THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH R0Y

Writ Petition Nos.16468 and 20077 of 2020
and
Crl. Petition Nos.4422, 4423, 4424, 4425, 4426 and 4427 of 2021

COMMON ORDER:

The two Writ Petitions and the six Criminal Petitions are filed under Article 226 of the Constitution of India and under Section 482 Cr.P.C. respectively seeking quash of the common F.I.R. in Crime No.08/RCO-ACB-GNT/2020 of A.C.B. Police Station, Guntur, registered against the petitioners for the offences punishable under Sections 13(1)(d)(ii) r/w.13(2) of the Prevention of Corruption Act, 1988 (for short, the "P.C. Act") and under Sections 409, 420 r/w.120-B of IPC.

2) The petitioner in W.P.No.16468 of 2020 is accused No.1 and the petitioner in W.P.No.20077 of 2020 is accused No.13 and the petitioners in Crl.P.Nos.4423, 4424, 4422, 4427, 4426 and 4425 of 2021 are accused Nos.2 to 7 respectively in the above F.I.R. Therefore, these Writ Petitions and Criminal Petitions are being disposed of by this common order.

3) Factual matrix of the prosecution case germane to dispose of these Writ Petitions and Criminal Petitions may briefly be stated as follows:

(a) One Komatla Srinivasa Swamy Reddy is the *de facto* complainant, who lodged report with the police. He claims to be an advocate from Ongole. He has lodged a report with the D.G.,

ACB, A.P., Vijayawada on 07.09.2020 stating that A-1 Sri Dammalapati Srinivas was the former Additional Advocate-General and also Advocate-General of the State of Andhra Pradesh. He and some public servants in high positions took advantage of their involvement in the decision making process relating to exact location of the core capital area and purchased lands either in their names or in the name of their binamis or their family members, associates/acquaintances, after sharing the privileged information about location of core capital area as they are privy to the said information and thereby enriched themselves.

(b) It is stated that till the draft of capital region area was approved by the Council of Ministers of the State of Andhra Pradesh, the details of the draft were kept secret. It is only in the month of December, 2014, the Capital Region Authority Bill, 2014 was presented and the names of the villages that would be included in the new capital region became known to the public.

(c) However, the father-in-law of A-1, who is A-3, his brother-in-law-A-4 and his close relatives-A-5 and A-6 and his wife-A-2 and other accused purchased large extent of land in Amaravati capital region and in the villages which are adjacent to the said capital region and the iconic bridge proposed to be built across the Krishna river even before notification was issued in the month of December, 2014 by the State Government notifying the capital region area and the villages included in the said capital region. It is stated that A-3, A-4,

A-5 and A-6, who are the father-in-law, brother-in-law and relatives of A-1, purchased about Ac.40.25 cents of land and out of the said land, Ac.11.18 cents is in the core capital area and remaining Ac.29.07 cents is adjacent to the core capital region. The aforesaid lands are purchased by them between the period from June, 2014 to December, 2014 even before issuance of notification notifying the capital region.

(d) It is stated that A-1, who worked in a key position as Additional Advocate-General, was privy to the information relating to the location of the capital area and he has divulged the said information to his family members, relatives and close associates and based on the said information furnished by him that aforesaid persons purchased the said lands in and around the capital region. Similarly, the other accused, who got information from the higher officials working in the Government relating to exact location of the capital area prior to its notification issued in the month of December, 2014, have also purchased lands in and around the proposed capital region. Therefore, all the accused have indulged in insider trading.

(e) On receipt of the said report lodged by the *de facto* complainant, the DG, ACB, AP, Vijayawada, by his order in C.No.82/RE-VGT/2020-S17, dated 08.09.2020, instructed Sri T.V.V. Pratap Kumar, Dy.S.P., ACB, Guntur, to conduct a regular enquiry and submit report on the said allegations made against A-1 former Additional Advocate-General and Advocate-General, and others.

(f) Accordingly, the Dy.S.P, ACB, Guntur, conducted a preliminary enquiry and he has submitted his report, dated 14.09.2020, to the D.G, ACB, AP., Vijayawada, stating that during the course of preliminary enquiry that he has collected relevant documents pertaining to the sale of lands from internet and the web-site belonging to the Stamps and Registration Department, Government of Andhra Pradesh, and it surfaced during the course of his enquiry that the said sale transactions took place during the months of June to December, 2014. In the Assembly sessions that took place in January, 2020, the Government disclosed in the Assembly that people in high position took advantage of being involved in decision making process about location of capital of Andhra Pradesh and thereby purchased lands between June and December, 2014 for themselves either through their binamis or through their family members by sharing the said information about the location of capital area and thereby allowed their kith and kin also to get themselves enriched.

(g) It is stated in the preliminary enquiry report that the *de facto* complainant stated in his statement recorded during the course of enquiry that in the advocate circles, it was openly proclaimed that A-1, with his close intimacy with the then Chief Minister and his associates in the Telugu Desam Party, was initially appointed as Additional Advocate-General on 19.06.2014 and was later appointed as Advocate-General on 28.05.2016, and he and other top leaders in the Telugu Desam

Party and businessmen, who supported Telugu Desam Party, bought lands in and around the capital region with prior knowledge of exact location of the capital and cheated the farmers who sold the lands to them. It is stated in the report that between June, 2014 and December, 2014, there were only some rumours and leaks about the location of the capital at Amaravati, but its limits were known to very few people in the Government and the list of villages included in the capital area was published only in the month of December, 2014 and till then the information relating to the villages coming within the purview of capital region is not known to the public. Therefore, even before official notification was issued on 30.12.2014 that the accused herein, who secured information relating to exact location of capital region in an illegal manner had by indulging in insider trading purchased the said lands from the farmers. It is stated in the report that the beneficiaries of such sale transactions, as indicated in the Annexure enclosed to the said report are:

1) Dammalapati Srinivas;

2) Dammalapati Nagarani;

3) Nannapaneni Krishnamurthy;

4) Nannapaneni Sita Rama Raju;

5) Nannapaneni Lakshmi Narayana;

6) Madala Vishnuvardhana Rao;

7) Mukkapati Pattabhi Rama Rao;

8) Yarlagadda Ritesh;

9) Yarlagadda Lakshmi;

10) Nuthalapati Sritanuja;

11) Nuthalapati Sribhuvana;

12) Katragadda Srinivasa Rao; and

13) Vellanki Renuka Devi.

The innocent farmers, who have no prior knowledge of location of capital in their area, have sold away their property at a low price and thus, the farmers were cheated by the accused. A-1 got the lands which were purchased in the name of his relatives and close associates, subsequently transferred in his name and in the name of his wife, which clearly indicates that the said sale transactions that earlier took place are binami transactions. Even there is no difference in the sale price from the earlier sales and the sales that took place in the name of A-1 and his wife and his relatives and it also indicates that they are binami sale transactions. Therefore, it is stated in the preliminary enquiry report that A-1 has grossly misused his official position as an Additional Advocate-General and he being privy to the information relating to the exact location of the capital area divulged the said information to his relatives and associates which is a secret information and thereby purchased the lands in the capital area and adjacent to it for paltry sale consideration from the farmers, who have no knowledge about the exact location of the capital area and thereby enriched themselves. Therefore, all of them indulged in insider trading and A-1 committed an offence of criminal misconduct in

obtaining pecuniary advantage to him and his family members and associates by abusing his official position. Therefore, he is liable for prosecution under Sections 13(1)(d)(ii) r/w.13(2) of the P.C. Act and also under Sections 409, 420 r/w.120-B of IPC and other accused are liable for prosecution under Sections 420 r/w.120-B of IPC.

(h) On the basis of the aforesaid preliminary enquiry report, wherein it is stated that the above accused and others have committed a cognizable criminal offence and that it is necessary to register a case against A-1 and others and conduct a thorough investigation, a case in Crime No.08/RCO-ACB-GNT/2020 of A.C.B. Police Station, Guntur, was registered on 15.09.2020, as per the order dated 14.09.2020 issued by the DG, ACB, AP., Vijayawada, instructing Sri T.V.V.Pratap Kumar, Dy.S.P, ACB, Guntur, to register a case against the accused.

4) Even before the F.I.R. was registered on the basis of the preliminary enquiry report on 15.09.2020, A-1 has filed W.P.No.16468 of 2020 to call for records pertaining to any inquiry/investigation being conducted by any of the State agencies and to quash the letter dated 23.03.2020 issued by the Principal Secretary, Home Department to Secretary, Government of India, Ministry of Personnel, Public Grievance and Pensions bearing No.1130466/SC.A/A1/2019-I and seeking other reliefs.

5) When the Writ Petition came up before one of the learned Judges of this Court on 15.09.2020, the learned Judge recused from hearing the case on the ground that he has earlier appeared along with A-1 during his tenure as an Advocate-General. Therefore, when A-1 moved house motion in view of the urgency, the matter came up before the then Chief Justice of this Court after according permission to move house motion.

6) This Court, by its order, dated 15.09.2020, ordered for stay of investigation and directed not to take any coercive steps while ordering notice to respondents 1 to 4 and 6. The Court was not inclined to issue notice calling for the response of respondent No.5 Sri Y.S. Jagan Mohan Reddy, the present Chief Minister of the State of Andhra Pradesh, who was added as a respondent in person.

7) The State has preferred petition for Special Leave to Appeal (Crl.) No.4979 of 2020 to the Hon'ble Supreme Court assailing the said interim order passed by this Court dated 15.09.2020, granting stay of investigation.

8) Thereafter, learned counsel for the petitioner in the said S.L.P. sought permission of the Supreme Court to withdraw the said S.L.P. Accordingly, the petitioner was permitted to withdraw the S.L.P. and the S.L.P. was dismissed as withdrawn as per order dated 22.07.2021. While dismissing the said S.L.P. as withdrawn, the Hon'ble Supreme Court directed that the

counter-affidavit if any to the amended Writ Petition that is filed by A-1 before the High Court be filed within one week and rejoinder affidavit if any be filed within one week thereafter and further directed the High Court to decide the pending Writ Petition as expeditiously as possible and preferably within four weeks.

9) The said order is placed before this Court on 29.07.2021 when the matter came up for hearing before this Court on that day. When the aforesaid direction of the Apex Court was brought to the notice of this Court, this Court has allowed I.A.No.1 of 2021 impleading the *de facto* complainant as 7th respondent in W.P.No.16468 of 2020 and ordered notice to him and directed the State to file its counter-affidavit if any to the amended Writ Petition seeking amendment of the prayer in the Writ Petition to quash the F.I.R. and posted the matter to 12.08.2021. On 12.08.2021 the State reported no counter-affidavit and stated that the amendment application may be allowed. Accordingly, A-1 was permitted to amend the prayer in the Writ Petition as sought for. Therefore, the petitioner-A1 in the said Writ Petition now seeks quash of the F.I.R. registered against him.

10) A-1 who is the petitioner in W.P.No.16468 of 2020 sought quash of the F.I.R. on various grounds. Myriad and manifold allegations have been made against the State and particularly against Sri Y.S. Jagan Mohan Reddy, the present Chief Minister

of the State of Andhra Pradesh, attributing motive in registering the aforesaid F.I.R. against him and his family members. It is stated that he has earlier appeared in many cases in pursuance of his profession as an Advocate against Sri Y.S. Jagan Mohan Reddy, which ultimately, resulted into registering some criminal cases against Sri Y.S. Jagan Mohan Reddy, which are now pending trial in C.B.I. Court. Therefore, to wreak vengeance against him and out of malice against him that the present criminal case has been foisted against him and his family members by grossly abusing his present position as Chief Minister of the State, to harass and humiliate him by falsely implicating him and his family members in a concocted criminal case. He also sought for quash of F.I.R. on the ground that the facts of the case do not constitute any offences, for which the F.I.R. was registered and that launching of criminal prosecution against him in the facts and circumstances of the case amounts to abuse of process of court.

11) As this Court, at the time of granting interim order of stay of investigation and ordering notice to respondents 1 to 4 and 6, was not inclined to issue notice to Sri Y.S. Jagan Mohan Reddy, who was added in person as 5th respondent and as this Court was also of the view that irrespective of the manifold allegations made against the 5th respondent attributing motive for launching criminal prosecution against A-1 that it would be appropriate to decide the Writ Petition by ascertaining whether

facts of the case and the allegations set out in the F.I.R. *prima facie* constitute any such offences registered against A-1 and while confining itself strictly to the said core issue to ascertain whether it amounts to abuse of process of court or not, was also not inclined to order notice to the 5th respondent. Therefore, this Court, as per order dated 12.08.2021, held that the 5th respondent, who was added in person by ;name, is not a necessary party to the Writ Petition, therefore, no notice is required to be issued to the 5th respondent and thereby deleted the 5th respondent from the array of parties.

12) Therefore, as several allegations are made against the 5th respondent in person attributing motive to falsely implicate A-1 and his family members in the present case, as the 5th respondent is now deleted from the array of parties, this Court is not delving into the correctness of said allegations to consider the plea of motive taken by A-1. This Court is strictly confining itself to ascertain whether the allegations set out in the F.I.R. *prima facie* constitute any offences under Sections 13(1)(d)(ii) r/w.13(2) of the P.C. Act and under Sections 409, 420 r/w. 120-B of IPC or not and whether launching of criminal prosecution against all the accused in the case amounts to abuse of process of court or not.

13) The State has filed counter-affidavit of Sri T.V.V. Pratap Kumar, Dy.S.P., ACB, Guntur denying material averments of the writ petitions filed by A-1 and A-13 and also the averments

of the Criminal Petitions filed by A-2 to A-7. It is pleaded that the Hon'ble Supreme Court has repeatedly held that on any information furnished regarding commission of a cognizable offence, a Station House Officer is obliged to register an F.I.R. and in the instant case, on the information furnished before the Station House Officer and after conducting preliminary enquiry, the F.I.R. was registered against the persons named therein. It is stated that the F.I.R. was registered on the basis of the *bona fide* information that was furnished and on the basis of the law laid down in the case of **Lalitha Kumari v. State of Uttar Pradesh**[1] by the Apex Court. Therefore, the registration of F.I.R. is completely legitimate and is unexceptionable. It is stated that the information disclosed in the F.I.R. clearly constitutes a cognizable offence and as mandated by the Supreme Court in various judgments, the present F.I.R. was registered. It is further stated that, as further investigation was stayed by this Court on the very day of registration of F.I.R. i.e. on 15.09.2020, no further investigation could be made. It is pleaded that the Apex Court repeatedly held that the investigation cannot be scuttled at a nascent and early stage and the power under Section 482 Cr.P.C. and Article 226 of the Constitution of India cannot be sought to be exercised for thwarting an investigation of a cognizable offence and the said law has been reiterated in the case of **Neeharika Infrastructure**

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[1] (2014) 2 SCC 1

Pvt. Ltd. v. State of Maharashtra[2]. It is pleaded that as the Writ Petitioners seek to raise several factual issues of complexity and defence that the same cannot be considered in the Writ jurisdiction. While making parawise denial of all the averments made in the Writ Petition, it is prayed to dismiss the Writ Petition in the counter-affidavit filed by the State.

14) The 7th respondent *de facto* complainant has adopted the said counter-affidavit filed by the State.

15) The 6th respondent Deputy Inspector General of Police, Intelligence Department, has filed a separate counter-affidavit stating that he was impleaded only as *eo-nomine* and that the allegations made in the affidavit filed in support of the Writ Petition against him are not correct. It is pleaded that the Intelligence Department in the State has a "Counter Intelligence Cell" Police Station and it has jurisdiction over the entire State of Andhra Pradesh as per G.O.Ms.No.287, Home (P.S. & C.A.D.) Department, dated 03.11.2010, and he is the Supervisory Officer of the said Police Station. Therefore, in discharge of his functions as Supervisory Officer that he has signed the letters, including the letter dated 29.01.2020, and the said letter was issued to secure information under Section 138(1)(b) of the Income Tax Act as it is his duty as a Police Officer under Section 23 of the Police Act, 1961, to aid and assist any enquiry and investigation into any crime in order to ensure public peace

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[2] (2020) 10 SCC 118 = (2021) SCC Online SC 315

and to apprehend those who are guilty of any offence as alleged against them. It is further pleaded that it is also the duty of the Intelligence Department of the State to collect material in accordance with law and communicate the same to the concerned Investigating Agency. Therefore, he prayed for dismissal of the Writ Petition against him.

16) When the matter came up for hearing before this Court, heard arguments of learned Senior Counsel Sri Siddarth Luthra, appearing for A-1 in W.P.No.16468 of 2020; learned counsel for other accused i.e. A-2 to A7 and A-13 in other Writ Petition and Criminal Petitions have adopted the arguments of learned Senior Counsel Sri Siddarth Luthra; and heard learned Advocate General for the State; Sri O. Kailashnath Reddy, learned counsel for the *de facto* complainant, adopted the arguments of the learned Advocate-General; and heard learned Senior Counsel Sri M.S. Prasad for 6th respondent.

17) Learned Senior Counsel Sri Siddarth Luthra vehemently contended that the facts of the case as alleged in the F.I.R. and in the preliminary enquiry report absolutely do not constitute or make out any offences punishable under Sections 13(1)(d)(ii) r/w.13(2) of the P.C. Act and under Sections 409, 420 r/w. 120-B of IPC. He would submit that, in fact, these are covered matters in view of earlier common order of this Court passed in a batch of Criminal Petitions in Crl.P.Nos.4819 of 2020 decided on 19.01.2021, which was confirmed by the Hon'ble Supreme

Court in Petition for Special Leave to Appeal (Crl.) No.2636 of 2021 and batch, as per order dated 19.07.2021. He would submit that all the issues which are now raised in these Writ Petitions and the Criminal Petitions were already considered by this Court in the aforesaid earlier common order of this Court and held that the facts of the case do not constitute any offences punishable under Sections 420, 406, 409 and 120-B of IPC. He would submit that this Court has elaborately discussed regarding the legal position relating to the said offences under Sections 406, 409, 420 and 120-B of IPC and gave a categorical finding that the facts of the case do not constitute any such offences. So, he would submit that as the present F.I.R. was also registered against the petitioners herein based on similar allegations and identical facts that all the petitioners herein, who are similarly placed, are also entitled for quash of the F.I.R.

18) He would submit that even this Court has elaborately dealt with the concept of offence of insider trading in the aforesaid earlier common order and held that the said offence of insider trading is alien to our criminal law under I.P.C. and it was only an offence punishable under the Securities and Exchange Board of India Act, 1992 (herein after called as “SEBI Act”) relating to unlawful disclosure of information pertaining to sale of securities in stock market. Therefore, he would submit that in view of the above common order of this Court, which was also confirmed by the Apex Court in Petition for Special

Leave to Appeal (Crl.) No.2636 of 2021 and batch, as per order dated 19.07.2021, that the present prosecution against the petitioners for the offences punishable under Sections 409, 420 r/w.120-B of IPC is also not maintainable under law and thereby prayed to quash the F.I.R. registered against the petitioners in the present case.

19) As regards the offence under Section 13(1)(d)(ii) of P.C. Act is concerned, learned senior counsel Sri Siddarth Luthra would submit that the said allegation is only against A-1 and even though he being an Additional Advocate General at the relevant time is undoubtedly a public servant that the allegations ascribed against him do not constitute any offence of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act. He would submit that it was also contended before the Apex Court during the course of arguments in Petition for Special Leave to Appeal (Crl.) No.2636 of 2021 and batch, that there is a possibility of public officials being arraigned under Section 13 of the P.C. Act after investigation in this case, and the Apex Court rejected the said contention in the above judgment and held that as all the transactions in question are between private individuals involving private lands and as found by the High Court that the information about the likely location of the capital city was very much in public domain at the time of the transactions in question that the said part of submissions made relating to possibility of public officials being arraigned

under Section 13 of the P.C. Act does not make out a case for interference. So, he would submit that the said contention that A-1 being a public servant is liable for prosecution under Section 13(1)(d)(ii) of the P.C. Act is unsustainable in view of the aforesaid observation of the Apex Court made in Petition for Special Leave to Appeal (Crl.) No.2636 of 2021 and batch and as such, it is no more open to the prosecution to contend that A-1 is liable for prosecution under Section 13(1)(d)(ii) of the P.C. Act.

20) Even otherwise, he would submit that mere buying lands by A-1 or his family members in exercise of their constitutional right and legal right to acquire property based on the information which is in public domain relating to location of capital does not attract any offence of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act as he did not have any pecuniary advantage or gain illegally on account of buying lands for valid consideration. He would submit that it is a genuine sale transaction relating to private lands as A-1 and other accused have purchased the lands for valid sale consideration which are willingly sold by the owners of the said lands after receiving valid sale consideration under valid registered sale deeds. So, he would submit that absolutely no offence whatsoever much less the offence under Section 13(1)(d)(ii) of the P.C. Act and the offences punishable under Sections 409, 420 r/w.120-B of IPC are made out from the facts of the case and the launching of criminal prosecution against

A-1 and other accused is sheer abuse of process of Court and thereby prayed for quash of the said F.I.R. registered against the petitioners.

21) *Per contra*, learned Advocate-General appearing for the State would contend that the term insider trading has been contextually used. He would contend that as A-1 was admittedly an Additional Advocate-General during the relevant period when the lands were purchased by him and his family members that in his fiduciary capacity or position as an Additional Advocate-General, there was primarily a breach of trust as he is not expected to divulge the information which is confidential in nature before its official notification to any person including his family members and close associates. He would contend that as A-1 has acted upon such information unauthorisedly and indulged in purchasing lands either in his name or in the name of his family members and close associates that it partakes the character of breach of trust punishable under Section 409 of IPC. He would also submit that the said acts committed by A-1 in his official capacity as Additional Advocate-General tantamount to an act of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act. He submits that as there has been a conspiracy between him and other accused in this case relating to purchase of said lands during the relevant period of time that other accused are also liable for the offence punishable under Section 120-B of IPC for

criminal conspiracy. He would also submit that as the information relating to location of capital in the area where the sellers owned lands was not disclosed to them and the same was deliberately concealed by all the accused at the time of purchasing the lands that it amounts to deception and cheating as per the explanation appended to Section 415 of IPC and all the accused are liable for offence of cheating punishable under Section 420 r/w.120-B of IPC. Therefore, he would pray for dismissal of the Writ Petitions and the Criminal Petitions.

22) I have given my anxious and thoughtful consideration to all the aforesaid submissions made by the learned Senior Counsel Sri Siddarth Luthra appearing on behalf of the petitioners and the learned Advocate-General appearing on behalf of the State.

23) The dispute primarily relates to purchase of lands by the petitioners from its lawful owners under various registered sale deeds for a valid consideration. Therefore, it is a peculiar case where the prosecution seeks to criminalize private sale transactions entered into between the petitioners as buyers of the lands and the owners of the said lands as sellers, long back about six years ago by invoking the concept of the offence of insider trading applying the same to the facts of the present case and also on the ground that the petitioners as buyers of the lands did not disclose to the owners of the lands that the

capital city is going to be located in the said area and thereby concealed the material fact and cheated the owners of the lands.

CONCEPT OF OFFENCE OF INSIDER TRADING AND ITS APPLICATION TO THE FACTS OF THE CASE:-

24) As regards the concept of offence of insider trading is concerned, when a case of similar nature based on similar allegations and identical facts has come up for consideration before this Court in Crl.P.No.4819 of 2020 and batch, this Court while disposing of the said Criminal Petitions as per its common order dated 19.01.2021, after tracing the origin and history of the offence of insider trading, categorically held that the said offence of insider trading basically relates to a trading of public company's stocks or other securities (such as bonds or stock options) based on material, nonpublic information about the company. The Court also found that the laws in various countries relating to the offence of insider trading were brought mainly to curb the insider trading in the field of stock market as it is apparent from the object and reasons of the said enactment that the offence of insider trading is essentially an offence relating to trading of public company stocks or other securities such as bonds or stock options based on material, nonpublic information about the company. It is also clearly held that the said offence of insider trading has absolutely nothing to do with the sale and purchase of land which is an immovable property

which are private sale transactions wholly unrelated to the affairs of stock market business.

25) Also held that on par with the other countries, India also brought into force the SEBI Act to curb the offence of insider trading in the field of stock market in India and that the insider trading in India is only an offence according to Sections 12-A and 15-G of the SEBI Act. It is also held that as per the provisions of the said Act, the offence of insider trading is said to be committed only when a person with access to nonpublic, price sensitive information about the securities of the company subscribes, buys, sells, or deals, or agrees to do so or counsels another to do so as principal or agent. Therefore, held that insider trading is only made an offence in India under the SEBI Act and it essentially deals with the sale and purchase of securities in stock market based on nonpublic material information and it is a special enactment which specifically and exclusively deals with the offences relating to sale of securities in stock market. It is pertinent to note that this Court clearly held that the said provisions of Sections 12-A and 15-G of the SEBI Act cannot be read into or imported into the provisions of the IPC much less into Section 420 of IPC and it is not at all the intention of the Parliament to attribute any criminal liability to such private sale transactions of immovable property either under Section 420 of IPC or under any provisions in the scheme of I.P.C. It is finally held by this Court in the earlier common

order that it is legally impermissible to prosecute the petitioners for the offences punishable under Sections 420, 406, 409 and 120-B f IPC by applying the said concept of insider trading or in the guise of the said concept of insider trading.

26) The said findings recorded by this Court relating to the offence of insider trading are confirmed by the Apex Court in the appeal preferred by the State in S.L.P.No.2636 of 2021 and batch. Therefore, it is no more open to the prosecution to contend that the said concept of insider trading applies either relatively or even contextually to the present facts of the case. The prosecution cannot invoke the said concept of offence of insider trading which is essentially an offence under the SEBI Act to prosecute the petitioners herein for the offences under Sections 409, 420 r/w.120-B of IPC. Therefore, the said contention of the prosecution is hereby rejected.

27) Before dealing with the vital aspect as to whether the facts of the case constitute any offence under Sections 409, 420 r/w.120-B of IPC, this Court would first like to deal with the offence of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act attributed against A-1.

WHETHER ANY CASE OF CRIMINAL MISCONDUCT AS CONTEMPLATED UNDER SECTION 13(1)(d)(ii) OF P.C. ACT IS MADE OUT AGAINST A-1 AND WHETHER THE FACTS OF THE CASE CONSTITUTE ANY SUCH OFFENCE AGAINST A-1:-

28) It is the version of the prosecution that A-1 was an Additional Advocate-General from 30.06.2014 and was an Advocate-General from 30.05.2016 and during his tenure as an Additional Advocate-General that he was privy to the information which is confidential in nature relating to exact location of capital region and instead of maintaining the confidentiality of the said information that he has shared and disclosed the said information to his family members, relatives and close associates and initially got the lands purchased by his family members and thereafter, got some of the lands transferred to him and to his wife, who is A-2, and thereby committed an act of criminal misconduct as he had pecuniary advantage for himself and his family members unlawfully by abusing his position as Additional Advocate General and the same is punishable under Section 13(1)(d)(ii) of the P.C. Act. This is the substratum of the prosecution case against A-1 as regards the offence under Section 13(1)(d)(ii) of the P.C. Act.

29) Admittedly, A-1 was an Additional Advocate-General for the State of Andhra Pradesh from 30.06.2014 till 28.05.2016. He was an Advocate-General from 30.06.2016 onwards for the State of Andhra Pradesh. The said period during which he worked as Advocate-General is not germane in the context to consider. Since the process relating to location of capital city took place during June, 2014 to December, 2014 when official notification to that effect was issued on 30.12.2014 and as the

sale transactions in question took place between June, 2014 and December, 2014 and in the month of July, 2015 during which period A-1 was an Additional Advocate-General, his tenure as an Additional Advocate-General from 30.06.2014 till 28.05.2016 alone is relevant in the context to consider. It is stated that as he was privy to the information which is confidential in nature relating to the location of capital city which took place during the period from June, 2014 to December, 2014 and that he has disclosed the said information to his relatives and associates. As the entire case of the prosecution rests and predicates on the said ground to prosecute A-1 and also the other accused in the case, it is essential to ascertain whether as an Additional Advocate-General during the said period of time, by the very nature of his duties as an Additional Advocate-General, he has any constitutional function or statutory duty to involve or be part of any decision making process in respect of location of capital city which is the main function of the Legislature and Executive of the State Government.

30) In this context, it is very much relevant to note at the very outset that appointment of Additional Advocate-General for the State is not contemplated under Article 165 of the Constitution of India or in the scheme of the Constitution of India. Article 165 deals with appointment of Advocate-General for the State. It reads thus:

> "**165. Advocate-General for the State.—** (1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.
>
> (2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
>
> (3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."

31) Therefore, a plain reading of the aforesaid Article makes it manifest that appointment of only an Advocate-General for the State is contemplated and it does not contemplate any appointment of Additional Advocate-General.

32) As per the settled law, even though appointment of an Additional Advocate-General is not contemplated under Article 165 of the Constitution of India, the State can appoint any lawyer on its behalf to conduct any case or to defend it and the State can designate any such lawyer with whatever designation the State may propose including by conferring designation on him as an Additional Advocate-General.

33) Whether such Advocate, who is appointed by the State and designated as an Additional Advocate-General, is competent to discharge any constitutional duties and statutory functions on behalf of the State or whether his role is confined only to appear on behalf of the State to conduct cases or to defend the

State in the cases before the Court or not, will be adverted to in the succeeding paragraphs.

34) As admittedly A-1 was appointed as an Additional Advocate-General on 30.06.2014, indisputably the office of the Additional Advocate-General falls within the definition of a public servant for the purpose of P.C. Act, 1988. Section 2(c) defines "public servant". All the persons holding offices, which are enumerated in clause (i) to (xii) of Section 2(c), fall within the definition of public servant for the purpose of the P.C. Act. Section 2(c)(i) of the P.C. Act, which is relevant in the context, is extracted hereunder and it reads thus:

> "Section 2 (c) "public servant" means, ---
>
> (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;"

35) Therefore, a plain reading of the aforesaid definition makes it clear that a person who is remunerated by the Government by fees or commission for the performance of any public duty is also to be construed as a public servant. Since, A-1, who is an Advocate by profession, was appointed by the State Government to appear on its behalf and to conduct and defend the cases in the Court, and he is remunerated by the Government for performance of the said duty, undoubtedly, he would come within the definition of "public servant" as defined under Section 2(c)(i) of the P.C. Act.

36) Even though while holding an office of an Additional Advocate General, A-1 can be termed as a public servant in view of the definition of public servant as defined under Section 2(c) of the P.C. Act, the crucial question that arises for consideration is whether A-1 during his tenure as Additional Advocate General from the period from 30-06-2014 to 28-05-2016, was actually involved in any decision making process relating to location and establishment of the capital city and in the process of preparing draft bill for bringing the enactment i.e. the Andhra Pradesh Capital Region Development Authority Act, 2014 (for short, the "A.P. C.R.D.A. Act") into force or not.

37) Admittedly, accused No.1 was not the Advocate-General during the period when decision as to where capital city is to be located was taken between June to December, 2014 by the Government of the State and when A.P. C.R.D.A. Act was passed by the State Legislature and was notified on 30.12.2014. He was only an Additional Advocate-General during the said period of time. So, he has no authority under law as Additional Advocate General to perform any constitutional or statutory duties or functions attached to the office of the Advocate General. It is only the Advocate General who holds a constitutional office under Article 165 of the Constitution of India and he alone performs the duties and functions which are constitutional and statutory for the State which are attached to his office.

38) The legal position whether an Additional Advocate General holds any constitutional office and whether he is competent to perform any constitutional and statutory duties and functions has been succinctly explained and dealt with by the Apex Court in the case of **M.T. Khan v. Govt. of A.P**[3].

39) Considering the true import of Article 165 of the Constitution of India which deals with the appointment of an Advocate General and the functions to be performed by him, the Apex Court while interpreting Article 165 of the Constitution of India held that the constitutional scheme is that it envisages appointment of only one Advocate General and the appointment of an Additional Advocate General is not contemplated under Article 165 of the Constitution of India.

40) However, it is held by the Apex Court that even though in the scheme of the Constitution it is not provided for appointment of an Additional Advocate General that the State in exercise of its jurisdiction under Article 162 is competent to appoint a lawyer of its choice and designate him in such manner as it may deem fit and proper and once it is held that any such person is designated as Additional Advocate General that he is not authorized to perform any constitutional and statutory functions, but he can discharge other functions as an Advocate appointed by the State while appearing on behalf of

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[3] (2004) 2 SCC 267

the State in the Court to conduct cases on behalf State or to defend the State in other cases.

41) Therefore, the legal position is now manifest from the exposition of law made by the Apex Court in the above judgment that even though the Government of a State as a litigant can appoint as many lawyers as it likes on its behalf and for the said purpose, the State is not prohibited from conferring such designation on such legal practitioners as it may deem fit and proper and it can designate any lawyer as Additional Advocate General, the said Additional Advocate General cannot discharge any constitutional and statutory functions.

42) Even Clause (2) of Article 165 of the Constitution makes the said position very clear. It enjoins that it shall be the duty of only Advocate General to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. For better appreciation, Clause (2) of Article 165 of the Constitution of India is reproduced hereunder and it reads thus:

> "**165. Advocate-General for the State.—**
>
> (1) .....
>
> (2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor,

> and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

43) Therefore, when Article 165 and the aforesaid legal position enunciated by the Apex Court while interpreting Article 165, makes it explicitly clear that an Advocate who is appointed by the Government of a State is designated as Additional Advocate General, he has no right or power to discharge any constitutional or statutory duties and functions on behalf of the State and his right is confined only to conduct or defend the cases on behalf of the State in the Court. The said power to perform constitutional and statutory duties is exclusively conferred only on the Advocate General and it is his exclusive duty to give advice to the Government of the State upon legal matters and to perform other duties of legal character which are assigned to him by the Governor and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force.

44) When that be the clear legal position, A-1 who was only an Additional Advocate General during the relevant period from 30-06-2014 to 28-05-2016 had absolutely no opportunity to involve himself in any statutory or constitutional functions/ affairs to be performed by the State or by the office of the Advocate General so as to hold that he had an opportunity to know the information relating to exact location of the capital city, which according to the prosecution is a confidential information and that he is privy to the said information. He has

absolutely no role to play in the decision making process relating to location of capital city or in bringing A.P. C.R.D.A. Act into force.

45) There is absolutely nothing to indicate either in the F.I.R or in the preliminary enquiry report as to how A-1 was privy to the said confidential information. Therefore, having regard to the very nature of duties and functions of an Additional Advocate General who has to only conduct or defend cases on behalf of the State, he has absolutely no opportunity to be privy to any such information, which is within the exclusive knowledge of the officials of the State Government and other authorities at the helm of the affairs of the State Government. The version of the prosecution that it is in the common knowledge in the advocate circles that A-1 has close acquaintance with the then Chief Minister Sri N.Chandrababu Naidu and his group in Telugu Desam Party and as such, he is privy to the said information cannot be countenanced. It is a vague allegation and too hypothetical in nature. No criminal liability can be fastened in this regard against A-1 on surmises and conjectures. Political leaders would be in public life and many people and advocates would have some acquaintance with them. It cannot be inferred or presumed or held that on account of such acquaintance that A-1 as an Additional Advocate-General was privy to the said information. As noted

supra, it is a vague allegation which was hypothetically made. Therefore, it cannot be countenanced.

46) The said version as per contents of the F.I.R. and the preliminary enquiry report shows that the *de facto* complainant has overheard from the advocate circles that accused No.1 had close acquaintance with the then Chief Minister N.Chandrababu Naidu and his group in Telugu Desam Party and on the basis of the said information which was overheard by him that it is alleged that accused No.1 is privy to the information relating to location of capital city. Criminal prosecution cannot be launched on the basis of any such information which was overheard by the *de facto* complainant and on the basis of mere conjecture and surmise and on the basis of vague allegations. The Apex Court in the case of **State of Karnataka v. Arun Kumar Agarwal**[4] at para 15 of the judgment held as follows:

> ".....The acts of persons will not be subject to criminal investigation unless a crime is reported and have been committed or reasonable suspicion thereto arises. **On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known**, the persons involved in it or the place of crime unknown, cannot be termed to be a reasonable basis at all for starting criminal investigation."

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[4] (2000) 1 SCC 210

47) Therefore, there is absolutely no material whatsoever to *prima facie* establish that accused No.1 was privy to any such information relating to location of capital city. It purely appears to be a figment of imagination of the *de facto* complainant.

48) Now, the crucial question that arises for consideration is whether purchasing the lands on the basis of the information that is in public domain relating to location of capital at a particular area would amount to committing an act of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act or not. For better appreciation of the same, it is apposite to extract Section 13(1)(d)(ii) of the P.C. Act to the extent it is relevant in the present context and it 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) .....
>
> (c) .....; or
>
> (d) if he,—
>
> (i) .....
>
> (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) .....; or
>
> (e) .....
>
> (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

49) Therefore, a careful reading of the aforesaid Section makes it manifest that a public servant is said to commit an offence of criminal misconduct only when he obtains for himself or for any other person any valuable thing or pecuniary advantage by abusing his position as public servant. So, the necessary ingredients of this Section to attract the offence are: (i) that the accused must be a public servant; (ii) he must abuse his position as a public servant; (iii) and thereby obtain for himself or for any other person any valuable thing or pecuniary advantage.

50) As regards the first ingredient is concerned, it is already noticed that A-1 was a public servant at the relevant time. However, as regards the other two ingredients relating to abusing his position as a public servant and thereby obtaining for himself or for any other person any valuable thing or pecuniary advantage is concerned, the entire case of the prosecution rests on the allegation that he was privy to the information relating to the exact location of capital area and by using the said confidential information which is in his knowledge along with other public servants, and by sharing the said information with his kith and kin that he initially got lands purchased in their name and subsequently he purchased some of the lands from some of his relatives in his name and in the name of his wife, who is A-2, and thereby abused his position as a public servant and obtained pecuniary advantage for himself.

51) In this regard, at the very outset, it is to be noticed, as held supra, that A-1 in his official capacity as an Additional Advocate-General is not directly connected with any affairs relating to identifying the area where the capital city is to be located. It is not made clear either from the contents of the F.I.R. or from the contents of the preliminary enquiry report that he was involved in the process of decision making or in identifying the area where the new capital for the State of A.P. is to be located. Obviously, he being an Additional Advocate-General is not directly connected with the process of decision making relating to the location of the area where the capital is to be established. It is not at all part of his official duty. At that point of time, there was an Advocate General for the State to discharge any constitutional or statutory functions, if any, entrusted to him. It is not the version of the prosecution as can be seen from the F.I.R. or from the preliminary enquiry report that A-1 was either directly or indirectly involved in the process of identifying the area where the capital city is to be located. Therefore, unless it is *prima facie* established either from the allegations set-out in the F.I.R. which is a detailed report or from the findings of the preliminary enquiry report that the A-1 had any direct role to play in decision making process relating to establishment of capital and location of its area, it cannot be said under any stretch of reasoning or imagination that he was privy to the said information which is exclusively within the

knowledge of the concerned Government officials who are dealing with the said issue. Therefore, when it is not shown that he was privy to the said information, the question of divulging the same or sharing the same with his associates or family members does not arise at all. Consequently, the question of abusing his position as a public servant by sharing the said information or divulging the same and thereby obtaining any pecuniary advantage for himself or for others also does not arise.

52) Simply because A-1 and his relatives purchased lands at the area where the capital is proposed to be located, it cannot be held that he has purchased the lands on the basis of the information that he received as a public servant in his capacity as Additional Advocate-General. Therefore, A-1 cannot be prosecuted for the offence of criminal misconduct under Section 13(1)(d)(ii) of the P.C. Act on mere surmises or conjectures and on suspicion by taking hypothetical view. There must be atleast a clear allegation either in the F.I.R. or in the preliminary enquiry report that he was actually involved in decision making process relating to location of capital city and that he got clear and definite knowledge/information of exact location of capital area and that by way of purchasing lands by using the said information that he has some pecuniary advantage. The said essential requirements, which are *sine qua non* to establish the alleged act of criminal misconduct are conspicuously and

absolutely absent in the present case. Therefore, he cannot be held liable for the offence of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act. The necessary ingredients contemplated under the said Section as discussed supra are not at all satisfied to hold that there is a *prima facie* case to prosecute him for the said offence.

53) The acts complained must relate to official duty or functions of A-1 as Additional Advocate-General and they must form integral part of his official functions as Additional Advocate-General. Only when it is shown that any part of his integral functions as Additional Advocate-General are misused or abused, to have pecuniary gain for himself or for anyone, then only an offence of criminal misconduct would be constituted. Prosecution has miserably failed to show that A-1 has misused any part of his official duty as Additional Advocate-General at relevant point of time to have any pecuniary advantage to him or his family members. Purchasing private lands by him or his family members in exercise of their constitutional right to acquire property which are voluntarily sold by its owners with their free consent is not an offence and it does not constitute any offence of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act.

54) So, the contents of the F.I.R. and the preliminary enquiry report do not make out or constitute any offence of criminal

misconduct punishable under Sections 13(1)(d)(ii) r/w.13(2) of the P.C. Act against A-1.

INFORMATION RELATING TO LOCATION OF CAPITAL CITY IS NOT CONFIDENTIAL INFORMATION AND IT IS VERY MUCH IN THE PUBLIC DOMAIN:-

55) Be that as it may, the material on record completely belies the said version of the prosecution also. The information relating to location of capital for the State of Andhra Pradesh between Krishna District and Guntur District by the side of river Krishna is not a secret or confidential information which is exclusively within the knowledge of the concerned officials of the Government. In fact, it is very much in the public domain. It is significant to note that it is clearly stated in the F.I.R, also in the preliminary enquiry report that the enquiry discloses that between June, 2014 and December, 2014, the public were speculating about the possible location of the capital region for the State of Andhra Pradesh. Therefore, it is now evident that even the preliminary enquiry made by the Dy.S.P., ACB, Guntur, pursuant to the direction given by the DG, ACB, AP, Vijayawada, after the report was lodged by the *de facto* complainant clearly revealed that there was a speculation among the public about the possible location of the capital region for the State of Andhra Pradesh during the period from June, 2014 to December, 2014.

56) Apart from it, the evidence that is produced by the petitioners i.e. newspaper clippings of various Telugu and English daily newspapers which are all of wide circulation bears ample testimony of the fact that the news/information relating to the decision of the Government to locate the capital city for the State of Andhra Pradesh would be between Krishna District and Guntur District by the side of River Krishna is very much in public domain.

57) The appointed day for bifurcation of the combined State of Andhra Pradesh into two States of Andhra Pradesh and Telengana as per A.P. Reorganisation Act, 2014 is 02.06.2014. The new Government for the State of Andhra Pradesh was formed after General Elections on 09.06.2014. The Chief Minister was sworn on 09.06.2014. These facts are incontrovertible facts. Immediately after the swearing in ceremony, the then Chief Minister declared publicly that the capital city is coming between Krishna District and Guntur District by the side of River Krishna. This news was widely published in all the widely circulated Telugu and English newspapers. On 10.06.2014 it was published in English newspaper with the headlines "*AP capital near Guntur, Naidu says he wants capital between Guntur and Vijayawada*". The news reads as follows:

> "It is official. The new capital of Andhra Pradesh will come up between Vijayawada and Guntur. Andhra Pradesh Chief Minister N. Chandrababu Naidu announced this on Monday (i.e. on 09.06.2014).

> Speaking to the media at his residence, Mr.Naidu said that if the capital comes up between Vijayawada and Guntur it will develop like Hyderabad city."

58) It was also published in Andhra Jyothi, Telugu daily newspaper, on 10.06.2014. Similarly, again on 02.07.2014 it was published in Eenadu, Telugu daily newspaper, which is another widely circulated local news paper, that the Andhra Pradesh Government is contemplating to establish the new capital for the State by the side of Krishna river, making Amaravati as main centre. The same news has been published in Times of India, English newspaper, on 02.07.2014 with the headline "AP capital in Amaravati? On 23.07.2014 also a news was published in Sakshi, Telugu daily newspaper, which is another widely circulated newspaper in the State, with the caption "Capital will be in between Krishna and Guntur and it is the suitable place for building capital city said by Chairman of Advisory Committee Narayana. On 24.09.2014 again it is published in Eenadu, Telugu daily newspaper, that the capital city would be on ring road and it may be anywhere throughout the length of 184 K.Ms as the farmers are now coming forward and that 30,000 acres are necessary and the aerial photograph of Putrajaya Nagara was also published in the newspaper.

59) It is important to note that on 30.10.2014, the Economic Times published the news that the Andhra Pradesh will have a "riverfront" capital on the south side of river Krishna as the State Government ended months of suspense and speculation

today by announcing that 17 villages in the existing Guntur District would be developed as new capital city. It is also stated that it is for the first time that the Telugu Desam Party lead government had come out with a clear location of the new capital as it had so far been saying it would come within Vijayawada region. Most importantly it is to be noted that the names of the proposed villages that would form part of the new capital area are published in the above news paper stating that Neerukonda, Kurugallu and Nidamarru in Mangalagiri Mandal; Borupalem, Tulluru, Nelapadu, Nekkallu, Sakhamuru, Mandadam, Malkapuram, Velagapudi, Mudalingayapalem, Uddandaraya-palem, Lingayapalem, Rayapudi, Apparajupalem and Dondapadu in Tulluru Mandal would form part of capital area.

60) In Deccan Chronicle, English daily newspaper, it was published on 31.10.2014, stating that in tune with the dream of Chief Minister N. Chandrababu Naidu of building a “riverfront capital”, the Cabinet sub-committee, on land pooling, met here on Thursday, identified 17 villages - 14 in Tulluru Mandal and three in Mangalagiri of Guntur District and most of the villages that will be formed part of the A.P. capital on the banks of the river Krishna.

61) The aforesaid news items publishing even the names of the villages that would form part of capital region or that would come within the purview of capital region belies the allegation in

F.I.R. and in preliminary enquiry report that names of villages forming part of capital city are kept secret till notification was issued in December, 2014.

62) As per the finding recorded by this Court in the earlier common order rendered in batch of criminal petitions in Crl.P. No.4819 of 2020 and batch, dated 19.01.2021, at para.106, this Court noted that as per the submissions made by the learned Advocate General, the Cabinet took decision regarding location of capital on 01.09.2014 and it was announced in the Legislative Assembly on 02.09.2014. Therefore, on account of announcement of the said information relating to the area where the capital would be located in the Legislative Assembly, that the said news is again in public domain.

63) Thus, from June, 2014 till 30.12.2014, on which day official notification relating to location of capital was issued, the news has been widely published in various newspapers from time to time regarding possible location of capital city between Krishna District and Guntur District by the side of River Krishna. The fact that the said information relating to location of capital city is very much in public domain by way of publication of the said news in various newspapers has been adequately dealt with by this Court in the previous common order, dated 19.01.2021. Therefore, it is needless to refer all the publications made in various newspapers during the said period. So, the fact that remains established beyond doubt is

that the news relating to location of capital city between Krishna District and Guntur District by the side of River Krishna, is not a secret and confidential information and the said news has been in very much in public domain. Therefore, not only the petitioners/accused and the sellers/owners of the land, but the whole world is aware of the information relating to possible location of the capital between Krishna District and Guntur District by the side of River Krishna. In fact, the prosecution also did not deny the said material fact of publication of aforesaid news items in various newspapers from June, 2014 till December, 2014. Therefore, in view of the said clear evidence available on record, it cannot be said under any stretch of reasoning that the said information is confidential in nature and A-1 being privy to the said information has shared the said information with the other accused and that he had illegally made use of the said information and purchased the lands for himself and for his family members and thereby had any pecuniary advantage.

64) In fact, probably with the information which is in public domain, on account of the said wide publicity of news in various newspapers regarding location of capital between Krishna District and Guntur District by the side of River Krishna on account of official announcement by no less than a person like the Chief Minister of the State itself that the capital is likely to come between Krishna District and Guntur District by the side

of River Krishna, A-1 and other accused might have purchased the lands.

65) In fact, it was contended before the Supreme Court in S.L.P.No.2636 of 2021 and batch arising out of the common order passed by this Court in Crl.P.No.4819 of 2020 and batch, dated 19.01.2021, that there is possibility of public officials being arraigned under Section 13 of the P.C. Act after investigation in the case is completed. The Apex Court did not accept the said contention. The Apex Court has struck a discordant note and held as follows:

> "……suffice it to observe that all the transactions in question are between private individuals involving private lands and, as found by the High Court, the information about the likely location of the capital city was very much in public domain at the time of the transactions in question. Therefore, this part of submission does not make out a case for interference."

66) So, it is now clear that the said contention that public officials are liable under Section 13 of the P.C. Act which was already raised before the Apex Court has been negatived on the ground that as per the finding recorded by this Court that the information about the likely location of the capital city is very much in public domain at the time of transactions.

67) This fact that the said information is very much in the public domain strikes at the bottom of the prosecution case and cuts the case of the prosecution at it roots. This vital plea that the said information is confidential in nature and A-1 and other

officials who are alone privy to the said information disclosed the same to their relatives is bereft of any legal foundation.

68) Therefore, in the said facts and circumstances of the case, it cannot be said that A-1 has committed any act of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act.

RIGHT TO ACQUIRE PROPERTY IS A CONSTITUTIONAL RIGHT AND A LEGAL RIGHT:-

69) Earlier Article 19(1)(f) and Article 31 of the Constitution of India are part of Chapter III of the Constitution dealing with fundamental rights of a citizen. Article 19(1)(f) guaranteed to the Indian citizen a right to acquire, hold and dispose of property. Article 31 provided that "no person shall be deprived of his property save by authority of law". Therefore, in view of Article 19(1)(f) and Article 31 of the Constitution, right to property was part of fundamental rights of a citizen. Subsequently, by 44th constitutional amendment both Article 19(1)(f) and Article 31 were repealed with effect from 20.06.1979. So, the right to property ceased to be a fundamental right. However, the right to acquire property continues to be a constitutional right, legal right and also a human right. Provision akin to Article 31 has been incorporated under Article 300-A in Chapter-IV of the Constitution under the rubric "right to property".

70) The Supreme Court, in the case of **D.B. Basnett v. The Collector, East District, Gangtok, Sikkim**[5] held at para 14 of the judgment as follows:

> "We may note that even though rights in land are no more a fundamental right, still it remains a constitutional right under Article 300A of the Constitution of India."

71) In **Tuka Ram Kana Joshi v. Maharashtra Industrial Development Corporation**[6] the Supreme Court reiterated that right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though it is not a basic feature of the constitution or a fundamental right, the right to property is considered very much to be part of new dimensions where human rights are considered to be in realm of individual's rights such as the right to health, the right to livelihood, the right to shelter and employment etc., and such rights are gaining an even greater multifaceted dimension.

72) Therefore, when the petitioners herein have in exercise of their constitutional right and legal right to acquire property purchased the said lands under registered sale deeds for valid consideration from the owners of the land which are willingly sold by them, the prosecution is not justified in seeking to criminalize the said private sale transactions entered into by private individuals in respect of private lands. Therefore, the

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[5] Judgment in Civil Appeal No. 196 of 2011 dated 02.03.2020
[6] (2013) 1 SCC 353

present prosecution under the aforesaid sections of law is not maintainable on this ground also.

WHETHER OFFENCES UNDER SECTIONS 420 R/W.120-B AND UNDER SECTION 409 OF IPC ARE MADE OUT FROM THE FACTS OF THE CASE:

73) As regards the offence under Sections 420 r/w.120-B of IPC against all the accused is concerned, it is relevant to note that the sale transactions in question have taken place as per the contract between the owners/sellers and the petitioners/purchasers. The recitals in the sale deeds clearly show that it is the owners who have offered to sell their lands to the petitioners to meet their legal necessities and other needs. The petitioners have accepted the said offer and purchased the lands for a valid sale consideration under registered sale deeds. The owners have also willingly with their free volition and consent sold the said lands to the petitioners under registered sale deeds and transferred the ownership of the lands in favour of the petitioners. It is not as though the petitioners have approached the owners and made any false representation and induced them to sell the lands to them and deceived them. In fact, there is absolutely no dispute regarding the fact that the recitals of the sale deeds show that the owners have offered to sell the lands to the petitioners with their own consent and volition. Learned Advocate-General also on instructions from the Investigating Officer, while answering the question posed by the Court, fairly conceded that the recitals in the present sale

deeds of all the accused show that the owners have offered to sell the lands to the petitioners. Therefore, the question of the petitioners approaching the owners and inducing them to sell the lands either by making any false representation or by concealing any material fact of location of capital at their lands does not arise at all.

74) While Section 420 of IPC deals with the punishment for the offence of cheating, Section 415 of IPC defines the offence of cheating. A reading of Section 415 of IPC makes it manifest that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person is said to have committed an offence of cheating. As already discussed supra, it is not at all the case of the prosecution that the petitioners have approached the owners of the lands and induced them fraudulently or dishonestly to deliver any property to them. So, the question of cheating them by deception does not arise at all.

75) However, it is contended that as per the explanation appended to Section 415 of IPC, a dishonest concealment of fact is a deception within the meaning of the said Section. Relying on the said explanation, it is sought to be contended that as the petitioners did not disclose to the owners of the lands that the capital is going to be located in their area that it amounts to concealment of material fact and as such, an offence of cheating is made out. This Court in the earlier common order in

Crl.P.No.4819 of 2020 and batch, dated 19.01.2021, after undertaking elaborate discussion in this regard has negatived the said contention. The Court after considering Section 55(5)(a) of the Transfer of Property Act and other relevant provisions of law relied on by the learned Advocate-General, unequivocally held that buyers have no legal obligation to inform the sellers regarding the latent advantages that the buyers may derive on account of the said sale transactions, to the sellers. Therefore, held that the non-disclosure of the fact that the capital is going to be located in the area where the lands are situate by the buyers to the sellers even if the same is within the knowledge of the buyers at that time does not amount to concealment of material fact and that it does not attract any offence of cheating under Section 415 of IPC. Relevant case law as decided by the English Courts sand Indian Courts has been also elaborately dealt with in the said common order. The said findings are also confirmed by the Apex Court while dismissing the S.L.P.No.2636 of 2021 and batch preferred against the same.

76) In this context, it is important to note that the sellers of the said lands have absolutely no demur or grievance whatsoever in respect of the sale of the lands by them to the petitioners. They did not complain at any point of time that they have no knowledge about location of capital near their lands and that the petitioners also did not disclose the said fact

to them at the time of buying the lands and concealed or suppressed the said fact or that the petitioners have made any false representation and thereby induced them to sell the lands. The sellers/owners did not institute any civil or criminal legal action till now in this regard for all this length of time. It is not at all their case that the petitioners have cheated them in respect of sale of the said lands made by them to the petitioners.

77) Surprisingly, it is the *de facto* complainant, who is totally a stranger to the said sale transactions, lodged the report with the police, alleging that the petitioners have cheated the owners/sellers of the lands and that too five years after the date of alleged sale transactions. When the sellers have absolutely no grievance that they have been cheated by the petitioners in respect of the lands that were sold to them, it is really surprising to note as to how the *de facto* complainant who is totally a stranger to the said sale transactions and who has absolutely no interest in the said lands would come forward and lodge a report with the police alleging that the petitioners have cheated the owners of the lands. As can be seen from the preliminary enquiry report also, there is nothing to indicate in it that the owners who sold the said lands came forward to complain that they were cheated by the petitioners by making any false representation or by suppressing any material fact. So, the preliminary enquiry report also does not disclose the

said fact. So, it is really beyond the comprehension of this Court as to how the Dy.S.P., ACB, who conducted a preliminary enquiry opined that a cognizable case is made out. So, it is a cryptic report submitted by him.

78) So, in the said facts and circumstances of the case, the contention of the petitioners that the *de facto* complainant who is a stranger was set up to lodge the report to set the criminal law in to motion with an ulterior motive to illegally prosecute the petitioners and subject them to harassment cannot be completely ruled out. It is clear that taking complete advantage of the legal position that any person can set the criminal law into motion and not necessarily by an aggrieved person, the present report was lodged by the *de facto* complainant for the obscure reasons best known to him to prosecute the petitioners for the said offences at the behest of some vested interests behind the curtain. There is absolutely no merit or substance in the contents of the said report lodged by the *de facto* complainant which makes out any offence for which the F.I.R. was registered.

79) In Petition for Special Leave to Appeal (Crl.) No.2636 of 2021 and batch, the Apex Court held at page 7 as follows:

> "..... There was also no question of loss being caused to the sellers or any cheating by the buyers because neither by law nor by a legal contract, the buyers were obliged to disclose the likelihood of the location of capital city, which facts were already in public domain. Moreover, there was no such pre-existing legal relationship between the buyers and the sellers

for which, the buyers were bound to protect the interest of the sellers."

80) Therefore, the facts of the case and the allegations set out in the F.I.R. absolutely do not constitute any offence punishable under Section 420 of IPC.

81) As regards the offence under Section 409 of IPC is concerned, it relates to criminal breach of trust by a public servant, or by banker, merchant or agent. Except A-1, the other accused are not public servants, bankers, merchants or agents, to whom any property was entrusted. So, the question of committing criminal breach of trust by them does not arise at all. The predominant requirement which is essential to attract the offence under Section 409 of IPC is that the accused must be a public servant, banker, merchant or an agent and the property is to be entrusted to him in any one of the above capacities and while holding domain over the said property in his capacity as a public servant, banker, merchant or an agent, broker or attorney, if he commits any criminal breach of trust in respect of the said property, then only an offence under Section 409 of IPC would be constituted. Therefore, no case is made out against the other accused in this case under Section 409 of IPC.

82) Even though A-1 was a public servant at that time, there is no allegation that any property was entrusted to him in his capacity as a public servant or that he got any domain over the

property and that he has committed breach of trust in respect of the said property. So, no case is made out against A-1 also for the offence under Section 409 of IPC.

83) Apropos the offence under Section 120-B of IPC is concerned, which deals with criminal conspiracy, a reading of Section 120-A of IPC, which defines the offence of criminal conspiracy, makes it manifest that in order to constitute an offence of criminal conspiracy that there must be an agreement between two or more persons to do or cause to be done: (i) an illegal act, or (ii) an act which is not illegal by illegal means. There is nothing to indicate from the facts of the case that there has been any agreement between the petitioners to do an illegal act or to do an act which is not illegal by illegal means. Further, as per the findings recorded supra, this Court found that no offence of criminal misconduct was committed by A-1 in sharing the information or divulging the information relating to location of capital to the other accused. It is found from the evidence on record that the said information is very much in public domain known to the entire public at large. So, when it is held that A-1 did not resort to any such illegal act of sharing and divulging the information relating to location of capital, the question of all the accused entering into a criminal conspiracy as alleged by the prosecution does not arise at all. In fact, this Court also dealt with the legal position relating to offence of criminal conspiracy punishable under Section 120-B of IPC in

the earlier common order, dated 19.01.2021, based on similar facts and held that the facts of the case do not constitute any offence of criminal conspiracy. This Court also at para. 116 of the said common order held that the facts of the case show that the prosecution is making an attempt to pick up sporadic instances here and there hypothetically and knit the same to concoct a story of conspiracy to somehow bring the same within the scope of Section 120-B of IPC. Also held that no offence under Section 120-B of IPC is made out and constituted from the facts of the case. The same finding holds good in the present case also.

84) A careful consideration of the facts and circumstances of the case clearly reveal that the owners of the land who sold the said lands have absolutely no grievance whatsoever that they have been cheated by the petitioners, who purchased the lands from them under registered sale deeds for valid consideration. Yet, the *de facto* complainant concocted a story very intelligently and he being totally a stranger to the said sale transactions lodged a report with the police based on conjectures and surmises and on hypothetical views. He is not at all justified in launching any such criminal prosecution against the petitioners. It appears that completely taking undue advantage of the fact that any person can set criminal law into motion and not necessarily by the aggrieved person, he has lodged the report setting the criminal law into motion. In the

circumstances, the version of the petitioners that there are some persons of vested interest behind the curtain, who has set up the *de facto* complainant and engineered manipulating the report, which was lodged by the *de facto* complainant to harass the petitioners and to humiliate them and to persecute them by way of malicious prosecution cannot be completely ruled out.

85) The Apex Court in the judgment cited supra in the case of **State of Karnataka v. Arun Kumar Agarwal**[4] at para.15 of the judgment held that the acts of persons will not be subject to criminal investigation unless a crime is reported and has been committed or reasonable suspicion thereto arises. **On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known,** the persons involved in it or the place of crime unknown, **cannot be termed to be a reasonable basis at all for starting criminal investigation**.

86) It is further held, "the attempt made in this case appears to us to be in the nature of blind shot fired in the dark without even knowing whether there is a prey at all. That may create sound and fury but not result in hunting down the prey."

87) The Apex Court also time and gain has examined the scope of jurisdiction of the High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482

Cr.P.C. A three-Judge Bench of the Apex Court in the case of **State of Karnataka v. L.Muniswamy**[7] held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed.

88) Similarly, another three-Judge Bench of the Apex Court in the case of **State of Karnataka v. M. Devendrappa**[8] by analyzing the scope of Section 482 Cr.P.C. held that the power is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. **When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to**

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[7] (1977) 2 SCC 699
[8] (2002) 3 SCC 89

assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

89) Also held that judicial process should not be an instrument of oppression, or, needless harassment.

90) Therefore, when no offence is constituted whatsoever under Section 13(1)(d)(ii) r/w.13(2) of the P.C. Act and under Sections 409, 420 r/w.120-B of IPC against any of the petitioners, allowing the proceedings to be continued pursuant to the registration of the said F.I.R. would certainly amounts to abuse of process of Court. Therefore, ground Nos.1 to 3 and 5 enumerated in the case of **State of Haryana v. Bhajan Lal**[9] squarely apply to the present facts of the case.

91) Therefore, the F.I.R. that was registered against the petitioners in Crime No.08/RCO-ACB-GNT/2020 of A.C.B. Police Station, Guntur, for the offences punishable under Sections 13(1)(d)(ii) r/w.13(2) of the P.C. Act and under Sections 409, 420 r/w.120-B of IPC, is liable to be quashed.

CONCLUSION:

92) The upshot of above discussion is that A-1 while holding the office of an Additional Advocate-General has no authority to discharge any constitutional or statutory duties and functions

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[9] 1992 Supp.(1) SCC 335 = 1982 CriLJ 527

and he has no role to play in the decision making process in locating the area where the capital is to be established and in bringing into force the A.P. C.R.D.A. Act, 2014. He was not privy to any information relating to exact location of capital city. He had no role to play in the process of identifying the location to establish capital city to know the information regarding exact location of capital city. Therefore, the question of A-1 disclosing the said information to the other accused and that all the accused have purchased the lands from the owners on the basis of the said information does not arise and there is no truth in the said allegation. A-1 also did not commit any act of criminal misconduct as contemplated under Section 13(1)(d)(ii) of the P.C. Act and no case is made out against him for the said offence from the facts of the case. The information relating to location of capital is not a confidential information and it is very much in the public domain from June, 2014 itself. Right to acquire property is a constitutional right and legal right of the petitioners as citizens of the country. As they purchased the lands in exercise of their constitutional right and legal right and acquired property from the owners/sellers of the lands, who willingly and voluntarily sold them to the petitioners for valid sale consideration under registered sale deeds, the said private sale transactions cannot be criminalized and no criminal liability can be attributed to the petitioners in the facts and circumstances of the case to prosecute them for any such offences under Sections 420 r/w.120-B of IPC or under Section

409 of IPC. The concept of offence of insider trading which is essentially an offence in the field of stock market relating to selling and buying the securities and bonds cannot be applied to the offences under the Indian Penal Code and cannot be read into Section 420 of IPC or into any provisions in the scheme of Indian Penal Code. It is totally alien to I.P.C. and it is unknown to our criminal jurisprudence under the Indian Penal Code. There is no dishonest concealment of fact in respect of the sale transaction in question as contemplated under Explanation appended to Section 415 IPC. So, it does not amount to any deception constituting an offence under Section 420 of IPC. The sellers did not sustain any loss on account of the said sale transactions. So, no element of criminal liability is involved in the sale transactions. No offence of conspiracy to do any illegal act or to commit an offence is made out from the facts of the case against the petitioners. Therefore, in the said facts and circumstances of the case, the prosecution of the petitioners for the alleged offences for which the F.I.R. was registered is wholly unjustified and clearly opposed to all cannons and basic tenets of criminal law and it amounts to sheer abuse of process of court warranting interference of this Court in exerciser of its inherent powers under Section 482 Cr.P.C. to quash the same in view of the law enunciated and the grounds enumerated by the Apex Court in **Bhajan Lal**[9]'s case and other judgments of the Apex Court in **State of Karnataka v. L.Muniswamy**[7] and **State of Karnataka v. M. Devendrappa**[8].

93) In fine, this batch of Writ Petitions and Criminal Petitions are allowed. The common F.I.R. in Crime No.08/RCO-ACB-GNT/2020 of A.C.B. Police Station, Guntur, registered against the petitioners for the offences punishable under Sections 13(1)(d)(ii) r/w.13(2) of the P.C. Act and under Sections 409, 420 r/w.120-B of IPC, is hereby quashed.

94) A-1 claimed compensation in the Writ Petition for intimidating him and harassing him by initiating the present criminal proceedings against him. This Court deems it appropriate, instead of granting any such compensation in this Writ Petition, to leave it open to A-1 by granting liberty to him to claim compensation or damages, as the case may be, against the *de facto* complainant for launching frivolous criminal proceedings against him.

As a sequel, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:02-09-2021.

Note:
L.R. copy to be marked.
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THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH R0Y

Writ Petition Nos.16468 and 20077 of 2020
and
Crl. Petition Nos.4422, 4423, 4424, 4425, 4426 and 4427 of 2021

Dated:02-09-2021

***HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Writ Petition Nos.16468 and 20077 of 2020
and
Crl. Petition Nos.4422, 4423, 4424, 4425, 4426 and 4427 of 2021

% Dated 02-09-2021

W.P.No.16468 of 2020:

Dammalapati Srinivas

..... Petitioner

Vs.

$ The State of Andhra Pradesh rep. by its Principal Secretary, Home Department, A.P., Secretariat Complex Velagapudi, Amaravti, A.P., & Ors.

..Respondents

! Counsel for the petitioners : Sri Siddarth Luthra,
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Sri M.Lakshmi Narayana,
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learned Standing Counsel
for ACB-cum-Special
Public Prosecutor
Learned Govt. Pleader for Home;
Sri O.Kailashnath Reddy,
and Sri Inakollu Venkateswarlu

<GIST:

> HEAD NOTE:

? Cases referred:

[1] (2014) 2 SCC 1
[2] (2020) 10 SCC 118 = (2021) SCC Online SC 315
[3] (2004) 2 SCC 267
[4] (2000) 1 SCC 210
[5] Judgment in Civil Appeal No. 196 of 2011 dated 02.03.2020
[6] (2013) 1 SCC 353
[7] (1977) 2 SCC 699
[8] (2002) 3 SCC 89
[9] 1992 Supp.(1) SCC 335 = 1982 CriLJ 527

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

Writ Petition Nos.16468 and 20077 of 2020
and
Crl. Petition Nos.4422, 4423, 4424, 4425, 4426 and 4427 of 2021

W.P.No.16468 of 2020:

Dammalapati Srinivas

..... Petitioner

Vs.

The State of Andhra Pradesh rep. by its Principal Secretary, Home Department, A.P., Secretariat Complex Velagapudi, Amaravti, A.P., & Ors.

..Respondents

COMMON ORDER PRONOUNCED ON: 02-09-2021

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? --
2. Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY