(2000) 07 AP CK 0029

In the Andhra Pradesh High Court

Case No : Criminal Petition No''s. 5384 and 5160 of 1997 and 259, 260, 425, 426, 473 3599 and etc. etc. of 1998

Salauddin Owaisi and — APPELLANT

Vs

D.S.P., CID, SDT — RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 468, 482
Penal Code, 1860 (IPC) — Section 120B, 177, 182, 34, 420

Citation : (2000) 2 ALD(Cri) 329 : (2000) CriLJ 4848

Hon'ble Judges : Motilal B. Naik, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : E. Ayyapu Reddy, E. Ella Reddy, D. Sudersane Reddy, K. Surender and K. Durga Prasad, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—In all these criminal petitions which are filed u/s 482 of Cr. P.C. petitioners have questioned the validity of criminal proceedings pending against them in the Court of the IX Metropolitan Magistrate, Hyderabad in C. C. Nos. 70/97, 64/97, 63/97, 54/97, 72/97, 225/93, 223/93, 60/97, 450/92, 220/93, 53/97, 595/94, 73/97, 67/98 and 59 of 1997 respectively on various grounds and seek to quash the same and to pass appropriate orders as is deemed fit and proper in the circumstances of the case.

2. Since the issues involved in these petitions and the relief sought are common, these petitions are taken up together and are being disposed of by this common judgment.

3. Before we proceed to examine the issues raised before us in these criminal petitions, we deem it appropriate to trace few facts leading to filing of these petitions which are narrated as under :

4. A society by name Sri Venkateshwara Co-operative House Building Society Limited for Andhra Pradesh Legislators, Hyderabad was floated by registering with the Deputy Registrar, Co-operative Housing Society, Hyderabad vide registration No. TAB/185 dated 4-4-1977 with 20 members and share capital of Rs. 2,000/-. The area of operation of the society was confined to the twin cities of Hyderabad and Secunderabad. The objects of the society were to carry on trade of building, buying selling, hiring and developing land in accordance with the cooperative principles and to give loans to the members for construction of new buildings and houses. Initially, the society was registered for the benefit of the A. P. Legislators but later, it was extended to present and past M.Ps. and MLAs and employees of the A. P. Legislative Assembly by virtue of an amendment brought out to Bye-law 5 of the Society.

5. In pursuance of G.O. Ms. No. 176, Revenue Department, dated 9-2-1982, 100 acres of land from the Jubilee Hills Cooperative House Building Society in Survey No. 403/1 of Shaikpet village and S. No. 102/1 of Hakimpetvillage was allotted to the members of Sri Venkateswara Co-operative House Building Society. Possession of the said land was also given to the society on 8-3-1982. In terms of the decision of the Managing Committee layout plans were prepared by HUDA and drawal of lots was conducted with the assistance of HUDA in the premises of the Legislative Assembly and 316 plots were allotted to the members of the society.

6. On receipt of representations from some members alleging that grave irregularities have been committed while allotting plots to the members of the society, viz., signatures of the original member-allottees have been forged on fake alienation letters; plots of original members have been transferred to ineligible persons/outsiders; members having plots and houses elsewhere are also allotted plots without verification; and grave financial and procedural irregularities have been committed by the office-bearers of the society, the Registrar, Co-operative Societies ordered inquiry u/s 51 of the A.P. Co-operative Societies Act, 1964 through his proceedings dated 22-11-1985 and appointed Sri M. Krishna Swamy, then Regional Joint Registrar, Co-operative Societies, Zone-VI, Hyderabad as Enquiry Officer. The Enquiry Officer after conducting detailed enquiry, submitted his report on 24-10-1986 pointing out various irregularities such as misappropriation, forgery and fraud committed by the ex-managing committing of the society. A copy of the enquiry report was also sent to the Government on 25-10-1986. On receipt of the Enquiry Report, the Government decided to initiate action, both civil and criminal, against the person as suggested by the Enquiry Officer. The Government further desired that the matter be referred to the CBCID for further probe, pursuant to which a complaint was filed before the Special Inspector General of Police. CBCID. Hyderabad on 28-1-1988 for conducting detailed investigation and launching prosecution into the various irregularities committed by the office-bearers of Sri Venkateswara Co-operative House Building Society. After detailed enquiry, a complaint was filed with CID which was registered as Crime No. 188 against these petitioners.

However, against each petitioner, separate charge-sheet is filed which is registered in various C.C. Nos. as indicated supra, before the IX Metropolitan Magistrate, Hyderabad. As indicated above, petitioners have filed these petitions seeking to quash the criminal proceedings launched against them.

7. For better appreciation of the issues involved in these petitions, brief facts in each of these petitions are narrated as under :

Criminal Petition No. 3599 of 1998 : This petition is filed seeking to call for the records in C.C. No. 70 of 1997 on the file of the IX Metropolitan Magistrate. Hyderabad and to quash the same. A charge-sheet is filed against the petitioner in the said C.C. for the offences u/s 177, 182 and 420 of IPC with the following allegations.

8. Petitioner became a member of Sri Venkateswara Co-operative House Building Society, Hyderabad as he was an MLA. A declaration was obtained from him after allotting the plot to the effect that he or his wife or minor children do not own a plot in Hyderabad and Secunderabad. After completion of the formalities, a plot bearing No. 74/A of 600 sq. yards was allotted to him and the same was registered on 16-2-1983. According to the charge-sheet, the declaration filed by the petitioner is false as he owned a house bearing No. 3-6-149 situated at Hyderguda. The petitioner suppressed this fact and cheated the society for wrongful gain and caused wrongful loss to the eligible members of the society. Hence, the charge-sheet.

9. Criminal Petition No. 5384 of 1997 : This petition is filed seeking to call for the records in C.C. No. 64 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner in the said C.C. for the offences u/s 177, 182 and 420, I.P.C. with the following allegations.

10. Petitioner became a member of Sri Venkateswara Co-operative House Building Society, Hyderabad by virtue of being an ex-legislator and Member of Parliament. A declaration has been obtained from him by the society to the effect that he or his wife or minor children do not own a plot in the twin cities of Hyderabad and Secunderabad and he also agreed to abide by all the conditions for allotment. On completion of formalities, a plot bearing No. 226/A of 600 square yards was allotted to him and the same was registered on 5-4-1983. According to the charge-sheet, the petitioner has furnished a false declaration to the society as he was owning a house bearing No. 1-8-75 to 77, Chikkadpally, Hyderabad which stands in his name. It is further alleged that he suppressed the fact that he was owning a house in his name and that he cheated the Society for wrongful gain and caused wrongful loss to the eligible members of the society. Hence, the charge-sheet.

11. Criminal Petition No. 5160 of 1997 : This petition is filed seeking to call for the records in C.C. No. 63 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner

in this petition for the offences under Sections 177, 182 and 420, IPC with the following allegations :

12. Petitioner became a member of Sri Venkateswara Co-operative House Building Society, Hyderabad as he was an MLA. He filed a declaration before the society on 19-7-1982 to the effect that he or his wife or minor children do not own a plot in twin cities of Hyderabad and Secunderabad and agreed to abide by all the conditions for the allotment. On completion of formalities, a plot bearing No. 275/A/C admeasuring 600 square yards was allotted to him and the same was registered on 14-5-1984. It is alleged that the petitioner gave a false declaration as he was owning a house bearing No. 6-3-347/13/301 and 6-3-347/13/302 at Dwarakapuri Colony Punjagutta which is in his name. Petitioner suppressed the fact that he was owning houses in his name and as such he cheated the society for wrongful gain and caused wrongful loss to the eligible members of the society.

13. Criminal Petition No. 259 of 1998 : This petition is filed seeking to call for the records in C.C. No. 54 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. In the said C.C, a charge-sheet is filed against the petitioner under Sections 177, 182 and 420 of IPC with the following allegations :

14. Petitioner became a member of Sri Venkateswara Co-operative House Building Society on 24-7-1979. He also filed declaration on 11-8-1982 stating that neither himself nor his wife or his minor children own a house or a plot in the twin cities of Hyderabad and Secunderabad. After completion of formalities, the petitioner was allotted a plot bearing No. 143-A admeasuring 600 square yard and the same was registered on 11-4-1983. It is, however, alleged in the charge-sheet that the petitioner is a member of Jubilee Hills Co-operative House Building Society and was also allotted a plot which was registered in the name of his major son on 27-9-1986. As the petitioner filed a false declaration suppressing the fact of owning a house in the name of his family member, petitioner made a wrongful gain and caused wrongful loss to the society. Hence, the charge-sheet.

15. Criminal Petition No. 260 of 1998 : This petition is filed seeking to call for the records in C.C. No. 72 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioners (A-3 and A-4) along with two others for the offences u/s 468, 471 and 420 r/w 34, IPC with the following allegations :

16. Petitioners who are A-3 and A-4 conspired along with two others who are A-1 and A-2 in the said C.C. for wrongful gain and in pursuance of criminal conspiracy, fabricated a letter of alienation purported to have been given by K. Lakshminrayana Reddy, former MLA but not a member of society, requesting the society to register his plot in favour of the wives of these petitioners. Accordingly, A-1 and A-2 in the said C.C. were allotted a plot No. 78/C of 300 square yards

and later enlarged the area of plot of 300 square yards to 900 square yards unauthorizedly and got registered. It is further alleged that the petitioners misrepresented that they were members of the society and got plots allotted. Hence, the charge-sheet.

17. Criminal Petition No. 425 of 1998 : This petition is filed seeking to call for the records in C.C. No. 225/93 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner in this petition for the offences under Sections 471, 420 and 120-B, IPC with the following allegations :

18. One Appanna Dora was an ex-MLA and he was allotted Plot No. 317/A/A in Sri Venkateswara Co-operative House Building Society. It is alleged in the charge-sheet that one Lakkaraju Rama Rao (A-3) with the active connivance of Kantipudi Appa Rao (A-1), who was the President of the said society, and B. Srinivasulu (A-2), obtained a consent letter to alienate the said plot to his wife and got interpolated the name of the petitioner herein by forgery purported to have been made by said Appanna Dora in favour of the petitioner. On the basis of the forged interpolated letter in the name of the petitioner. A-1 to A-3 conjointly managed to register the plot No. 317/A/A admeasuring 600 square yards in favour of the petitioner who is a non-member of the society. It is further alleged that A-3 who was incharge contractor for development works of the society land was helping A-1 and A-2 in illegal alienation of plots on the basis of forged interpolation in the alienation letters and thus A-1 to A-3 criminally conspired together to dispose off the plot on the basis of the forged interpolation in the alienation letter issued by said Appanna Dora to the petitioner herein. In pursuance of the said conspiracy. A-1 to A-3 registered the said plot in favour of A-4. Hence, the charge-sheet.

19. Criminal Petition No. 426 of 1998 : This petition is filed seeking to call for the records relating to C.C. No. 223/93 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner in this petition and three others for the offences under Sections 471, 420 and 120-B, IPC with the following allegations.

20. One Y. Narayana Rao who was an employee of the A. P. Legislative Assembly was admitted as a member of Sri Venkateswara Co-operative House Building Society and he was allotted plot No. 22/B admeasuring 450 square yards. Kantipudi Appa Rao (A-l) who is the president of the society and B. Srinivasulu (A.-2) with the connivance of Potlapalli Narayana Rao (A-3) who was the ex-director and executive member of the society and K. Laxman Rao (A-4) got a forged alienation letter purported to have been made by Y. Narayan Rao in favour of the petitioner herein. It is also alleged in the charge-sheet that A-1 to A-4 managed to register the plot in favour of A-4 who is non-member. It is further alleged that A-1 and A-2 fabricated allotment in the name of Y. Narayan Rao and no intimation was given to him and said Narayan Rao was not aware that A-4 purchased his plot on the basis of the forged alienation letter purported to have been written by him. Thus, A-1 to A-4 entered into a criminal conspiracy and

fabricated the records by forging the signature of Y. Narayan Rao and registered the plot 22/ B in favour of the petitioner and thus, they committed the offences under Sections 471, 420 and 120-B, IPC.

21. Criminal Petition No. 473 of 1998 : This petition is filed seeking to call for the records relating to C.C. No. 60 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner herein along with four others under Sections 468, 471, 420 and 120-B, IPC with the following allegations :

22. L.W. 3 is the member of Sri Venkateswara House Building society and he nominated his wife as nominee. It is alleged that P. Narayana Rao (A-l) and Ghouse Moinuddin (A-2) approached L.W. 3 and obtained his signatures on some papers deceitfully. Petitioner (A-3) approached L.W. 4 and offered the plot for sale on extra consideration and collected huge amount in addition to the cost of the plot. K. Appa Rao (A-4) and B. Srinivasulu (A-5) registered plot No. 60/C/B originally allotted to L.W. 3 in favour of L.W. 4 and the documents were handed over to L.W. 3 by A3. It is further alleged that A-1 to A-5 conspired to dispose off the plots of the society as the value of the land increased enormously and in that process A-1 and A-2 deceitfully obtained the signatures of L.W. 3 on blank papers and converted those papers into fake alienation letter and A-3 bargained and sold the said plot to L.W. 4 under a sale deed executed by A-4 and A-5. Hence the charge-sheet.

23. Criminal Petition No. 596 of 1998 : This petition is filed seeking to call for the records in C.C. No. 60 of 1997 on the Tile of the Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner herein (A-2) along with four others in the said C.C. No. 60 of 1997 under Sections 468, 471, 420 and 120-B, IPC, with the allegations stated supra in Criminal Petition No. 473 of 1998.

24. Criminal Petition No. 646 of 1998 : This petition is filed seeking to call for the records in C.C. No. 450 of 1992 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner along with three others under Sections 420, 471, 120-B, IPC with the following allegations :

L.W. 3 who was an ex-MLA was allotted a plot in Sri Venkateswara Co-operative House Building Society. On intimation from the society, L.W.-3 paid an amount of Rs. 14,000/- towards the cost of the plot to the society. However, she withdrew the said amount from the society as the plot allotted to her was found to be unsuitable for construction of the house. Subsequently, she was allotted another plot No. 28/A/A admeasuring 600 square yards on the basis of fabricated draw held on 27-3-1985. Thereafter, Kantipudi Appa Rao (A-l) and B. Srinivasulu (A-2) with the active connivance of Potlapalli Narayana Rao (A-3) and Madamsetty Indrasena (A-4) who is the petitioner herein forged a fake alienation letter purported to have been written by LW. 3 and on that basis A-1 to A-4 managed to register the said plot in favour of the petitioner herein who is a non-member of the society. Hence, the charge-sheet.

25. Criminal Petition No. 1836 of 1998 : This petition is filed seeking to call for the records in C.C. No. 220 of 1993 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner herein along with three others for the offences u/s 468, 471, 420 and 120-B, IPC with the following allegations :

26. One V. Satyanarayana, Ex-MP of Guntur District who is the father of L.W. 3 was admitted as a member of Sri Venkateswara Co-operative House Building Society. On the basis of the fabricated draw held on 30-12-1984, the father of L.W. 3 was allotted a plot No. 347/A of 695 square yards. Thereafter, Kantipudi Appa Rao (A-1} and B. Srinivasulu (A-2) with the active connivance of Lakkaraju Ramma Rao (A-3) got forged and supplied a fake alienation letter purported to have been written by the father of L.W. 3 in favour of A-4. On the basis of the forged letter. A-1 to A-3 managed to register the said plot in favour of A-4 who is the petitioner herein. Thus, they have committed the offences as stated supra.

27. Criminal Petition No. 4650 of 1998 : This petition is filed seeking to call for the records in C.C. No. 53 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner herein along with two others under Sections 468, 471, 420 and 120-B, IPC with the following allegations :

28. V. Muniswamappa was an MLA and he was admitted as a member of Sri Venkateswara Co-operative House Building Society on 20-7-1984 and nominated his wife as his nominee in membership application. Plot No. 334-A was allotted to him on 27-4-1984 and he paid an amount of Rs. 20,400/- through D. D. on 25-5-1984. Petitioner herein who was the Director of the said society, approached Muniswamappa who was his friend and represented to him that his brother-in-law who was working as a teacher at Hyderabad and he may be permitted to put up a hut in his plot. On his request. Muniswamappa gave a letter addressing the society in this regard and also signed some papers. The petitioner alleged to have fabricated a letter of alienation on the signed papers given by said Muniswamappa purported to have been made in favour of one S. Chandra Babu S/o R. Seshadri Naidu of Triupati whom Muniswamappa does not know. Plot No. 334-A was registered in favour of S. Chandra Babu, a fictitious person on the strength of the fake alienation letter on 26-9-1984 by Kantipudi Appa Rao (A-2) and B. Srinivasulu (A-3). Petitioner herein has taken a special power of attorney from S. Chandra Babu on 25-10-1994 which was registered vide document No. 1174 of 1984. Petitioner obtained permission from MCH for construction of a room and a compound wall. The said plot was sold by the petitioner to one Syed Ashfaq Hussain for a consideration of Rs. 35,000/-who in turn sold it to Dr. C. D. Naidu, Superintendent of Sri Venkateswara Medical College, Tirupati for a sum of Rs. 1,25,000/-. It is further alleged that the petitioner along with A-2 and A-3 have conspired and fabricated a letter of

alienation and registered the said plot in favour of S. Chandra Babu a non-existing person and thus, they committed the above offences. Hence, the charge-sheet.

29. Criminal Petition No. 4707 of 1998 : This petition is filed seeking to call for the records in C.C. No. 595 of 1994 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. Petitioners here in along with three others were charge-sheeted under Sections 471, 420 and 120-B, IPC with the following allegations :

30. Late Edle Gopaiah, Ex.-MLA of Suryapet and father of L.Ws. 3 and 4 was admitted as a member of Sri Venkateswara Co-operative House Building Society. He was allotted plot No. 333-A and he paid the amount and nominated his son L.W. 4 as his nominee. It is alleged that Kantipudi Appa Rao (A-l). B. Srinivasulu (A-2) with the active connivance of K. B. Siddaiah (A-3) deceitfully got fake alienation letter prepared which is purported to have been issued by Edla Copaiah in favour of K. Purushotham, second petitioner herein. On the basis of the said fake alienation letter. A-1 to A-3 conjointly managed to register the plot No. 333-A admeasuring 500 square meters in favour of A-4, a non-member of the society. K. Bhaker (A-5) and P. Narayana Rao (A-6) attested the same as attesting witnesses. L.Ws. 3 and 4 stated that their father Edla Gopaiah never gave consent letter for alienation of the plot in favour of A-4 and no intimation was given regarding the draw conducted on 25-9-84.

31. Criminal Petition No. 1855 of 1998 : This petition is filed seeking to call for the records in C.C. No. 73 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner for the offences u/s 177, 182 and 420, IPC.

32. Petitioner became a member of Sri Venkateswara Co-operative House Building Society being an MLA and he was allotted a plot No. 316/A of 600 square yards. Petitioner filed an undated declaration that he nor his wife owns a plot in the twin cities of Hyderabad and Secunderabad. After the completion of formalities, the plot was registered in his name on 29-3-1985. It is alleged in the charge-sheet that the undated declaration filed by the petitioner is false inasmuch as the petitioner was the owner of the premises bearing Municipal No. 6-1-1063/6 at Saifabad which is standing in his own name. Thus, petitioner gave a false declaration which caused wrongful loss to the society. Hence, the charge-sheet.

33. Criminal Petition No. 2629 of 1998 : This petition is filed seeking to call for the records in C.C. No. 67 of 1998 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner in this petition for the offences u/s 177, 182 and 420 of IPC with the following allegations :

34. Petitioner became a member of Sri Venkateswara Co-operative House Building Society on 20-6-1980. He was allotted a plot bearing No. 94/A of 600

square yards on 21-3-1980. Petitioner submitted an undated declaration stating that himself nor his wife or his sons own a plot in the twin cities of Hyderabad and Secunderabad. On payment of the cost for the land, the plot was registered in favour of the petitioner on 20-4-1983. It is alleged that the petitioner was the owner of the premises bearing Municipal No. 6-1-127/1, Padmaraonagar, Secunderabad. The petitioner submitted a false declaration suppressing the ownership of a house by him and as such caused wrongful loss to the society. Hence, the charge-sheet.

35. Criminal Petition No. 3684 of 1998 : This petition is filed seeking to call for the records in C.C. No. 59 of 1997 on the file of the IX Metropolitan Magistrate, Hyderabad and to quash the same. A charge-sheet is filed against the petitioner for the offences under Sections 177, 182 and 420, IPC with the following allegations.

36. Petitioner became a member of Sri Venkateswara Co-operative House Building Society, Hyderabad as he was a member of Parliament. He filed a declaration stating that he or his wife or his minor children do not own a plot in Hyderabad and Secunderabad and agreed to abide by all the conditions of allotment of plots to the members. On completion of formalities, a plot bearing No. 322/A was allotted to him. Petitioner has written a letter to the President of the society stating that he intends to transfer his allotted plot in favour of his grand son by name D. Amaramohandas and tendered his resignation from the Society. On completion of all the formalities, the society registered the said plot admeasuring 600 square yards in the name of D. Amara Mohandas by executing a registered document on 29-9-1994. It is alleged in the charge-sheet that the petitioner was already a member of the Jubilee Hills Co-operative House Building Society from 1964 with membership No. 2118 and was allotted a plot by the said society prior to the year 1981 and he transferred the same in favour of his grand daughter which was registered in her name on 14-8-1986. It is, therefore, alleged in the charge-sheet that the petitioner filed a false declaration suppressing the fact that he was a member of another co-operative society and owning a plot and thereby cheated the society for wrongful gain and caused wrongful loss to the eligible members of the society. Hence the charge-sheet.

37. From the material placed before us, it appears that the petitioners in Criminal Petition Nos. 3599/98, 5484/97, 5160/97, 259/98, 1855/98, 2629/98 and 3664/98 are charge-sheeted for the offences under Sections 177, 182 and 420, IPC. Whereas petitioners in Criminal Petition Nos. 260/98, 473/98, 596/98, 1836/98 an 4650/98 are charge-sheeted for the offences punishable under Sections 468, 471, 420 and 120-B, IPC. Petitioner in Criminal Petition Nos. 425, 426, 646 and 4707 of 1998 are charge-sheet for the offences punishable under Sections 471, 420 and 120-B, IPC. It is thus clear that the offence punishable u/s 420, IPC has been commonly alleged against all these petitioners.

38. The principal contention raised on behalf of all the petitioners is that the allotment and assignment of plots by Sri Venkateshwara Co-operative House

Building Society to its members is totally within the jurisdiction of the society and any dispute with regard to the allotment or assignment of plots would fall with in the domain of Section 61 of the A.P. Co-operative Societies Act which empowers the Registrar of the Cooperative Societies to make such enquiry and take appropriate action including that of cancelling the allotment if any made to ineligible members. It is stated by all the learned counsel that, instead of taking recourse to this procedure, the State Government appointed one Sri Krishna Swamy as Enquiry Officer to enquire into the alleged irregularities committed by the executive committee members of Sri Venkateswara Co-operative House Building Society and to submit a report. The Enquiry Officer later submitted a report pointing out certain irregularities committed by the members of the Executive Committee of Sri Venkateswara Co-operative Housing Society. Basing on the enquiry report, the Government decided to initiate civil and criminal action. According to learned counsel, on the basis of the Government''s desire, which reflected through the proceedings in RC. No. 99431 dated 25-10-1986, criminal proceedings were initiated by the Deputy Registrar, Co-operative Societies by lodging a complaint to the DSP (CID), Hyderabad who in turn registered crime No. 1/88 on 29-1-1988 against the petitioners. According to the learned counsel, though crime No. 1/88 was registered against these petitioners in January, 1988 charge-sheets were filed before the competent Criminal Court only somewhere in the month of October, 1996 i.e., after a lapse of more than eight years which according to the learned counsel is impermissible and barred by limitation as provided u/s 468 of the Code of Criminal Procedure. Learned counsel also submitted that as the offences alleged against some of the petitioners under Sections 177 and 182, IPC though barred by limitation, but in order to save limitation, a charge-sheet u/s 420, IPC is also deliberately framed against those petitioners in order to save the limitation. Thus, according to the learned counsel, in order to wreak vengeance against these petitioners who are politically opposed to the ruling party, false cases were foisted against them. All the learned counsel appearing on behalf of the petitioners also submitted that though the allotment of plots and registration in the names of individual members of Sri Venkateswara Co-operative House Building Society took place in the year 1981 to 1983, however, prosecution is launched against these petitioners after 13 years which itself reflects the vindictive attitude of the State Government. Learned counsel thus submitted that launching of prosecution against these petitioners is uncalled for as there are no grounds for launching of prosecution against these petitioners.

39. According to all the learned counsel, the allegations made against some of these petitioners that they being members of the legislative assembly/parliament have given false affidavits indicating that neither themselves nor their family members own houses or house plots within the area of operation of Sri Venkateswara Co-operative House Building Society, which is found to be false declaration. It is stated that these petitioners have later clarified the position in the enquiry as to the fact of some of them being members of joint families and

as such the houses owned are joint family properties and as such individually they did not own any house or house plots in their names within the area of operation of the said society. It is alleged by the counsel, instead of accepting their statements, deliberate attempt is made by the Government to wreak vengeance against these petitioners and to bring disrepute to them, some of whom are presently members of Legislative Assembly/ Parliament. It is submitted that though an offence of forgery is alleged against these petitioners, the same cannot stand to legal scrutiny as the then executive members of the society obtained signatures of these petitioners on blank papers later incorporated the writings in them as if illegally and unauthorisedly they alienated the plots to some third parties. It is contended, even otherwise, bye-law No. 41(4) of the Society empowers the society to assign or alienate plots to non-members also. Thus, it is submitted by all the learned counsel appearing on behalf of these petitioners that even if the allegations made against these petitioners in the charge-sheets and the statements of the witnesses recorded in support of the same taken at their face value, the same do not disclose the essential ingredients of the offences alleged against these petitioners. As the allegations made against these petitioners in the charge-sheets and the statements of witnesses recorded taken together do not, prima-facie, make out offences alleged against them, and as such allowing the criminal proceedings to continue would tantamount to an abuse of the process of the Court and therefore, it is pleaded that this Court in exercise of the powers u/s 482 of the Criminal Procedure Code quash the criminal proceedings launched against these petitioners.

40. Learned Public Prosecutor appearing on behalf of the respondents, on the contrary, submitted that the charge-sheets filed against these petitioners and the statements of witnesses disclose the commission of offence by these petitioners. It is also contended by the Public Prosecutor that only after a full length trial, the Court would be in a position to decide as to whether the prosecution is able to establish the guilt of these petitioners and if not, they would be acquitted. Learned Public Prosecutor also pleaded that exercise of power u/s 482 of Cr.P.C. is unwarranted and pleaded for dismissal of these petitions. It is also denied that in order to wreak vengeance against these petitioners, prosecution is launched against them.

41. In the light of the above submissions, the principal question that emerges for our consideration is whether launching of prosecution against these petitioners under various offences as indicated above is sustainable?

42. In all these criminal petitions, it is the case of the petitioners that the criminal prosecution has been launched against them with an ulterior motive and also to wreak vengeance against them. It is also their case that the allegations made in the charge-sheets coupled with the statements of witnesses even taken at their face value and accepted in entirety, do not disclose the essential ingredients of the offences alleged against them and as such they seek quashing

of the charge-sheets u/s 482 of Cr.P.C.

43. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Supreme Court has laid down the following guidelines for the exercise of the power u/s 482 of Cr.P.C.

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 on investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 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 FIR 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 u/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 proceeding 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.

44. In the above decision the Supreme Court has also observed that the categories of cases mentioned above are only by way of illustrations wherein the power u/s 482 of the Cr.P.C. can be exercised either to prevent the abuse of process of Court or otherwise to secure the ends of justice and those guidelines are not exhaustive. The Supreme Court also sounded a note of caution of observing thus State of Haryana and others Vs. Ch. Bhajan Lal and others, :

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that 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. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

45. In State of U.P. Vs. O.P. Sharma, , the Supreme Court held thus (at p. 1881 of Cri LJ):

The Court has to prima-facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether Court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases i.e., in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal law is availed of in laying a com-plaint or FIR itself does not disclose at all any cognizable offence - the Court may embark upon the consideration thereof and exercise the power.

When the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy u/s 482 of the Code is available. When the Court exercises its inherent power u/s 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court.

46. Keeping in view the principles laid down by the Supreme Court in the above pronouncement, we proceed to examine whether the allegations contained in the charge-sheets filed against these petitioners coupled with the statements of witnesses, taken at their face value, disclose the essential ingredients of the offences alleged against them.

47. Since all these petitioners were charge-sheeted for various offences, for proper appreciation of the issues involved in these petitions, we propose to deal with them in three separate categories. In the first category, offences punishable under Sections 177, 182 and 420, IPC are alleged against the petitioners in Criminal Petition Nos. 3598/98, 5384/97, 5160/97, 259/98, 1855/98, 2629/98 and 3684 of 1998. In this context it would be relevant to extract Sections 177, 182 and 420, IPC, which are as under :

Section 177. IPC: Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 182. IPC ; Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 420. IPC : 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 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.

48. We shall now scrutinize the allegations levelled in each of the charge sheets separately in the first category of criminal petitions to ascertain whether the ingredients of Sections 177, 182 and 420, IPC are present or not.

49. In Criminal Petition No. 3599 of 1998, on a perusal of the charge-sheet filed against the petitioner, it is revealed that the principal allegation against the petitioner is that he secured the plot bearing No. 74/A admesuring 600 square yards from the said society by suppressing and mis-representing the fact that he owned a house in his name at Hyderabad and thereby got a valuable property transferred into his name to gain wrongfully and caused wrongful loss to the society and therefore, committed the offences punishable u/s 177, 182 and 420, IPC.

50. It is, however, the case of the petitioner that the allegation that he was owning a house bearing No. 3-6-149 is incorrect inasmuch as the said house belongs to his mother and she being a parda observing lady and as he resides with her and as such his name is also added along with her. He further stated in his statement that he would vacate the said house after he constructs a house in the plot allotted by the society.

51. When it is alleged that the petitioner owned a house in his name, no steps were initiated for cancellation of the plot allotted to the petitioner. When the petitioner him-self has clarified that under what circumstances his name was shown as the owner of the said house, it cannot be said that the petitioner suppressed or concealed information. He has, on the other hand, explained the circumstances under which his name has been shown as an owner of the said house at Hyderguda. Even for a moment, if it is to be accepted that the

petitioner committed the offences under Sections 177 and 182 of I.P.C. i.e. furnishing false information, he cannot be prosecuted for the said offences in view of the limitation engrafted u/s 468 of Cr.P.C. as the maximum punishment that is likely to be imposed for the said offences is six months only as the crime in this case has been registered in the month of January, 1988 and the charge-sheet is filed in October, 1996 i.e. nearly after eight years.

52. The charge-sheet filed against the petitioner and the statement of witnesses also do not disclose the ingredients of Section 420, I.P.C. inasmuch as the main ingredient of cheating i.e., "dishonestly induces the person deceived to deliver any property to any person" is absent. He sought membership of the said society, consequent upon which a plot is allotted to him. The society after verifying the details furnished by the petitioner allotted the plot to him and he has paid the entire amount as required by the society towards sale price of the plot. It is also not disclosed from the statements of witnesses that by allotting the plot to the petitioner, other eligible members were denied the plots. Therefore, on a perusal of the entire charge-sheet and the statements of witnesses, we are convinced that the ingredients of the offences alleged against the petitioner are conspicuous by their absence.

53. In Criminal Petition No. 5384 of 1997, the petitioner was charge-sheeted for the above offences as he furnished a false declaration to the society stating that he had no land or house in his name and got a plot allotted in his name and gained wrongfully causing wrongful loss to the society. The prosecution alleged that he owned a house bearing No. 1-8-75 to 77 at Chakkadpally, Hyderabad. Petitioner however denied that he owned the said house as it belonged to his major son as per the family settlement effected in the year 1977 itself. Even the records of Municipal Corporation of Hyderabad showed that the said house is a Hindu Joint Family property. Thus, when the petitioner has explained that the said house belonged to his major son who got the same in the joint family property, it is difficult to comprehend as to how it could be held that he has concealed or furnished false information. Even if it is to be accepted that he did so, he cannot be prosecuted now for the offences under Sections 177 and 182 I.P.C. in the light of the limitation envisaged u/s 468 of Cr.P.C. as the maximum punishment that is likely to be imposed for the said offences is six months only as the crime has been registered in the month of January, 1988 but the charge sheet has been filed only in October, 1996 after a gap of more than eight years which clearly bars the prosecution of the petitioner under these offences.

54. When the petitioner paid the entire amount as required by the society for allotment of the said plot to him, it cannot be said that he has caused wrongful loss to the society. The ingredients of Section 420, I.P.C. are also not made out from the statements of witnesses as none stated that the petitioner has dishonestly induced the society to deliver the property to him. It is also not the case of the prosecution that some eligible members were denied allotment as the petitioner has been allotted the said plot. Thus, on a perusal of the charge-sheet

and the statements of witnesses in their entirety, we are convinced that no ingredients of the offences alleged against the petitioner are made out.

55. Coming to the charge-sheet filed in Criminal Petition No. 5160 of 1997, it discloses that the petitioner has been allotted a plot admeasuring 600 square yards on his furnishing a declaration that neither himself nor his family members own a house or plot in Hyderabad and Secunderabad. However, it is alleged in the charge-sheet that the petitioner was owning house bearing Nos. 6-3-347/13/301 and 302 at Dwarakapuri Colony, Hyderabad in his name and therefore, cheated the society for wrongful gain and caused wrongful loss to the eligible members.

56. It is the case of the petitioner that according to the statements of L. Ws. 5 and 6, these apartments forming part of Tejaswi apartments constructed by one Neelakantam in the year 1992-95, were given to him on rent by L. W. 4. According to L. W. 3, these two premises were first assessed with effect from 1-4-1995 and as such, they were not existing in the year 1982 during which year the petitioner had given the declaration to the society. It is in the evidence of L. Ws. 3 to 6 that the declaration given by the petitioner is correct. It is, therefore, difficult to hold that the petitioner has furnished false information to the society and as such, the ingredients of Sections 177 and 182 of I.P.C. are absent.

57. Even on a perusal of the charge-sheet, the ingredients of Section 420, I.P.C. are not made out. Prima facie, it is not shown as to how the petitioner dishonestly induced the society to deliver the plot to him. He being a member of the society, has been allotted a plot by the society on payment of the amount prescribed by the society. It is also not stated in the charge sheet that other deserving members have been deprived of being allotted a plot. According to the prosecution, the petitioner also filed an affidavit on 14-12-1985 stating that he has no objection if the Government resumes the land by paying him the amount deposited by him with reasonable interest. Thus, it is clear that the petitioner has no intention to cause wrongful loss to the society or make wrongful gain. Therefore, it cannot be said that the petitioner furnished any false information to the society with a view to get the plot allotted to him. If for any reasons it is to be accepted that the petitioner committed the offences under Sections 177 and 182 of I. P. C, he cannot be prosecuted for the same since they are barred by limitation as provided u/s 468 of Cr.P.C. as the maximum punishment provided under those sections is only up to six months, having regard to the fact that the crime is registered in the month of January, 1988 and the charge-sheet is filed nearly after eight years.

58. Even the main ingredient of cheating is also absent in the statements of witnesses and the charge-sheet also fails to mention the same. By virtue of the membership of the petitioner, a plot was allotted to him on payment of the regular amount and also betterment and other charges. Thus, on a scrutiny of the charge-sheet and the statement of witnesses, we are unable to find any ingredients of the offences alleged against the petitioner.

59. On a perusal of the charge-sheet filed against the petitioner in Criminal Petition No. 259 of 1998, the principle allegation against the petitioner is that by suppressing the fact that he is also a member of Jubilee Hills Cooperative Society, he filed a false declaration and got a plot allotted in his name, making a wrongful gain and caused wrongful loss to the society.

60. The allegations against the petitioner in the entire charge-sheet revolves round the fact that being a member of the Jubilee Hills Cooperative Society and by suppressing the said fact, he filed a false declaration, joined as a member and got allotted a plot in his favour from Sri Venkateswara Cooperative House Building Society. Even for a moment if it is to be accepted that the petitioner has furnished false information to the society and committed the offences u/s 177 and 182 of I. P. C, he cannot be prosecuted at this point of time since the punishment prescribed under those offences is only upto six months and in view of the limitation provided u/s 468 of Cr.P.C. his prosecution is impermissible as the crime was registered in the year 1988 and the charge-sheet is filed after more than eight years. Similarly, the ingredients of 420, I.P.C. are also absent as the statement of witnesses so recorded fails to disclose that the petitioner has dishonestly induced the society to allot a plot in his favour. Merely because the petitioner became a member of the other society, that by itself cannot be a ground to find him guilty under Sections 177 and 182, I.P.C. It is not the case of the prosecution that the petitioner obtained a plot in other society also. The charge-sheet also fails to disclose that the petitioner has gained wrongfully, since he has paid the entire amount as was being paid by the similarly placed members as required by the society. We are therefore, convinced that no ingredients of the offences alleged against the petitioner are found in the charge-sheet.

61. In Criminal Petition No. 1855 of 1998, the principal allegations contained in the charge-sheet filed against the petitioner are that he filed a false declaration stating that he or his family members did not own any house or plot in Hyderabad and Secunderabad and got allotted a plot in his favour causing wrongful loss to the society and wrongful gain to him. Even if it is so, the petitioner cannot be prosecuted for the offences under Sections 177 and 182, I.P.C. at this length of time as they are barred by limitation u/s 468 of Cr.P.C. since the maximum punishment imposed under those sections is up to six months only and as the crime was registered in the year 1988 and the charge-sheet is filed in the year 1996 after more than eight years, they are barred by limitation. Even the ingredients of Section 420, I.P.C. are also absent and the statements of witnesses recorded also fail to disclose that the petitioner dishonestly induced the managing committee of the society to allot a plot to him. Like any other member, he paid the entire amount as required by the society and the society has registered the plot in his name. It is also not stated in the charge-sheet that other eligible members were deprived of allotment of plot. Thus, we are of the view that the ingredients of the offences alleged against the petitioner are totally absent in the charge-sheet.

62. In Criminal Petition No. 2629 of 1998, the principal allegations against the petitioner contained in the charge-sheet are that by furnishing false information that he did not own any house in Hyderabad or Secunderabad, he became a member of the society and got allotted a plot in his name thereby causing wrongful loss to the society and wrongful gain to him. Petitioner, however, denied during the course of enquiry by L. W. 2, the allegation that a house bearing No. 6-1-127/1, Padmaraonagar, Secunderabad stands in his name. Though the petitioner denied owning a house at Padmaraonagar, yet the prosecution examined 18 witnesses to prove that he owned a house at Padmaraonagar. Even if it is to be accepted for a moment that the petitioner furnished false information and committed offences under Sections 177 and 182, I. P. C, he cannot be prosecuted under those offences at this belated stage in view of the limitation contained in Section 468 of Cr.P.C. since the maximum punishment provided under those sections is imprisonment up to six months having regard to the fact that the Crime has been registered in the year 1988 and the charge-sheet is filed in the month of October, 1996 after more than eight years which is clearly barred by limitation. Even the ingredients required u/s 420, I.P.C. are also absent as the statements of witnesses so recorded fails to disclose that the petitioner induced the managing committee to allot a plot to him by misrepresentation, when it is the case of the prosecution that the Managing Committee has allotted plots even to non-members also. As the petitioner paid the entire amount as required by the society and as he was allotted a plot by virtue of his membership, it cannot also be said that he caused wrongful loss to the society. Thus, on a careful scrutiny of the charge-sheet, we are unable to find the ingredients of the offences alleged against the petitioner.

63. In Criminal Petition No. 3684 of 1998, a perusal of the charge-sheet filed against the petitioner discloses that he obtained membership in Sri Venkateswara Cooperative House Building Society by filing a false declaration suppressing the fact that he was a member of another cooperative society and got allotted a plot in his favour. However, even if these allegations if accepted to be true and the petitioner has committed offences under Sections 177 and 182, I.P.C. he cannot be prosecuted for the same at this point of time in view of the limitation contained in Section 468 of Cr.P.C. since the maximum punishment under the said offences is up to six months only. As the crime is registered against the petitioner in the year 1988 and the charge sheet is filed in the month of October, 1996 after more than eight years, prosecution of the petitioner for the said offences is clearly barred by limitation. Even the ingredients of Section 420, I.P.C. are also not present on a scrutiny of the statements of witnesses so recorded. The plot has been allotted to him by virtue of his membership in the said society and after payment of the entire amount as required by the society. We are unable to find any element of dishonesty or inducement on which basis, the society allotted plot to him. It is also not alleged in the charge-sheet that other eligible members were deprived of allotment of plot in view of allotment of the plot to the petitioner. Therefore, we are of the view that the charge-sheet

fails to disclose the ingredients of the offences alleged against the petitioner.

64. Insofar as the second category of Criminal Petition Nos. 260/98,473/98,596/98, 1836/98 and 4650/98 is concerned, petitioners therein are charge-sheeted for the offences punishable under Sections 468, 471, 420 and 120-B, I.P.C. As Section 420, I.P.C. is already extracted supra, it would be relevant to extract Sections 468, 471 and 120-B, I.P.C. for proper appreciation of the contentions advanced on behalf of the petitioners in these criminal petitions.

Section 468, I.P.C. : Whoever commits forgery, intending that the document 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 471, I.P.C. - Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Section 120-B, I.P.C. - (1) Whoever is a party to a criminal conspiracy to 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.

65. Now, we shall examine the charge-sheets filed against the petitioners in the light of the statements of witnesses in this second category of criminal petitions to ascertain the presence or otherwise of the ingredients engrafted in Sections 468, 471, 420 and 120-B, I.P.C.

66. In Criminal Petition No. 260 of 1998, the charge-sheet filed against the petitioners (A-3 & A-4) discloses that they conspired with A-1 and A-4, fabricated a letter of alienation purported to have been given by L. W. 4 - K. Lakshminarayana Reddy requesting the society to register his plot in favour of L. Ws. 6 and 7 who are the wives of these petitioners respectively, pursuant to which A-1 and A-2 allotted the plots and registered the same in favour of L. Ws. 6 and 7. It is also alleged that the plots were later sold to L. Ws. 9 and 11 who in turn sold to L. Ws. 10 and 12.

67. A perusal of the chargesheet and the statements of witnesses recorded fail to show the ingredients required u/s 468, I.P.C. On the other hand, it is the case of the prosecution that L. W. 4 signed on the allotment letter at the instance of these petitioners. It seems, L. W. 4 is not examined as a witness to show that the petitioners have committed forgery. When there is no specific allegation of forgery against these petitioners, it is difficult to say that the petitioners

committed the offence of forgery. It is also difficult to accept that the petitioners dishonestly used the said letter of allotment to get a plot in the name of L. W. 4. It is further alleged in the charge-sheet that Petitioners and A-1 and A-2 conspired for wrongful gain. The ingredients of Section 120-B, I.P.C. are absent in the statement of witnesses recorded as it fails to disclose as to how A-1 to A-4 conspired to cheat the society. It is not the case of the prosecution that the amount required by the society has not been paid by L. Ws. 6 and 7 thereby caused wrongful loss to the society. Thus, on a scrutiny of the statements of witnesses in the light of the allegations made in the charge-sheet, we are unable to find the ingredients of the offences alleged against the petitioners.

68. In Criminal Petition No. 473 of 1998, the charge-sheet filed against the petitioner discloses that L. W. 3 was allotted a plot in the said society and he nominated his wife as nominee. P. Narayana Rao (A-l) and Ghouse Moinuddin (A-2) approached L. W. 3 and obtained his signatures on some papers deceitfully. Petitioner approached L. W. 4 and offered to sell the said plot allotted to L. W. 3 for extra consideration. It also discloses that A-4 and A-5 registered the plot allotted to L. W. 3 in favour of L. W. 4.

69. On a scrutiny of statements of witnesses supporting the allegations in the charge-sheet, we are unable to find the ingredients of 468, 471, 420 and 120-B, I.P.C. against the petitioner. All that is alleged against the petitioner is that he approached L. W. 4 and offered to sell the plot allotted to L. W. 3. That by itself cannot constitute the offence of forgery or cheating. The allegations also failed to disclose at what place and in what manner all the accused named in the charge-sheet conspired to cheat the society. The allegation against A-1 and A-2 is that they obtained the signatures of L. W. 3 on blank papers. That by itself also cannot constitute the offence of cheating since prima facie, under what circumstances L. W. 3 signed on blank papers has also not been broughtforth. We are, therefore, unable to find any of the ingredients of the offences alleged against the petitioner.

70. In Criminal Petition No. 596 of 1998, a charge-sheet is filed against the petitioner (A-2) along with four others in the C. C. No. 60 of 1997 with the allegations referred to in Criminal Petition No. 473 of 1998. A reading of the entire charge-sheet and the supporting evidence recorded, fails to disclose the ingredients of the offences alleged against him. The only allegation against the petitioner is that he approached L. W. 3 and obtained his signatures. When it is the specific case of the prosecution that the petitioner approached L. W. 3 and obtained his signatures on some papers, it cannot be said that the petitioner forged the signature of L. W. 3. Thus, prima facie, the ingredients of forgery are totally absent. The charge-sheet also fails to disclose the manner as to how A-1 to A-5 conspired to cheat and cause wrongful loss to the society. Thus, it is difficult to hold that the charge-sheet filed against the petitioner prima facie showed the ingredients of the offences alleged against him.

71. In Criminal Petition No. 1836 of 1998, the only allegation against the

petitioner is that he purchased the plot from the father of L. W. 3 who was allotted a plot in the alleged fabricated draw. The entire charge-sheet fails to disclose that the petitioner has forged the signature of the original allottee or he conspired with the other accused to cause wrongful loss or to cheat the society. It is alleged in the charge-sheet that he purchased the plot on the basis of the forged letter at the instance of A-1 to A-3. The statements of witnesses so recorded, even if accepted, fail to satisfy the ingredients of the offences alleged against the petitioner in the charge-sheet.

72. In Criminal Petition No. 4650 of 1998, it is alleged that the petitioner being the Director of Sri Venkateswara Cooperative House Building Society, represented to V. Muniswamappa, who was allotted a plot No. 334-A, to permit his brother-in-law to put up a hut in his plot. It is also alleged that Muniswamappa gave a letter addressing the society in this regard and also signed some papers and the petitioner is alleged to have forged a letter of alienation and registered the said plot in the name of a non-existing person with the connivance of A-2 and A-3, obtained a power of attorney in his favour and sold the said plot for excess amount to Ashfaq Hussain. However, from the reading of the entire charge-sheet, it is apparent that the petitioner obtained the signatures of L. W. 3 and on the basis of the same, registered the said plot in favour of S. Chandra Babu. Since L. W. 3 has signed on the letter of alienation, it cannot be said that the petitioner committed the offence of forgery. The value of the plot as fixed by the society has been paid to the society and as such the allegation that the society is cheated by misrepresentation for wrongful gain prima facie, is not established. The charge-sheet, therefore, fails to disclose the ingredients of the offences alleged against the petitioner.

73. In the third category of Criminal Petition Nos. 425, 426, 646 and 4707 of 1998, petitioners therein were charge-sheeted for the offences under Sections 471, 420 and 120-B, I.P.C. We shall now proceed to examine the charge-sheets filed against the petitioners in these cases to ascertain the presence or otherwise of the ingredients of the offences alleged against them in the light of the statement of witnesses recorded.

74. In Criminal Petition No. 425 of 1998, the charge-sheet filed against the petitioner discloses that A-3 with the active connivance of A-1 and A-2 in the charge-sheet obtained a consent letter from L. W. 3 who was allotted a plot to alienate the plot to his wife, got interpolated the name of the petitioner by forgery purported to have been made by L. W. 3 in favour of the petitioner. It is alleged that A-1 to A-4 conjointly managed to register the plot of L. W. 3 in favour of the petitioner who is a non-member. However, in the charge-sheet, it is only mentioned that the plot has been registered in the name of the petitioner. Even the ingredients of Section 420, I.P.C. are not present in the charge-sheet since the society itself has registered the plot in the name of the petitioner after receiving the amount so fixed by it. Prima facie, the ingredients of the offence of criminal conspiracy cannot be made out against the petitioner. The allegations

only center around the office bearers of the society and the allegations against the petitioner are too remote to fasten the criminal liability on him. Therefore, we are unable to find, prima facie, the ingredients of the offences alleged against the petitioner in the charge-sheet.

75. In Criminal Petition No. 426 of 1998, the charge-sheet filed against the petitioner is that a plot which is allotted to one Y. Narayana Rao, an employee of the A. P. Legislative Assembly has been registered in favour of the petitioner with the active connivance and conspiracy of A-1 to A-4, A-4 being the petitioner, A-1 to A-3 being the office bearers of the society. However, on a perusal of the charge-sheet, it fails to disclose that the petitioner has committed the offences of forgery, cheating and criminal conspiracy. The allegations so made in the charge-sheet, only establish that A-1 to A-3 sold the plot to A-4 (petitioner herein) in a deceitful manner. Since the amount has also been paid to the society towards the purchase of plot as fixed by the society, it cannot be said that the society has been cheated so as to cause wrongful loss to it. The allegations in the charge-sheet also center around the office-bearers of the society and do not prima facie point towards the petitioner. Therefore, we are of the view, the allegations in the charge-sheet do not prima facie contain the ingredients of the offences alleged against the petitioner.

76. In Criminal Petition No. 646 of 1998, the charge-sheet filed against the petitioner discloses that L. W. 3 was allotted a plot by the society and as the said plot was unsuitable for construction, on her request, she was allotted another plot on the basis of a fabricated draw held on 27-3-1985. Thereafter, A-1 to A-3 along with A-4 (petitioner) forged a fake alienation letter purported to have written by L. W. 3 and on that basis registered the plot in favour of the petitioner. The charge-sheet only mentions that A-1 to A-3 connived themselves and forged a fake alienation letter said to have been written by L. W. 3 and registered the plot in favour of the petitioner. It does not specifically allege that the petitioner forged the letter. Since L. W. 3''s signature is present in the alienation letter, the ingredients of forgery are also not prima facie made out against the petitioner. As the amount due to the society has also been paid at the rate as fixed by the society, the ingredients of cheating i.e., dishonestly inducing the society to alienate the plot, are also not made out against the petitioner. As the main allegation is against A-1 to A-3 who are the office bearers of the society, conspired to alienate the plots to non-members, petitioner being a non-member, seems to have been charge-sheeted for purchasing the plot. The allegations contained, prima facie, may utmost, implicate the office bearers of the society, but cannot fasten the criminal liability against the petitioner for the offences alleged against him. Thus, the ingredients of the offences alleged against the petitioner are not present in the charge-sheet.

77. In Criminal Petition No. 4707 of 1998, the charge-sheet filed against the petitioners discloses that a plot has been allotted to the father of L. Ws. 3 and 4 and he nominated L. W. 4 as his nominee. However, it is alleged, A-1, A-2 with

the active connivance of A-3 deceitfully got a fake alienation letter prepared and registered the plot in the name of A-4 who is a non-member of the society. A-5 and A-6 attested the same as witnesses. A perusal of the charge-sheet in its entirety, does not disclose the offences alleged against the petitioners herein except alleging that A-3 has obtained an alienation letter from late Edla Gopaiah, original allottee and got the plot registered in favour of A-4 and A-5 obtained the document on behalf of A-4. The ingredients of forgery have not been made out against these accused. Similarly, the ingredients of cheating are also absent in the charge-sheet as the society itself has registered the plot in favour of A-4 on payment of the amount fixed by it. The ingredients of criminal conspiracy are also absent inasmuch as the charge-sheet does not disclose as to the manner in which the accused conspired to cause wrongful loss to the society. Therefore, we are prima facie of the view that no ingredients of the offences alleged against the petitioners are made out in the charge-sheet.

78. All the learned counsel appearing on behalf of the petitioners submitted that since the society - Sri Venkateswara Cooperative House Building Society is registered under the Andhra Pradesh Cooperative Societies Act, 1964, in terms of Section 61 of the said Act, any dispute touching the constitution, management or business of the society shall be referred to the Registrar of the Societies for a decision and his decision shall be final. It is further contended that as provided u/s 79(1)(aa) and (c) of the said Act, if any member of the society willfully makes a false return or furnishes false information to gain admission or to continue as member of a society, he shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five hundred rupees. According to the learned counsel, as the offences alleged against the majority of the petitioners are "furnishing false information regarding their owning another house and having membership in other societies", the same if established, could be punishable u/s 79 of the Act under which punishment for the said offences could be upto six months. However, counsel contended, crime against the petitioners is registered in the year 1988 and charge-sheets are filed against them only in the month of October, 1996 after more than eight years. Therefore, as provided u/s 468 of Cr. P. C. the offences of providing false declaration and information to the society are clearly barred by limitation as they are only punishable with imprisonment up to six months. It is therefore, contended that the petitioners cannot, be prosecuted for the mismanagement or irregularities committed by the office bearers of the society under the provisions of Indian Penal Code and filing of charge-sheets against them in the year 1996 though the crime is registered in the year 1988 clearly shows that the Government is trying to wreak political vengeance against them and as such, their prosecution at this length of time, cannot be permitted.

79. We see some force in this submission. The society is registered under the A.P. Cooperative Societies Act and as such it is governed by the provisions of the said Act. As provided u/s 61 of the Act when any dispute touching the constitution, management or the business of the society arises, the same has to

be referred to the Registrar for his decision and his decision shall be final. The principal allegations against the petitioners are a) furnishing false information; and 2) suppressing the vital information of their owning other houses/having membership in other societies. These allegations, in our view, are in the nature of touching the constitution and business of the society and not otherwise. On these allegations, enquiry as provided u/s 61 of the A. P. Cooperative Societies Act could have been held as the scheme of the Act provides for cancellation of allotment if such allotment is made to ineligible persons. When a specific procedure is provided to deal with the irregular acts of the Committee/Society or its members in the Act, recourse ought to have been taken under that provision of the said Act. Unless strong reasons are made out for launching criminal prosecution under the provisions of the Indian Penal Code, initiation of prosecution under the provisions of IPC cannot be resorted to. As discussed by us elaborately in the foregoing paragraphs, the allegations made against each petitioner in the charge-sheet and the statements of witnesses recorded even if taken at their face value, do not disclose the essential ingredients of the main offences under Sections 420, 468, 471, 120-B, I.P.C.

80. Section 468 of Cr.P.C. provides limitation for launching prosecution to certain category of offences. As discussed in the foregoing paragraphs, except for the offences u/s 420, 468, 471 and 120-B, I.P.C., the other offences alleged against some of I the petitioners are clearly barred by limitation in terms of Section 468 of Cr.P.C. and as such, launching of prosecution after the expiry of limitation is impermissible. Since some of the petitioners are also charge-sheeted for the offences under Sections 420, 468, 471 and 120-B, I. P. C, their prosecution though saved by limitation u/s 468 of Cr. P. C, but the allegations made against those petitioners in the charge-sheets coupled with the statement of witnesses recorded, even if taken at their face value, do not disclose the ingredients of the said offences alleged against them. As held by the Supreme Court in the decisions cited supra, when the High Court exercises inherent powers u/s 482 of Cr. P. C, the prime consideration should only be whether the exercise of such power would advance the cause of justice or it would be an abuse of the process of the Court. Having regard to our elaborate discussion in the foregoing paragraphs, we hold that launching of prosecution against these petitioners under various provisions of the Indian Penal Code at this point of time is nothing but gross abuse of the process of the Court apart from an exercise in futility.

81. For all the above reasons, we quash the criminal proceedings pending against these petitioners on the file of the IX Metropolitan Magistrate, Hyderabad in C. C. Nos. 70/97,64/97, 63/97, 54/97, 72/97, 225/ 93, 223/93, 60/97, 450/92, 220/93, 53/ 97, 595/94, 73/97, 67/98 and 59 of 1997.

All these criminal petitions are accordingly allowed.

