s. GIL by KSEB nor had the appellants any say in price fixation for M/s. GIL by KEB. In this light we may pass on to J.C. Smith and Brian Hogan: Criminal Law (Smith, J.C. and Hogan, B.: Criminal Law, 6th Edn., P.31), where the proposition of law is put as follows:

"It is a general principle of criminal law that a person may be convicted of a crime unless the prosecution have proved beyond reasonable doubt both (a) that he caused a certain event or that responsibility is to be attributed to him for the existence of a certain state of affairs, which is forbidden by criminal law, and (b) that he had a defined state of mind in relation to the causing of the event or the

existence of the state of affairs. The event, or state of affairs, is called the actus reus and the state of mind the mens rea of the crime."

44. We further find the said principle of criminal jurisprudence stated in Criminal Law by K.D. Gaur (Gaur, K.D.: Criminal Law-Cases and Materials, 3rd Edn., p.23), wherein it is stated as follows:

"Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively."

xxx xxx xxx

46. Thus, looking to the definition of the crime in the case in hand, namely, clause (d) of sub-section (1) of Section 5 of the Act, according to the principle indicated above, it is necessary that the act must have been done illegally abusing his position as a public servant for obtaining benefit, pecuniary or otherwise, for himself or for someone else. This is an offence which would require an intention to accompany the act. The element of mental state would be necessary to do a conscious act to get the required result of pecuniary advantage or to obtain any valuable thing, even if it is for someone else, then too element of mental state must be there at the relevant time. xxx."

50. In C.K. Jaffer Sharief (supra), the apex Court while reiterating the essential ingredients of Section 13(1)(d) of the P.C. Act, has observed as follows:--

"17. xx xx xx. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in M. Narayanan Nambiar Vs. State of Kerala, AIR 1963 SC 1116 : (1963) 2 LLJ 660 : (1963) 2 SCR 724 Supp , while considering the provisions of Section 5 of the 1947 Act."

51. In the instant case, no materials have been produced before this Court to show that the petitioners had any dishonest intention in sanctioning 100% advance towards purchase of cement and steel from the manufacturers/suppliers. Moreover, as has been admitted in the subsequent counter affidavit filed by the Vigilance Department, the practice and procedure of payment of 100% advance towards price of cement and steel was in vogue much before the

petitioners joined the Corporation and continued even after they left the service of the Corporation. Further, taking a bonafide decision in the best interest of the Corporation to procure steel from public sector undertakings, like SAIL and RINL and branded cement from renowned manufacturers like Ultratech, Lafarge, ACC, L and T, OCC etc. through a transparent procedure at non-trade price, which is much lesser than the market price, cannot be said to be an improper or illegal decision taken with dishonest interest, which would amount to criminal misconduct. Merely because some of the manufactures/suppliers had failed to supply the materials in time or there has been some delay in such supply, the same cannot be the basis for implicating the petitioners for criminal misconduct. Therefore, there being no violation of the existing procedure and practice, which were being followed by the Corporation much prior to the petitioners joining and there being no extravagant display of redundancy or any improper or illegal exercise of power, no dishonest intention can be attributed to the petitioners in order to implicate them for the alleged offence under Section 13(1)(d) of the P.C. Act.

52. Further, neither the F.I.R. nor the materials available in the case diary reveals any particulars of the steel and cement manufacturers/suppliers who have failed to supply the required materials and the exact amount of pecuniary advantage gained by them at the cost of the Corporation. Rather, the statement of witnesses recorded during investigation under Section 161 Cr.P.C. clearly shows that the policy adopted by the writ petitioner to procure steel from public sector undertakings and branded cement from renowned manufacturers, to ensure quality product at minimum price has yielded excellent result for the Corporation.

53. Coming to the charge of criminal conspiracy, the same has been defined in Section 120-A I.P.C., which provides that when two or more persons agree to do or cause to be done (i) an illegal act or (ii) an act which is not illegal by illegal means, such agreement is designated a criminal conspiracy. The apex Court in K.R. Purushothaman Vs. State of Kerala, AIR 2006 SC 35 : (2005) CriLJ 4648 : (2005) 9 JT 38 : (2005) 8 SCALE 618 : (2005) 12 SCC 631 : (2005) AIRSCW 5437 : (2005) 7 Supreme 323 , has held that in order to constitute a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy.

54. In the present case, no material has been produced by the Vigilance authorities to substantiate the allegation of criminal conspiracy against the present petitioners. Except the bald allegations made in the impugned F.I.R., none of the witnesses examined during investigation have even whispered anything about the prior meeting of mind and unlawful agreement between the

two petitioners to constitute the offence of criminal conspiracy under Section 120-B I.P.C.

55. Coming to the preliminary enquiry conducted by the Vigilance authorities prior to the lodging of the impugned F.I.R., on a perusal of the relevant records and the affidavit submitted by the Vigilance Department, it is seen that on receipt of a petition from some individual (details of which have been withheld on the plea of confidentiality, purportedly to protect the identity of the individual), containing various allegations against the writ petitioner Prakash Mishra, erstwhile CMD of the Corporation, the same was marked by the Chief Minister to the Director, Vigilance, to conduct an enquiry and submit report. The records further reveal that the said petition was received by the Superintendent of Police, Vigilance Cell, Cuttack, who put up a note to the Director, Vigilance, for orders to conduct an open enquiry into the matter. The Director, Vigilance, merely put his initial in the note sheet dated 05.7.2014, pursuant to which, the Superintendent of Police, Vigilance Cell, Cuttack, opened Vigilance Cell File No. 12/2014 and entrusted Shri S.K. Das Mohapatra, Deputy Superintendent of Police, Vigilance Cell, Cuttack, to conduct an open enquiry into the allegations made in the petition.

56. The records further reveals that during enquiry, the Enquiring Officer collected copies of documents from the Corporation, including the Special Audit Report and Annual Reports of the Corporation for the years 2006-07 to 2009-10. However, no witnesses were examined and no statements were recorded during the enquiry. Further, no notice was issued to the petitioners, providing them an opportunity to put forth their case. It is further seen that the Enquiry Officer issued requisitions vide letters dated 11.9.2014 to various manufacturers/suppliers of steel and cement, seeking informations/documents relating to the advance received by them towards supply of steel and cement against different supply orders, supply of steel and cement against each supply order and to which site of the Corporation such supplies have been made, along with the vouchers and bills submitted at the site and acknowledgement receipt of such supplies.

57. The records further reveal that though all such requisitions had been sent to various manufacturers/suppliers of steel and cement vide letter dated 11.9.2014, seeking details of the advance received and supplies made by them to different sites of the Corporation, the Enquiry Officer has proceeded to conclude the enquiry on the very day and has submitted the final report on the same day, i.e. 11.9.2014, with the findings that the petitioners have abused their official position and shown undue favour to the suppliers by entering into criminal conspiracy, for which, they are liable under Section 13(2) r/w Section 13(1)(d) of the P.C. Act and Section 120-B I.P.C. and accordingly recommended for registration of criminal case against the petitioners for the said offences.

58. Further, as has already been noted above, during pendency of the preliminary enquiry, the Superintendent of Police, Vigilance Cell, Cuttack, vide his

letter dated 08.9.2014 had sent a questionnaire to the Home Department, which is the Administrative Department of the Corporation, seeking clarification on various points with regard to the working of the Corporation. However, before receipt of the same, the preliminary enquiry had been concluded and even the impugned F.I.R. had been lodged.

59. There is nothing on record to show as to who considered the final report submitted by the Enquiry Officer and accepted the same, on the basis of which, approval was sought for from the State Government for registration of criminal case against the petitioners. From the note sheet, it appears that approval of the State Government for registration of criminal case was received on 20.9.2014 and on the same day the impugned F.I.R. has been registered against the present petitioners.

60. In the aforesaid background of the present case, it is apt to refer to a decision of the apex Court in *P. Sirajuddin, etc. Vs. State of Madras, etc.*, AIR 1971 SC 520 : (1971) CriLJ 523 : (1970) 1 SCC 595 : (1970) 3 SCR 931 , where in a near similar situation, the Hon"ble Court has held as under:--

"17. In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. Before a public servant, what ever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge sheet is for some one in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report."

61. From the facts detailed above, there is no manner of doubt that the Vigilance authorities have proceeded in the matter with a predetermined agenda to implicate the petitioners, more specifically the writ petitioner Prakash Mishra, irrespective of whether any material is available to substantiate the allegations. The Enquiry Officer has conducted the preliminary enquiry in a most perfunctory manner, in brazen disregard of all established norms of justice and fair play. The manner in which the preliminary enquiry has been conducted and method adopted by the Enquiry Officer in concluding the enquiry posthaste, without even verifying the relevant documents and examining any witness, clearly goes to show that he was bent upon implicating the petitioners and thereby facilitate registration of the F.I.R. against them. Hence, the entire action of the Vigilance authorities smacks of arbitrary and mala fide exercise of power with the oblique motive to harass the petitioners and damage their reputation.

62. It is no doubt the duty of the State to track down and punish all delinquent officers but it is certainly not in accordance with justice and fair play that their conviction should be sought for by such questionable means, which is bound to cause incalculable harm and damage to the reputation of the officers concerned.

63. Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right.

64. In *D.F. Marion v. Davis*, 55 American Law Reports, page 171, it was held :

"The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property."

65. It is thus amply clear that one is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review. (See- *State of Maharashtra Vs. Public Concern for Governance Trust and Others*, (2007) 1 SCALE 72 : (2007) 3 SCC 587 : (2007) 2 SCR 87 : (2007) AIRSCW 474 : (2007) 1 Supreme 8

66. It is not very uncommon in our country that honest and upright public servants with unimpeachable integrity and having impeccable track record are often hounded by the ruling political establishment for extraneous consideration. In the present case, what is more disturbing is that the Director, Vigilance, to whom the file was marked by the Chief Minister for conducting an enquiry, has abdicated his duty and responsibility by displaying studied indifference and allowing the Superintendent of Police, Vigilance Cell, Cuttack, to deal with the

matter and entrust the enquiry to an officer of the rank of Deputy Superintendent of Police, inspite of the fact that the enquiry was being conducted against the writ petitioner, who was the former D.G.P. of the State and is one of the senior most IPS officers of repute in the country, presently posted as Director General, CRPF, New Delhi. The action or rather the willful inaction of the Director, Vigilance, in not ensuring free, fair and proper enquiry into the matter and allowing the report of a sham enquiry to be accepted and giving his consent for seeking approval of the State Government for registration of criminal case against the petitioners clearly shows that he was more concerned in exhibiting his loyalty to the ruling political establishment, akin to the old British adage of "more loyal than the King".

67. Applying the principles of law as discussed above to the facts of the present case, the conclusion is irresistible that the allegations made in the impugned FIR and the materials available in the case diary and even the purported incriminating materials pointed out by the learned counsel for the Vigilance Department, as detailed above, do not constitute or disclose commission of any cognizable offence and therefore, allowing continuance of the criminal proceeding against the present petitioners would be an abuse of the process of Court and result in serious miscarriage of justice.

68. For the reasons as aforestated, the criminal proceeding initiated against the petitioners in Bhubaneswar Vigilance P.S. Case No. 35, dated 20.9.2014, under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 120-B of the Indian Penal Code, corresponding to V.G.R. Case No. 35 of 2014, pending in the Court of the learned Special Judge, Vigilance, Bhubaneswar, and all consequential criminal proceedings are hereby quashed.

CRLMP and CRLMC are accordingly allowed. No costs.