(2023) 06 JH CK 0029

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2264, 2237, 2338, 2261, 2392, 2420, 2476, 2587, 3165 Of 2013

Yadunandan Choudhary And Others — APPELLANT

Vs

State Of Jharkhand — RESPONDENT

Date of Decision : 30-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 90, 120B, 406, 409, 415, 420, 423, 424, 465, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2023) 06 JH CK 0029

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : A.K .Kashyap, A.K. Sahani, Rahul Kumar, Krishna Murari,, Vishal Kumar Trivedi, Amrita Banerjee, Deepak Kumar Prasad, Anil Kumar, Chandana Kumari, Nitish Parth Sarthi

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. These criminal miscellaneous petitions have been filed for quashing the cognizance order of learned Special Judge, CBI, Ranchi and the entire criminal proceeding in R.C.04(A)/2010- AHD-R(F,G,H) whereby and whereunder the cognizance of offence has been taken against the petitioner under Sections 406, 409, 420, 423, 424, 465 and 120-B of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (in short P.C. Act), 1988.

2. All these petitions arise out of the same case, is rooted in the same fact situation, are heard together and shall be disposed of by this common order.

PROSECUTON CASE

3. Petitioners are the engineers and dealing assistants, of the Rural Works

Department and are facing prosecution for the registration of firms/company floated by the then Minister and their close relatives as Class-1A Contractor. As per the prosecution case they were not having requisite qualifications/experience and did not fulfil the eligibility criteria for being registered as a Class-IA contractor, but were registered under a criminal conspiracy by the petitioners.

4. Prelude to the case was the upswing of political fortune of Hari Narayan Ray and Anosh Ekka whose rise coincided with surge of business and financial fortunes of their family members and relatives, which finally landed them in the net of investigating agency in corruption cases.

5. Disproportionate asset cases were registered by the vigilance bureau against Sri Hari Narayan Ray and Sri Anosh Ekka, the then ministers and charge sheet was submitted against them after investigation. Later, the investigation of Vigilance Case No. 26 of 2008 was taken up by CBI and re-registered under the direction of this court passed in W.P.(PIL) No.4700 of 2008 and W.P. (PIL) No.2252 of 2009.

6. During investigation in the disproportionate asset case, it was found that the modus operandi of making windfall illegal gains was to float construction company/firm, get it registered as class-1A and award huge work contracts by the government departments. The registration was obtained in a rushed-up manner and without fulfilling the requisite criteria based on forged documents and false reports submitted by the engineers concerned. Registration as class-1A contractor was accelerated and the certificate of registration was granted by the departments concerned in collusion with the officers and staffs. What was more revealing that such certificates were granted, although they did not fulfil requisite criteria. When this came to light, supplementary charge sheets were filed against the officers and staff concerned, instrumental in issuing of such certificates and cognizance has been taken, against which the instant petitions have been moved.

7. Registration of Class IA contractor is made on the basis of the eligibility criteria laid down in the notification of the statement of Bihar, Road construction department, vide No.A2/ Niyam-3-01/96 – 4009(S) dated 28.6.97 which has been adopted by the Jharkhand government vide its Notification No. Lo. Ni – 6– 3 – 2 – 2000 (Ansh) – 3878(S) dated 21.08.2002. Stipulations relevant for registration of a Class – 1A contractor provides:

i. Registration of a class IA contractor could be done by the EIC cum Addl. Commissioner-cum-Spl. Secretary with the advice of at least three Chief engineers.

ii. The contractor should have a permanent engineering organization.

iii. The contractor should have ownership of plant/missionary.

iv. The contractor should have experience of executing minimum five works, each of the valued not less than ☐ 10 lakh and totalling ☐ 75 lakh.

v. The contractor should have at least three diploma holder engineers and 1 degree holder engineer.

8. Hari Narayan Rai, after becoming minister, floated construction firms in the name and style of M/s Mhamaya Construction and M/s Ma Gauri Construction in which his wife and brother respectively were the major shareholders. After Sri Anosh Ekka became Minister, Construction Company was floated in the name and style of M/s Ekka Construction Pvt Ltd in which his wife Smt Ujjana Menon Ekka was the major shareholder. These firms were registered as Class-IA contractor by the Rural Works Department of government of Jharkhand although it did not fulfil the eligibility criteria. The firms got huge work orders from the Department which were under the control of Hari Narayan Rai and Anosh Ekka.

9. On receipt of the application for being designated as Class -1A contractor, Mr. Janmejay Thakur, the then Under Secretary, RWD, Ranchi issued letters on 24.01.2008 requiring verification of the experience certificate and possession of machinery equipment by the Firm, to the executive engineer of Khunti, Sahibganj, Ramgrah and Dumka.

10. Affirmative reports from the executive engineers were received. The Executive Engineers of Ramgarh, Khunti and Dumka, all submitted their reports on the same date i.e 24.01.2008 and these reports were placed in the file the very next day. Possession of the same machine was certified by Sri Yadvendra Singh, Executive Engineer, Ramgarh and Nathu Ram Executive Engineer, Dumka. Sri Yadvendra Singh confessed in his statement under Section 164 of the Cr.P.C that he was coerced by the Minister Hari Narayan Ray and Sri Ramjee Singh into signing the certificate as the firm to be registered belonged to the Minister’s relation and the Minister wanted registration of this firm.

11. As per the 2002 circular, the report along with the application was placed before Registration Advisory committee comprising of Chief Engineer Mr. Lalan Ji Kharwar, the then Executive Engineer, Jai Prakash, the then Executive Engineer, RCD, Ranchi and Philip Marianus Toppo, the then Executive Engineer, Ranchi. The Committee approved the registration without demur or raising any objection to the discrepancies in the application and the documents enclosed therewith.

12. Smt. Menon Ekka, submitted an application to Rural Works Department, Ranchi, on 10.04.2006 on behalf of M/s Ekka Construction Pvt. Ltd. in which she showed herself as the major partner with 80% share and her cousin Shri Jaykant Bara to be the other partner with 20% share. This application was submitted requesting registration of the company as a Class-1A contractor. The application, aforesaid of Smt. Menon Ekka, was put up with a checklist enlisting the documents required for fulfilling the eligibility criteria and also the documents actually submitted by Smt. Menon Ekka. In this checklist, column No. 6 was meant for filling up the details/particulars of engineers working on the payroll of the company. The dealing assistant left this column blank because Smt. Menon Ekka did not submit documents evidencing availability of engineers on its spay

roll.

13. In order to fulfil another criterion i.e. ownership of required machinery/ equipment, Smt. Menon Ekka submitted documents which indicated that all the required machinery belonged to one M/s Rameshwaram (not M/s Ekka Construction Pvt. Ltd.) and Sri Jaykant Bara, one of the partner of M/s Ekka Construction Pvt. Ltd. entered into a lease agreement with M/s Rameshwaram for hiring their machinery on monthly basis.

14. Similarly, so far as the working experience was concerned, the documents submitted by Smt. Menon Ekka indicated that different Executive Engineers issued experience certificate in favour of M/s Rameshwaram and M/s Rameshwaram in turn, issued experience certificates in favour of Sri Jaykant Bara. Thus, not a single document, evidencing the eligibility of M/s Ekka Construction Pvt. Ltd. was submitted.

15. It also came to light that documents filed claiming the firm to have been engaged engineers were fake.

16. The concerned file was dealt with by S/Sh Upendra Prasad Singh, the then Executive Engineer, RWD and Sri S.N. Murmu, the then Engineer in Chief, RWD. They did not object to the fact that the qualification of the company was wanting in almost all the aspects. They recommended registration of the company as a Class 1A contractor and the file was put up before the Registration Advisory Committee which mechanically accorded the approval without paying heed to the fact that the company did not fulfil even a single eligibility criterion. In this way, this company was fraudulently accorded the status of a Class-1A contractor on 09.06.2006.

17. The photocopy of the certificates in proof of payment receipt by the partners of M/s Ma Gauri Construction and certificate bearing engineering certificate were verified by Sri Upendra Prasad Singh, Executive Engineer and on his requisition, Nathu Ram who was the then Executive Engineer, RWD, Dumka, submitted a false verification report regarding possession of machinery by M/s Ma Gauri Construction which facilitated its registration as a Class-IA Contractor.

CASE OF RAMJEE SINGH (Cr MP 2338 of 2013)

18. Name of this petitioner has appeared as an accused in the fifth charge sheet submitted by CBI which deals with allegation of fraudulent registration of M/s Ma Gauri Construction as a class IA contractor. Sri Hari Narayan Rai was the Minister of the Rural Works Department, Government of Jharkhand and his younger brother Sri Sanjay Kumar Ray was the major partner of this firm.

19. Sri Sanjay Kumar Ray, submitted an application on 21.01.08 to the Rural Works Department, Ranchi on behalf of M/s Ma Gauri Construction, in which he showed himself as one of the partner. Petitioner was the dealing clerk who put up to his superiors this application with a checklist of documents enclosed therewith, which included photocopy of the partnership deed of the firm.

20. One of the partners whose name was mentioned therein, namely, Sri Ratneshwar Kumar stated that he was not a partner in this firm, nor he was aware of it that he had been made partner. His signature was forged. Apart from this there were other documents enclosed with the application which were found to be forged and fabricated.

21. Ramjee Singh was dealing assistant and he had processed the file and under a criminal conspiracy facilitated grant of verification report of machines and equipment, and in his note he raised no objection to the grant of registration certificate. This firm was, subsequently, awarded huge work orders by both Rural Works Department and Rural Development Department of Government for construction of roads and bridges, in districts of Deoghar and Dumka.

22. The specific role that has been attributed to him is that the letter had been addressed to some other executive engineer, but this petitioner applied whitener and added Executive Engineer, Ramgarh as one of the addressee. On the same day i.e. 24.01.2008, the Executive Engineers of Ramgarh, Khunti and Dumka, all submitted the reports and these reports were placed in the file the very next day. On this point the dispatcher Sri Binod Pathak stated that the letters of Sri Janmejaya Thakur were brought to him for dispatch by this petitioner when the dispatch numbers were put on the letters, he himself took those letters. In this way, the petitioner was involved in short-circuiting the procedure and facilitating fraudulent registration of the firm.

Ripusudan Dubey (Cr.M.P 3165 of 2013)

23. Name of this petitioner figures in the sixth chargesheet which deals with allegation of fraudulent registration of M/s Ekka Construction Pvt. Ltd. as Class - 1A Contractor.

24. Petitioner was the Chief Engineer and member of the Registration Advisory Committee which approved the registration of the applicant company as the Class- 1A contractor. It is alleged that accorded he approved mechanically without paying heed to the fact that the company did not fulfil even a single eligibility criterion. In this way, this company was fraudulently accorded the status of a Class 1A contractor on 09.06.2006.

JAI PRAKASH (Cr.MP 2420 of 2013)

25. Petitioner has been made an accused along with other accused persons, in the 5th supplementary charge sheet filed by the CBI regarding fraudulent registration of M/s Maa Gauri Construction as a Class 1A contractor. The petitioner was the Chief Engineer and member of Registration Advisory Committee which approved the registration of the Company.

26. The specific role attributed to this petitioner is that being the Chief Engineer, RCD, Ranchi and member of the Advisory Committee approved the registration without paying any heed to the discrepancies. In this way M/s Ma Gauri Construction got registered as class 1A contractor on 28.1.2008 and huge work

orders were awarded by the Rural Works Department and the Rural Development Department.

SUSHIL MINZ (Cr.M.P 2237 of 2013)

27. The name of this petitioner has come up in the supplementary charge-sheet dated 29.7.2013 submitted by CBI against (1) Sri Hari Narayan Rai and others which deals with fraudulent registration of M/s Mahamaya Construction.

28. Petitioner was dealing hand and custodian of file. The main allegation against him is that the original final regarding registration of M/s Mahamaya Construction was deliberately misplaced/lost by him. The original file was taken away from this petitioner by Sri Sanjay Kumar, P.S. to the Minister, Sri Hari Narayan Rai on the pretext that Minister wanted to see the file and was not returned thereafter. Sri Sushil Minz talked to the Engineer-in-Chief, Sri Y. N. Choudhary in this regard who told him to hand-over the file if Minister had asked for it and the Minister would return the file after perusing it. Sri Minz retained the photocopy of the file and gave away the original file to Sri Sanjay Kumar which was never returned back to Sri Sushil Miz or the department.

29. Further role attributed to this petitioner is that while acting as dealing assistant he put up his note to superiors, the application of Smt. Sushila Devi with a checklist of documents enclosed by her which included the photocopies of engineering degrees/ certificates of Sudhir Kumar Sinha, Ramjit Sahay Srivastav, Awdheshwar Prasad and Ramanand Prasad Verma, Bhola Nath Shukla and Kamla Kumari. However, degrees appearing in the name of Ramji Sahay Srivastav, Awdheshwar Prasad and Ramanand Prasad Verma were found to be fake. Certificate in the name of Kamla Kumari were found to be fake. Also, certificate in the name of Kamla Kumari has been found to be fake. The Diploma certificate appearing in the name of Sri Bhola Nath Shukla had been found to be fake.

YADUNANDAN CHOUDHARY (Cr.M.P 2264 of 2013)

30. As per the prosecution case, the petitioner is not named in the FIR and his name has come up in the 6th Charge-sheet submitted which deals with the allegation of fraudulent fraudulent registration of M/s Ekka Construction Pvt. Ltd. as Class IA Contractor.

31. Petitioner was posted as Engineer-in-chief at the relevant time in March, 2010 in the Rural Works Department, Jharkhand who had finally approved the issuance of such certificate. Being Engineer-in-chief, issued registration certificate on the recommendation by the Registration Advisory Committee of three Chief engineers.

CASE OF SOUMENDRA NATH MURMU (Cr.M.P 2392 of 2013)

32. Name of this petitioner appears in charge sheet No.7 dated 29.07.2013. Petitioner was posted as the Engineer-in-chief at the relevant point of time. Rural Works Department, Jharkhand conferred the status of class – 1A contractor on

the private company M/s Ekka Construction Pvt Ltd on the recommendation of Registration Advisory Committee.

CASE OF NATHU RAM (Cr.M.P 2476 & 2587 of 2013)

33. The name of the petitioner has come up in the supplementary charge-sheets submitted by the CBI in case relating to fraudulent registration of M/s Mahamaya Construction ltd and M/s Ma Gauri Construction ltd.

34. Petitioner was posted as Executive Engineer, RWD, Dumka and is alleged to have submitted false verification report regarding possession of machinery by M/s Mahamaya Construction and M/s Ma Gauri Construction, which facilitated its registration as a Class-1A contractor.

35. The photocopy of the certificates in proof of payment receipt by the partners of M/s Mahamaya Construction and M/s Ma Gauri Construction and certificate bearing engineering certificate were verified by Sri Upendra Prasad Singh, Executive Engineer and on his requisition, this petitioner who was the then Executive Engineer, RWD, Dumka, submitted a false verification report regarding possession of machinery by M/s Mahamaya Construction which facilitated its registration as a Class-IA Contractor.

PLEA OF THE PETITIONERS

36. Argument on behalf of the petitioners Yadunandana Chaudhary and Saumendra Nath Murmu proceeds on the same line as they were the engineer-in-chiefs who finally ordered the registration of the firm/company on the basis of the recommendation of the Registration Advisory Committee.

37. It is submitted that the procedure for getting the registration is laid down vide Bihar Thikedari Suchikaran Niyamawali, 1996 which inter alia stipulates the conditions for registration of Class 1A Contractor. This has been adopted by the state of Jharkhand ant it provides that registration of Class-1A Contractor would be done by the Engineer-in-Chief cum Additional Commissioner cum Spl. Secretary on the advice of at least three Chief Engineers. On Application being filed for registration as class-1A Contractor, office processed the application and report was called for from the concerned Districts regarding the work experience and other criteria. On considering the relevant reports, the Committee made recommendation for registration which was accepted by the petitioners and applicant was registered.

38. Petitioners being Engineer-in-chief, issued Registration Certificate on the basis of approval by the Registration Advisory Committee of three Chief engineers. The committee on their part had approved the proposal for registration on the report submitted by the executive engineers in which the certificate showing possession of the machines were also certified. The above notification does not require nor is it feasible for the engineer-in-chief to verify each and every document accompanied with the application of the firm for its registration.

39. It is asserted that on the basis of the allegations made and the materials on record the offences of cheating and forgery will not be made out. Even if the allegation is assumed to be true, the petitioner cannot be made guilty for the offence as alleged under the P.C. Act. There is no allegation that they were beneficiary or demanded any pecuniary advantage from any quarter. Materials do not disclose the offence of criminal conspiracy or cheating as defined under IPC.

40. Arguments advanced on behalf of the petitioners Jai Prakash (Cr.MP 2420 of 2013), Philip Marianus Toppo @ Filip Marianus Toppo and Ripusudan Dubey (Cr.M.P 3165 of 2013) that they were members of Registration Advisory Committee and had recommended the proposal to the engineer-in-chief for registration of the firm/company as Class-1A Contractor.

41. It is submitted by learned counsel for the petitioners that the Committee had acted on the report of the executive engineers and their recommendation was based on the materials placed before the committee.

42. In order to make out the offence under Section 420 of IPC, there should be some materials to show that it was a case of financial fraud and for Section 471 of IPC documents should have been brought on record which is alleged to forged. There is no allegation with regard to these aspects. Offence under Section 120B of IPC will not be made out for the reason that in the original FIR i.e. Vigilance P.S. Case 26 of 2008 the petitioners are not named in the FIR and no allegation has been made against them. There is no material to unfold the charge criminal conspiracy.

43. With regard to the alleged offence under Section 13(1)(d) of P.C. Act, it is submitted that if, at all, the registration certificate was issued in violation of any code or rule, this itself will not make out the offence under the P.C. Act. Reliance is placed on Cr. Misc. No. 44151 of 2008 (Shankar Prasad Vs. State of Bihar through the Department of Cabinet Vigilance) of Patna High Court. Further investigation was carried without permission from the competent authority. Reliance has been placed on (Inspector of Police) v. Surya Sankaram Karri, (2006) 7 SCC 172 wherein it has been held that the courts are obliged to go into the question of prejudice of the accused when the main investigation is concluded without a valid sanction.

44. It is argued on behalf of Nathu Ram (Cr.M.P 2476 & 2587 of 2013) that when the requisition was made for verification of vehicles/ machinery for registration of the applicant firm, he forthwith entrusted the job of physical verification of the plant and machineries to his Assistant Engineer, namely, Rajesh Kumar on 13.02.2008. The said Assistant Engineer reported on the following day of 14.02.2008 that he has verified the tools and machineries of the alleged firm and found the same in conformity with the claim made by the firm and therefore, in good faith he reported back the same to the co-accused, Upendra Prasad vide his letter No.102(R) dated 14.02.2008. This would be evident from the relevant memo available with the petitioner dated 08.02.2008 and 14.02.2008

respectively.

45. The F.I.R was instituted back in the year 2008, the petitioner remained in service in the substantive capacity of Assistant Engineer and for some time as in-charge Executive Engineer, but date no departmental enquiry has been set up against him for any act of misconduct.

46. The application of Prevention of Corruption Act and Section 13(1)(d) under which cognizance has been taken along with Penal provisions under Section 13(2), it is submitted that same requires to be established by satisfying four essential ingredients as laid down in the case of R. Venkatta Krishnan Vs. C.B.I., reported in (2009) 11 SCC 737 which are as follows :-

(i) The person must be a public servant;

(ii) He should use some corrupt or illegal means or otherwise abuse his position as a public servant.

(iii) He should have obtained a valuable thing or pecuniary advantage,

and;

(iv) For himself or any other person. (Para 164, 165).

47. The second part of allegation regarding allotment of various works subsequent to registration by the Chief Engineer in favour of the firm in question is concerned, it is stated that the petitioner is not at all concerned with the allotment of work and payment thereof in either of the work order as mentioned from Serial No.1 to Serial No.8 and, therefore, even otherwise cannot be attributed to have inflicted any pecuniary gain either to himself or to the contractor.

48. On law, it is submitted that all the four ingredients as referred above to constitute the offences under Section 13(1)(d) PC Act, requires to be proved in juxtaposition to each other, meaning thereby unless all the four ingredients are simultaneously present, the offence as alleged is not at all made out. Consecutively, even if the first part of the allegation wherein the petitioner's role has been alleged

to be fraudulent in abuse and misuse of power and position leading to untoward registration of the contractor is taken to be true for the sake of argument, the essential ingredient for undue gain and loss since not at all been attributed in the second part of the charge sheet, the order taking cognizance under Section 13(2) read with 13(1) (d) of the PC. Act is rendered from est.

49. It is submitted that the petitioner has now retired from his services and is aged about 70 years old. Learned counsel in support of his submission has relied upon the following authorities:-

(i) 2009(6) SCC 587—The fact of this case is very different and the ratio is laid down is not with respect to the cognizance of the offence, but in appeal against conviction where the complainant was not examined.

(ii) C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193 wherein it has been held that mere codal violations and irregularities by ignoring various circulars and departmental orders are not by themselves sufficient to bring home the charge against persons.

(iii) State of M.P. v. Sheetla Sahai, (2009) 8 SCC 617

50. It is submitted on behalf of Sushil Minz (Cr.M.P 2237 of 2013) that the offence, as alleged will not be made out even if these materials are assumed to be true. Learned senior counsel in support of his submission has relied upon the authority reported in 2013(1) SCC 2015 at Paras 14, 15 & 17. The original file relating to M/s Mahamaya Construction was handed over to the private secretary of the Minister after he had obtained the approval from the Engineer-in-Chief.

51. It is submitted on behalf the petitioner Ramji Singh that in process of registration of the contractor as Class 1A, there is no role of the dealing assistant. The verification is to be done by the Executive Engineers and on its recommendation the competent authority issues certificate. The petitioner in the note-sheet had made specific comment that the verification report from the Executive Engineer, Dumka in relation to the plants and machineries was on record and the said applicant could be registered subject to liability of the contractor.

52. Learned ASGI for the CBI has opposed the prayer. It is submitted that being the Executive Engineer has submitted that false verification report has submitted with regard to M/s Ma Gauri Construction. It is submitted that definition of misconduct under Section 13(1)(d) of the P.C. Act, 1988 is wide enough which reads as follows :-

"13.Criminal misconduct by a public servant – [(1) A public servant is said to commit the offence of criminal misconduct :-

(a)………..

(b)…………..

2………..

(a)………………

(b)………

(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he –

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

Which includes pecuniary benefits for himself or for any other person. The grant of Class-IA certificate as a contractor was the basis and foundation of getting the work order and contracts awarded in his favour leading to pecuniary benefits in favour of M/s Ma Gauri Construction.

53. It is submitted that under a criminal conspiracy and in complete violation of the Government Rules, the registration certificate was issued signed by the petitioners in favour of the construction company which had submitted the forged and fabricated documents for registration. With regard to plea of incompetency of the authority issuing sanction in reference to the point of incompetency, learned ASGI has relied on (2007) 1 SCC 1 para 29.

ANALYSIS

54. Petitioners have moved this Court against the order taking cognizance for offences under IPC and PC Act.

55. It has not been disputed that the firms/company floated by the ministers and their relatives were registered as Class-1A contractor without fulfilling the required eligibility criteria.

56. Argument veers round the individual roles of the petitioners in the said registration process. None of the petitioners owe or have accepted the liability for the admitted wrong committed in the registration.

At the top, the Engineer-in-Chiefs claim to have acted on the recommendation of the Registration Administrative Committee. The engineers who constituted this Committee on their part plead that they acted on the defective report received from the executive engineers of Ramgarh and Dumka viz Yadvendra Kumar Singh and Nathu Ram respectively. Those who gave false report, like Yadvendra Singh in his statement u/s 164 Cr.P.C claims to have given such a report on being pressurized by the then Minister. The other engineer Nathu Ram has claimed to have acted on the report submitted by another engineer who had been deputed for field report. The respective dealing assistants will argue that they were not the authority to decide the issue of registration.

57. The way, all from the top to bottom have abnegated their individual

accountability in the process, the question naturally boils down :

Whose liability for false registration was it anyway?

58. It is a classical case how the buck is passed over in important decision making process of Government Departments abdicating individual responsibility.

59. The entire episode cannot be looked into silos, as registration was a mere prelude to the firms/company being awarded huge contract by the respective ministers, which became the source of illegal enrichment and acquiring disproportionate assets. When the matter is looked into its entirety, it cannot be said to be a case of mere codal violation and wrong registration of a company. In the larger picture that emerges, almost everyone joined their hand to facilitate the fraudulent registration of the firm/company floated by the then Ministers. After the registration these firms were awarded huge contracts from which enrichment was made by the ministers for which disproportionate assets case has been filed.

60. Process of registration was accelerated and the registration was accorded on the basis of forged documents to the firms/company that had the patronage of the then Ministers. Government files which are often blamed to move proverbially at snail pace, appear to have cruised at hypersonic speed, uninterrupted and unobstructed from any quarter.

61. In this process, there is a prima facie materials to show that petitioner Ramjee Singh being dealing assistant, raised no objection in the notes which was put to the superiors, is also to have made interpolations and pressurized Executive Engineer, Yadunandan Singh to give false report. He took an active role in the getting the letters despatched to the Executive Engineers and himself received the same. Sushil Minz cannot be faulted for handing over the original file to the Private Secretary of the Minister, under the instruction of the Engineer-in-chief Yadunandana Chaudhary. He too however failed to raise any objection in his note put up to the superiors.

62. False reports were sent by the Executive Engineers, Yadvendra Singh and Nathu Ram in favour of the applicant for registration. It appears from the statement of Sri Yadvendra Singh, Executive Engineer, Ramgarh, that there was pressure from the minister for giving favourable reports, but this plea is of no avail to an accused facing prosecution for committing acts of illegality. Section 90 of the IPC cannot be called in aid by a party who has committed an offence, but pleads that the acts was committed under pressure from any official superior to him. Similarly, the plea of Petitioner Nathu Ram that he deputed another Engineer for making physical verification of the subject matter to be reported can be considered as a defence plea during trial, but cannot be a ground for quashing of cognizance.

63. Petitioners Jai Prakash, (Cr.MP 2420 of 2013), Philip Marianus Toppo @ Filip Marianus Toppo and Ripusudan Dubey (Cr.M.P 3165 of 2013) member of the

Registration Administration Committee, became blind to the glaring material discrepancies and recommended the matter for final approval by the Engineer-in-chief. The plea of these petitioners that they had acted on the report of the Executive Engineers, at this stage cannot be considered. This can be considered only at the stage of trial. Committees are not constituted to be the post office for passing over the report received on a subject matter from other persons/ agencies, and pass it over to the higher ups. It is expected of a committee to critically scrutinize the report before it, and then give its objective opinion over the subject matter. To hold otherwise would be to undermine the principles of administrative accountability.

64. On the principles as discussed above, the plea of the Engineer-in-Chiefs, Yadunandana Chaudhary and Saumendra Nath Murmu that they acted on the advice of the Registration Advisory Committee, cannot be the basis for quashing the cognizance, and the petitioners shall be at liberty to raise this plea during trial. From the statement of Sushil Minz that he had handed over the original file to the Private Secretary of the Minister under the instruction from the Petitioner Yadunandan Chaudhary, it can be reasonably inferred that he was in full knowing of the matter that the relevant file concerned the Minister. It shall be beyond prudence and common sense to think that the person at the helm of affairs was blissfully unaware that the file was vitiated by false reports and forged documents.

65. On the point of law, it is argued that offences alleged will not be made out on the basis of materials on record.

66. There is much force in the argument on behalf of the petitioners that there has not been any element of entrustment to the petitioners to make out an offence under Section 406 or 409 of the IPC. Cognizance of the offence against these petitioners is therefore liable to be quashed.

67. To bring a case under the ambit of Section 420, IPC there should not only be an element of cheating simpliciter, but also dishonest inducement to person sought to be deceived to deliver any property. The expression property is so wide term that it admits of no easy definition. In Nrisingha Murari Chakraborty v. State of W.B., (1977) 3 SCC 7 passport was held to be “property” of the State so long it was not issued and after its issuance it was the property of the person in whose favour it was issued. Similarly Admit Card issued by the University has been held to be property in Abhayanand Mishra v. State of Bihar, AIR 1961 SC 1698.

In E.K.Krishnan, Inre, AIR 1948 Mad 268, the accused arranged for certificates to drivers without requiring them to give the driving tests. He after filling the forms, used to get licences from licensing officers. The licensing officer was fraudulently or dishonestly induced to part with the license which was deemed to be a property. It was held that the intrinsic value of the paper on which it was written had a substantial potential value. As soon as the license which the hand of licensee it had an actual value.

68. In the light of the preponderance of the Judicial opinion on the meaning of ‘property’ under Section 415 of the IPC, the registration certificate issued in the present case, as a Class-IA contractor by the State, was a valuable piece of property for the applicant, which was used subsequently for obtaining contracts. These materials prima facie show that issuance of certificate was induced by fraud. It cannot therefore be said that Section 420 of the IPC will not be attracted in the instant case.

69. As far as Section 423 and 424 of the IPC is concerned, the offence alleged shall not be made out as will be evident from the definition itself which is reproduced herein below.

423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.—Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge, any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

424. Dishonest or fraudulent removal or concealment of property.—Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

From the above definition, it shall be apparent that fundamental ingredient of the offence under Section 423 is a false statement as to consideration or a false statement relating to purchaser. Since the present case does not involve sale or purchase therefore, this section shall not be applicable.

Similarly, Section 424 will have no application as the issuance of a false certificate which is vitiated by fraud and forgery, cannot be said to amount to concealment or removal of it. In order to make out a prima facie case of offence under this Section, it is necessary there should be material against these petitioners that property was concealed by them.

70. Coming to Section 13 (1)(d) r/w 13 (2) of the PC Act, it is argued that there is no allegation or material against these petitioners that they enriched themselves or derived any material advantage by facilitating the registration of the firm/company which was not eligible for registration. It has been rightly argued on behalf of the CBI that the definition is wide enough to cover cases where by corrupt or illegal means, the public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. Here the

beneficiaries were the firm/company floated by the then ministers, and therefore it cannot be said that provision under the PC Act shall not apply.

71. One of the objects of penal law is to prevent the commission of crime. The object is not fully served by merely punishing the actual offenders. It is also necessary to bring to book those who bring about the crime by the hand of the another who happens to be a mere hireling. The commission of crime in most cases require joint action or assistance and co-operation of one or more persons. Unless the acts of all those are not made punishable the object of the code shall not be fully realized.

The criminal liability under the Indian Penal Code for criminal acts committed by the groups have a distinct imprint of the English Common Law which makes a distinction between the principal offender and accessories to the crime. The fastening of criminal liability on persons other than the principal offenders, for the individual and collective acts has always been a tricky business. Under English Law persons who are in any way connected with the perpetration of crime can be divided into two classes. Those who take part in the actual execution of the crime are called principals i.e. those who counsel, procure or command the execution and those who in any way assist the criminal after the crime with a view to shielding him from justice are called accessories. It is in such circumstance that the charge of criminal conspiracy assumes significance.

72. Here in the present case, the petitioners under a criminal conspiracy assisted principal accused in getting the firm registered without fulfilling the requisite eligibility criteria. The materials on record are sufficient to make out an offence of criminal conspiracy against the petitioners.

Under the aforesaid facts and circumstance of the case and the reasons as discussed above, there is sufficient materials to make out an offence under Sections 420, 465 and 120-B of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) P.C. Act 1988 which can be considered by the learned Court below at the time of framing of charge.

The plea of defence cannot be considered at this stage in view of the prima facie case to have been made out. The petitioners will be at liberty to take these pleas during trial, which shall be considered by the trial court without being prejudiced by the order or any observation made by this court.

All the criminal miscellaneous petitions stand rejected. Pending interlocutory applications, if any, are also disposed of.

The petitioners shall however be at liberty to raise the plea of applicability of the relevant sections at the time of framing of charge.