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(2023) 05 OHC CK 0313

In the Orissa High Court

Case No : CRLMC No.3407 Of 2019

Shrikant Mohta APPELLANT

Vs

Republic Of India (CBI) RESPONDENT

Date of Decision : 30-05-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 482
Indian Penal Code, 1860 — Section 120B, 403, 405, 406, 408, 409, 415, 418, 420
Prize Chits and Money Circulation Scheme (Banning) Act, 1978 — Section 4, 5, 6
Arbitration and Conciliation Act, 1996 — Section 34, 36

Citation : (2023) 05 OHC CK 0313

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Milan Kanungo, Sarthak Nayak

Final Decision : Dismissed

Judgement

R.K. Pattanaik, J

1. The petitioner by invoking inherent jurisdiction under Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr.P.C.') has knocked the doors of this Court for quashment of the chargesheet dated 22nd May, 2019 in so far as the same relates to him filed before the learned Special C.J.M., CBI, Bhubaneswar and the proceedings emanating therefrom corresponding to FIR No. RC/39/S/2014-Kol on the grounds inter alia that the same is not tenable in law.

2. At the behest of the CBI, the petitioner stands prosecuted under Sections 409, 408, 420 and 120-B IPC besides Sections 4, 5 and 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 on the premise that he as the Founder Director of Shree Venkatesh Films Private Limited (in short 'SVFL') entered into an agreement with Brand Value Communications Limited (shortly as 'BVCL'), a sister concern of Rose Valley Group of Companies (RVGC) assigned with the exclusive broadcasting rights for a period of three years and for having received

the consideration amount which forms a part of the crime proceed collected by the RVGC from its chit fund business despite having knowledge about the ill-gotten money collected through illegal means. However, according to the petitioner, the above allegation is absurd and even if taken at its face value and accepted in entirety does not prima facie constitute any of the offences alleged. From the FIR, as it is further claimed by the petitioner, there has been a business transaction without having any criminal intent jointly shared, the fact which is clearly discernable from the litigations including an arbitral proceeding between them. It has been pleaded by the petitioner that the parties to the contract engaged themselves in commercial business but he has been criminally prosecuted by the CBI alleging fraudulent intent and conspiracy in utilizing the money collected from the depositors by RVGC which is completely preposterous. It has been claimed that the agreement in question was lawful and so was the consideration involved, inasmuch as, all rights and liabilities in terms thereof stand judicially evaluated and if any consideration received from RVGC, in that case, for each and every business dealing with the said company by all other partners during the relevant period shall have to be held as criminally liable, a proposition which is simply atrocious. It is strongly urged that the petitioner's company was not directly involved in the collection of public money through chit fund business but entered into a transaction with BVCL, one of the associated companies of are RVGC and in that connection, received a contract for an amount of Rs.25 Crore and furthermore, in view of the dispute arose between them, the parties were engaged in litigations and therefore, to implicate the petitioner with the allegation of cheating, misappropriation and criminal breach of trust is nothing but a brazen display of misuse of power by the CBI and furthermore when the essential ingredients of the offences are not satisfied especially when it is not a case of hatching any criminal conspiracy related to chit fund money and its circulation which is directed entirely against the RVGC. According to the petitioner, for the alleged contract, which was only for a period three years, to allege conspiracy against him is totally absurd and in so far as he is concerned, there was no nexus and even otherwise any such allegation and criminal proximity is disabled and stands fully negated in view of the inter se litigations between the parties. So, therefore, the petitioner pleads that he has not committed any criminal offence and as to the contract, it could have been avoided but unfortunately, without any involvement was entangled by the CBI and hence, the chargesheet which is submitted as against him should be quashed in order to advance the cause of justice by exercising the extra-ordinary jurisdiction of this Court.

3. Heard Mr. Kanungo, learned Senior Advocate appearing for the petitioner assisted by Mr.S.R. Mohanty, Advocate and Mr. Nayak, learned counsel for the CBI.

4. Mr. Kanungo, learned Senior Advocate for the petitioner submits that the petitioner was the Director of SVFL, a company incorporated in the year 1995 under the provisions of the Companies Act, 1956 engaged in the business of film

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production, distribution, broadcasting rights etc. It is submitted that SVFL is also engaged in the business of production of cinematographic films through various modes and formats being one of the most renowned film production house in the eastern India circuit for having produced more than 130 films with commercially successful films to its credit since its incorporation with a film library of 500 plus and music catalogue of 1000 plus songs apart from having received several accolades including seven national award winning films. Mr. Kanungo submits that in an usual course of a business transaction, SVFL entered into a purely commercial contract with BVCL by way of a Film Assignment Agreement dated 7th April, 2010 for sole and exclusive satellite television broadcasting rights of 70 features films to BVCL aired through its channel 'Rupashi Bangla' for a period of three years at a consideration amount of Rs.25 Crore and thereafter, SVFL had a TV production agreement dated 23rd May, 2010 for a daily television program titled as 'Suhasini' to be telecast on BVCLs' satellite channel 'Rupashi Bangla' at an agreed rate of Rs.1.45 Lac per episode, however, out of total 320 telecast episodes, BVCL defaulted in making payment in respect of 94 episodes for which SVFL was constrained to approach Calcutta High Court in CP No.213 of 2012 for winding up of the said company in default which was disposed of in favour of SVFL on 4th February, 2013. It is claimed by Mr. Kanungo that as a counterblast BVCL disputed delivery of technical tapes of some films under the Films Assignment Agreement and lodged an FIR against the petitioner and five others, who were chargesheeted under Sections 403, 405, 406, 408, 418 and 420 IPC corresponding to Baguiati P.S. Case No.689 of 2011 which was quashed by the Calcutta High Court by order dated 15th January, 2014 in CRR No.292 of 2012 and CRAN No.1887 of 2013 by observing that the dispute between the parties is purely commercial in nature and even after it was being challenged by the BVCL through SLP, the Apex Court dismissed it on 30th November, 2015 and that apart, for the dispute under the agreement over delivery of technical tapes, BVCL had also filed CP No.361 of2012 before the Calcutta High Court similarly seeking winding up of SVFL which was dismissed by order dated 9th April, 2013 and ultimately by virtue of the arbitration clause in the agreement, the matter was referred to the Arbitral Tribunal which passed an award on 13th June, 2018 which was assailed by the petitioner before the Commercial court at Rajarhat in Arbitration Misc. Case No.254 of 2018 filed under Sections 34 and 36 of Arbitration and Conciliation Act,1996. In the aforesaid backdrop, with the litigations inter se SVFL and BVCL, Mr. Kanungo, learned Senior Advocate would further submit that the CBI made a bald allegation that the petitioner despite having knowledge regarding illegal chit fund business of RVGC entered into the commercial transaction with BVCL notwithstanding the fact that BVCL is a separate and distinct legal entity and at no point of time, there was any restriction under law against it for any such matter related to chit fund activities of RVGC. It is contended that despite a pure commercial transaction, a case of criminal conspiracy has been alleged by claiming that there was a tacit understanding and knowledge about the chit fund business and illegal activities of RVGC which is based on surmises and conjecture merely by referring to the

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statements of witnesses recorded under Section 161 Cr.P.C. and nothing more. With regard to the petitioners' knowledge about the nature of business by RVGC, Mr. Kanungo pleads that the petitioner had no business know how about all the group of companies considering the fact that its business transaction was with BVCL alone and that apart, the claim of the CBI runs contrary when it is matter of fact that there was no any such restriction as against BVCL or any ban from SEBI at the time when the commercial transaction was entered into between them in the months of April and May of 2010 as against the background that SEBI passed an order dated 24th December, 2002 against Rose Valley and Plantation Limited directing it to refund the money received under the schemes in compliance of which the refund was made and that another order dated 3rd January,2011 vis-à-vis Rose Valley Real Estate and Construction Limited with a direction to not collect the money from the investors and not to dispose of its assets or divert any fund raised from public which was thereafter stayed by order dated 3rd August, 2011 of the Calcutta High Court in W.P.(C) No.725 of 2011 followed by a direction to the SIBI not to move ahead with the pending proceedings, whereas, the Apex Courts' order for investigation into the illicit activities of chit business arrived in the month of August, 2014 which is almost 4 years after the agreements executed between both the sides. It is further submitted by Mr. Kanungo that SVFL after due diligence verifying the nature of activities of the company which holds a valid satellite license issued by the Ministry of Information and Broadcast and the fact that BVCL owns and operates four channels including 'Rupashi Bangla' (with respect to which agreements were entered into by SVFL) all forming a part of the list of permitted 'privates satellite TV channels' as per the license granted from the year 2009 which continued to remain valid, it has to be held that the parties really entered into a business transaction for and in respect of exclusive satellite television broadcasting rights and in view of the litigations before the courts thereafter, it is quite not justified to allege involvement of the petitioner with any criminal intent and conspiracy, inasmuch as, the allegations are totally ill-founded and besides the above, no any offence is made out against the petitioner since the ingredients are not fulfilled. It is contended that the petitioners' company was not involved in collection of public money or at any point in time induced the depositors to make investment in BVCL or RVGC and in so far as the statements referred to by the CBI are concerned, it does not even remotely hint about any such involvement in the alleged chit fund scam in connivance with RVGC and hence, the chargesheet filed against him is nothing but a colourable exercise of authority and thus, liable to be quashed in the interest of justice.

5. Mr. Nayak, learned counsel for the CBI on the other hand submits that the petitioner had a role to play with a tacit indulgence with BVCL, an associated company of RVGC and was involved in promotion of the chit fund business and received the consideration under the alleged contract, a part of the siphoned off money collected from the investors by RVGC. In course of investigation, material evidence has been collected by the CBI, as according to Mr. Nayak and it is

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submitted that the nature of involvement of the petitioner stands revealed from the statements of witnesses and in particular, Mr. Kranti Kumar, AGM (Operations) of BVCL, who deposed that a meeting was held at Taj Bengal with respect to production of films, episodes, TV serials for telecast by 'Rupashi Bangla' and promoting the business of RVGC through advertisements during intermission of films and TV serials to impress upon the depositors and attract them to invest more. It is further submitted by Mr. Nayak that the said witnesses, on A specific query made by the petitioner and his representatives regarding the requirement of huge capital outlay and recurring expenses in the production of films, episodes for television, it was assured by Mr. Goutam Kundu, Chairman/Director of RVGC that there shall be no dearth of money as the group of companies are into the business of collecting deposits under investment schemes and thus, funds would be made available for business venture and that RVGC was to generate more fund from public through advertisements in the breaks/intervals of the TV programmes and films in the light of good brand value of SVFL. By resting upon the statements of witnesses recorded under Section 161 Cr.P.C. and referring to it, Mr. Nayak contends that the petitioner as the head of SVFL has the involvement not only in the utilization of the crime money but also in a way extended support towards the promotion of such business and since meeting of minds was revealed, there was prima facie evidence for which the chargesheet was submitted against him under the alleged offences and as all such materials are needed to be examined and enquired into during and in course of trial and therefore, inherent jurisdiction under Section 482 Cr.P.C. should not to be exercised to terminate the action at its inception. In fact, the CBI while opposing quashment of the chargesheet filed affidavits dated 7th December, 2019 and 21st June, 2020 and referring to it, Mr. Nayak, learned counsel for the CBI submits that since prima facie material emerged during investigation showing complicity of the petitioner and others for which the learned Court below took cognizance of the offences on 23rd May, 2019 and thereafter, transferred the matter to the learned Special Court for trial, jurisdiction under Section 482 Cr.P.C. is not to be exercised and furthermore when, he has the remedy to work out seeking discharge during enquiry. Mr. Nayak further submits that the affidavits summed up the facts and circumstances showing the involvement of the petitioner and in so far as the charge of criminal conspiracy is concerned, there can hardly be direct evidence to establish it and while contending so, he cited the judgment of the Supreme Court in the case of E.K. Chandrasenan Vrs. State of Kerala 1995 SCC (2) 99. That apart, the conduct of the petitioner during further investigation was highlighted upon in the affidavit dated 21st January, 2023 and about the fact that he had approached this Court earlier in CRLMC No. 743 of 2019 with a prayer to quash the investigation and criminal prosecution which was dismissed being infructuous. Referring to the order in BLAPL No. 3450 of 2019, wherein, release of the petitioner was declined with observations made therein, Mr. Nayak submits that when sufficient material was found to exist by this Court, reconsideration of the same is intervened by doctrine of precedence. To supplement the decision in E.K. Chandrasenan

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(Supra), Mr. Nayak referred to one more authority of the Apex Court in State of Himachal Pradesh Vrs. Krishan Lal Pradhan and Others 1987 CriLJ 709 and at the end claimed for dismissal of the plea of the petitioner. A similar view has been expressed in CRLREV No. 618 of 2018 by this Court in connection with another case is drawn to the attention by Mr. Nayak contending that when there is prima facie evidence gathered during and in course of investigation which led to the submission of supplementary chargesheet against the petitioner, all such aspects and grounds raised by him should be left open for a decision by the learned Special court.

6. In response to the above, Mr. Kanungo, learned Senior Advocate for the petitioner submits that in the aforesaid case, this Court had also categorically held that the essential ingredients of the offences under Sections 405, 415 & 420 I.P.C should be fulfilled by placing reliance on other decisions and finally concluded with the argument that the allegation of cheating, misappropriation whatever has been alleged stands directed against RVGC and there is no material on record to show that the petitioner had ever connived with RVGC or for that matter, BVCL to deceive and fraudulently induce the public investors.

7. The extra-ordinary jurisdiction under Section 482 Cr.P.C. is wide and expansive and not fettered by any limitation. In order to prevent abuse of process of law or to secure ends of justice, such power may be exercised by this Court. In umpteen numbers of cases, the Apex Court has discussed and reiterated the principles for exercising jurisdiction under Section 482 Cr.P.C. and more prominently in State of Haryana and Others vs. Ch. Bhajan Lal and Others AIR1992 SC 604, which is considered to be a legal classicus on the point, the relevant except of which is reproduced herein below:

"(a) where the allegations made in the FIR 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;

(b) where the allegations in the FIR and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) 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;

(d) 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 under Section 155(2) of the Code;

(e) 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

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just conclusion that there is sufficient ground for proceeding against the accused;

(f) 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;

(g) where a criminal proceeding is manifestly attended with malafide 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."

It is therefore trite law that inherent power can be invoked to quash the criminal proceedings if the case falls in one of the categories specified in the above judgment of the Apex Court.

8. Inherent power under Section 482 Cr.P.C. is exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. The authority of the Court exists to advance the cause of justice and if any attempt is made to abuse that authority, it shall have the power to prevent such abuse in exercise of inherent power. The Court would be justified to quash any proceedings if it finds that initiation and/or continuation of it would amount to an abuse of process of law or it is necessary otherwise to serve the ends of justice. The above are the words of advice of the Apex Court while dealing with matters for quashing of criminal proceedings exercising jurisdiction under Section 482 Cr.P.C. In Ananda Kumar Mohatta and Another Vrs. State (Govt. of NCT of Delhi) 2018 SCC OnLine SC 2447, the Supreme Court held and observed that there is nothing in Section 482 Cr.P.C. which restricts the exercise of jurisdiction to prevent abuse of process of court or miscarriage of justice. So therefore, such extra-ordinary jurisdiction may be exercised in a given fact situation, where it demands. The aforesaid decisions have been relied on by Mr. Kanungo, learned Senior Advocate besides the following, namely, Randheer Singh Vrs. State of U.P & Others 2021 SCC OnLine SC 942; Mitesh Kumar J Sha Vrs. State of Karnataka 2021 SCC OnLine SC 976; M/s. Thermax Ltd Vrs. K. M. Johny 2011 (13) SCC 412; Vijay Kumar Ghai Vrs. State of West Bengal (2022)7 SCC 124; Binod Kumar Vrs. State of Bihar (2014) 10 SCC 663; Asoke Basak Vrs. State of Maharashtra and Others (2010) 10 SCC 600 and Dani Singh and Others Vrs. State of Bihar (2004) 13 SCC 203 with host of other authorities to convince the Court that there has been no case prima facie made out against the petitioner, inasmuch as, the essential ingredients of the offences are not satisfied and besides that the dispute between the parties is held to have been civil in nature and there could not have been any connivance in view of the litigations pending between the parties.

9. A copy of the Film Assignment Agreement dated 7th April, 2010 is at Annexure-1 executed between SVFL and BVCL, which is in relation to sole and

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exclusive satellite television broadcasting rights for the assigned period; to promote transmission in respect of films described in Annexure-A only through its general entertaining channel subject to the conditions stipulated therein. A further agreement dated 23rd May, 2010 came into being between the parties for production of daily TV programme titled 'Subhasini' to be telecast on BVCL satellite channel in 'Rupashi Bangla', a copy thereof is at annexure-2. For the winding up of BVCL due to default in payment in respect of 94 episodes out of 320, the petitioner, as earlier mentioned, had approached the Calcutta High Court in CP No. 213 of 2012 disposed of with an order and direction to BVCL to deposit Rs.1.45 Crores is at Annexure-3. Likewise, BVCL and its share of litigation against SVFL as it raised a dispute out of the agreement dated 7th April, 2010 and lodged criminal prosecution against SVFL and the petitioner and lodged an F.I.R which was quashed along with the proceedings by a judgment of the Calcutta High Court in CRR No. 297 of 2012 and CRN No. 1887 of 2013 is at Annexure-4. The said order of the Calcutta High Court was appealed before the Supreme Court but stood dismissed vide Annexure-5. The disputes between SVFL and BVCL was referred to arbitration, as a result of which, an award dated 13th June, 2018 was passed in favour of the BVCL, a copy of which is at Annexure-6. Having regard to the disputes between the SVFL and BVCL, it has been claimed by Mr. Kanungo, learned Senior Advocate for the petitioner that it is quite inherently improbable or absurd to make one believe about any such criminal conspiracy as alleged. The agreements between the parties are of the year 2010. In so far as the order of the Supreme Court for CBI investigation is concerned, which is with regard to the chit fund scam, it was directed in the year 2014. As per the CBI, since SEBI had banned chit fund business of RVGC but the petitioner knowingly entered into a commercial transaction with the said company and BVCL in order to further the illicit business. The BVCL is a sister concern of RVGC which entered into agreement with SVFL being an independent commercial entity, which owns and operates various satellite channel and continues to operate till date as it is claimed by Mr. Kanungo, learned Senior counsel for the petitioner, the fact which has not been denied or disputed by the CBI. It is claimed that the order dated 24th December, 2022 of SEBI was complied with by the company of RVGC and the other one dated 3rd June, 2011 was stayed by Calcutta High Court against collection of public money from the investors under different schemes floated by M/s. Rose Valley Real Estate and Constructions Limited. The petitioner having prior knowledge about the source of fund received from the BVCL has been denied by Mr. Kanungo by referring to the aforesaid developments.

10. Precisely stated, the petitioners' involvement is alleged by the CBI with the claim that he had the knowledge about the original source of the consideration amount received by SVFL and thus, assisted BVCL and as a necessary corollary, RVGC in the promotion and advertisement of the chit fund business. It is the defence that the petitioner and SVFL, an entertainment company was not directly or actively participated in the promotion of such activities of RVGL. As it is

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revealed, the SVFL was responsible for production of films, TV Serials/episodes in view of the contract entered into with BVCL, the amount of money which SVFL received, as according to the CBI, was from the crime proceeds accumulated by RVGC through its chit fund business. It is alleged that the petitioner was well aware of the activities of the RVGC, which is the company responsible for the finance spent on production of episodes to be telecast on the satellite channels owned by it. As further claimed by the CBI, the Chairman/Director of RVGC assured the petitioner that there would no crunch in the finance to meet the recurring expenses as disclosed by the witnesses, who by then, were the officials of BVCL. Is it that the petitioner was a party to the criminal conspiracy after having entered into an agreement in 2010? Whether there is prima facie evidence on record to show that the petitioner entered into a criminal conspiracy with other accused persons and influenced the investors of the RVGC with his participation to the extent alleged?

11. Mr. Kanungo, learned Senior Advocate contended that in Randheer Singh (supra), the Apex Court deprecated the criminal action initiated with regard to the civil transactions between the parties wherein it has been held and observed that the duty of the Court is to cross check that the dispute of a civil in nature has been given colour of criminal offence. No doubt, the chit fund business and the offences alleged stands against the RVGC is an independent cause of action. So far as the petitioners' role and involvement is concerned, since he was involved with BVCL in a commercial transaction, Mr. Kanungo therefore refers to Randheer Singh (supra) to persuade the Court that a civil liability and disputes pending between the parties can by no stretch of imagination be given a criminal flavour alleging criminal conspiracy which does not commensurate with the fact that there has been litigations in the past between SVFL and BVCL and when both are still in litigating terms before the Arbitral Tribunal. In Mitesh Kumar J Sha (supra), the Apex Court explained the fine distinction between an act of breach of contract and cheating while referring to one of its earlier decisions in Hridaya Ranjan Prasad Verma & Others Vrs. State of Bihar and Another. By placing reliance on the said decision, Mr. Kanungo further contended that in view of the settled position of law a civil liability cannot be converted to a criminal action. Indeed, the prosecution has been launched against the RVGC, whereas, the petitioner and SVFL have been entangled on the ground of criminal conspiracy. It is not a case simpliciter where a civil dispute between the parties has been painted with a cloak of criminality. Rather the above decisions are referred to with the contention that the dispute between the parties leaving aside the chit fund activities of the RVGC is a product of commercial transaction which is not to be converted and given a colour of criminality with the allegation of connivance and conspiracy.

12. Indisputably, between 2011 and 2018, the SVFL and BVCL were at loggerheads as both sides approached the Calcutta High Court for winding up of the company of each other on account of respective defaults and in 2012, the latter rather lodged an F.I.R. against the former including the petitioner alleging

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cheating, criminal conspiracy and misappropriation of funds which culminated with a chargesheet was quashed in 2014 by the Calcutta High Court and upheld by the Apex Court in 2015 while dismissing the SLP. As earlier mentioned, the parties are also up against each other and the matter is pending before the Commercial court against an award of the Arbitrator. A question which hinges the most is that when both sides have been in litigation and even BVCL alleged cheating against SVFL and lodged F.I.R, would it still be the reasonable and justified to allege connivance and conspiracy? As it is understood, the defence argument is that had there been any such meeting of mind or conspiracy hatched, whether the petitioner would have approached the Court against BVCL and vice versa and the latter would have lodged F.I.R. with the allegation of misappropriation and cheating against the former, rather, in view of the conspiracy, the parties would have tried to hush it up instead of raising litigations against each other. There has been a valid contract between the parties in relation to a business and on broadcasting rights, with respect to feature films and production of a TV serial to be telecast on BVCL satellite channel and in that connection, when dispute arose, the matters landed up before the Calcutta High Court and the Arbitral Tribunal and under such circumstances, would it be quite natural to draw a conclusion or any kind of inference suggestive of criminal conspiracy as alleged by the CBI.

13. Mr. Nayak, refers to the statements of witnesses recorded under Section 161 Cr.P.C. in course of hearing to bring to the notice of the Court as to how the parties had a connivance and how it was within the knowledge of the petitioner regarding the fact that RVGC is involved in chit fund business and was assured no dearth of fund to meet the huge capital outlay and recurring expenses in the production of films and episodes for television. On a reading of a statement of a witness, namely, Kranti Kumar, it is made to appear that a meeting was held at Taj Bengal between SVFL and BVCL attended by the petitioner and also the Chairman/ Director of RVGC, Mr. Goutam Kundu. In that meeting, as per the said witness, discussion was held with regard to production of film episodes, TV serials to be telecasted by the separate channel of BVCL and about promotion of business of RVGC through advertisements during intervals of TV serials and films to impress the depositors for investment. It was also resolved in the said meeting that SVFL shall not only help in the production of films but also in its marketing and distribution using its wide network in eastern India in respect to vernacular content. It is also deposed by the above named witness that the petitioner was assured that there shall be no capital crunch. So by harping on the statements of the witnesses, especially, Mr. Kranti Kumar, AGM (Operations), BVCL, it is alleged by the CBI that there was knowledge and also connivance between the parties and hence the petitioner cannot escape from the criminal liability, which he is to bear with BVCL and RVGC. For a promise by the RVGC, the depositors and consequential cheating and misappropriation of public money generated through chit fund activities, whether can bind the petitioner of a criminal liability, when it is made to suggest that the latter was engaged in a civil

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contract with BVCL. Unless, there is conspiracy shown and proved by conduct of the petitioner, the allegation of cheating and conspiracy cannot stand against him. For an offence under Section 420, I.P.C, the basic ingredients are that the accused must have cheated someone who has been dishonestly induced to deliver any properties or valuable security or anything capable of being converted to a valuable security. It carries an element of fraud or dishonest intention at the time of making promise or representation. Similarly, an offence under Section 409 I.P.C, which is an offence for criminal breach of trust, it has to be proved that there was an entrustment of property or the accused enjoyed dominion over the same, however, misappropriated or dishonestly disposed it of breaching the trust or any such legal contract touching upon the discharge of such trust has to be established. In the present case, it was of course not the petitioner instead RVGC was directly involved in illegal chit fund activities. For the wrong and illegality committed by the RVGC, whether, it would be just and proper to drag the petitioner and entangle him by alleging conspiracy when he was neither directly or indirectly a party to the collection of public money nor in any way participated in its promotion and advertisement to influence the public is the premise upon which the defence argument is based. Without any doubt, the mischief and deception is primarily directed against RVGC which illegally collected the public money through chit fund business. Also not in dispute that the petitioner was a party to the contract leading to the litigations taking place with BVCL. To a naked eye, it appears to be entirely an act of accumulation of public money by RVGC and thereafter using it for other means in violation of the contract like diversion of fund as in the present case for film production would certainly amount to an act of criminal breach of trust vis-à-vis the persons, who are directly into the business and its related activities. It may be too risky to subject someone to a criminal prosecution when the origin is from a civil dispute. Admittedly, the discussions of the meeting at Taj Bengal culminated in the execution of the agreements under Annexures-1 and 2. Merely by the claim that the Group Head of the RVGC assured the petitioner while allaying the apprehension of budgetary crunch on the ground that there has been no dearth of finance since the company was collecting deposits from public by itself may not be held sufficient to allege criminal conspiracy. The outcome of the meeting at Taj Bengal, as according to the material witnesses, was about the production of films, episodes and TV serials and SVFL to look after the marketing and distribution of the same using its wide network. So far as the promotion in the activities of the RVGC is concerned by floating advertisements during intervals of TV serials and films, as it has been pointed out, was the look out of the BVCL as neither the petitioner nor SVFL did have any say for the reason that the entertainment channel 'Rupashi Bangla' is owned and operated by BVCL. In other words, referring to the agreement, releasing advertisements during intervals was within the domain of BVCL and the petitioner or for that matter, SVFL had no role therein whatsoever. It has been alleged by the petitioner that the advertisements of RVGC were continuously telecast in the channel in all the shows and programmes, however, SVFL was singled out with no valid explanation offered by

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the CBI in that regard.

14. Whether there is criminal intent is a subjective satisfaction and a decision thereon depends on collective examination of material evidence. Where conspiracy alleged with involvement of others in the periphery or fringe areas, it is always a difficult task to prove it especially when the involvement begins with a commercial transaction of the present nature. True to say that the dispute existed between the parties is stated to have been over in the meantime with the awarded amount paid by SVFL to BVCL recently. In spite of the contract, the CBI alleged conspiracy. With an agreement or understanding, any commercial tie up begins wherein if conspiracy is claimed, the same is to be established by prima facie materials. The areas of activities have been earmarked as revealed from the contract between the parties. But placing reliance on the evidence collected during investigation, the CBI alleged existence of a tacit understanding between SVFL and BVCL with RVGC playing prominent role to pump in the finance utilizing the ill-gotten public money. As it is known, conspiracy is a mental faculty and therefore, one does not come across direct evidence. At times, economic offences are committed via media and there it becomes a challenge to prove conspiracy which would then depend on conduct of the parties proven through indict evidence. In a civil dispute, a criminal consequence may arise. If the genesis of a commercial transaction is connected to a source which is illegitimate, questions bound to emerge regarding its credibility which is what has happened in the case at hand where tacit understanding between the parties with RVGC in the forefront has been alleged which is based on the revelations made by the material witness present while the contract was being materialized. It is though difficult to segregate a civil contract from the criminal culpability, which demands intention but with whatever materials on record, even a tinge of suspicion may be enough to favour prosecution only for a limited purpose to proceed with the enquiry. A piecemeal trial is never encouraged at a preliminary stage which involves detailed scrutiny of evidence and it is strictly avoided while exercising inherent jurisdiction. No doubt, the veracity of the allegations is to be tested on the floor of the court during trial. But the evidence which may not appear convincing at the initial stage where conspiracy is alleged could be held as sufficient for enquiry and may even travel further. The statements recorded under Section 161 Cr.P.C. are without any doubt no substantive piece of evidence rather to be confronted to the makers during trial but on that basis, an enquiry otherwise felt or realized, having regard to the fact that conspiracy is alleged, cannot be derailed midway. In the present case, the evidence gathered to a certain extent has dented the credibility of the petitioner, for being a party to a commercial transaction, which is alleged to be built upon a foundation by having the knowledge and intention regarding the source and circulation of ill-gotten money. Being alive to the settled legal position vis-à-vis exercise of inherent jurisdiction and taking into account the totality of the facts and circumstances of the case, the Court reaches at a logical conclusion that it would not be justified at present to interfere with the chargesheet but instead to leave it open for the

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learned court below to examine the material evidence and to take a call with regard to the future course of action.

15. Accordingly, it is ordered.

16. In the result, the CRLMC stands dismissed, however, with the observations on record.

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