

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.8114 OF 2021

ORDER:

The present criminal petition is filed under Section 482 CrPC seeking to quash the criminal proceedings in C.C. No. 14/2012 pending on the file of Court of Principal Special Judge for CBI cases at Red Hills, Nampally Hyderabad (hereinafter called as 'Trial Court').

2. Heard Mr. T. Niranajan Reddy, learned senior counsel representing Mr. T. Nagarjuna Reddy, learned counsel for the petitioner and Mr. Srinivas Kapatia, learned Special Public Prosecutor for the Central Bureau of Investigation (hereinafter called as 'CBI').

Factual Background

3. The present case has a chequered history and has its roots in the politics of the erstwhile united Andhra Pradesh. The case was registered based on the order dated 10.08.2011 passed by the erstwhile High Court of Andhra Pradesh in W.P. Nos. 794/2011 and 6604/2011.

4. The said order was passed in public interest litigations wherein CBI inquiry was directed. It was alleged that the petitioner

herein along with many other businessmen and industrialists invested in the companies of Mr. Y.S. Jagan Mohan Reddy (son of the then Chief Minister - Y.S. Rajashekhar Reddy), who later became the Chief Minister of the newly formed Andhra Pradesh. As *quid pro quo* to those investments, government projects were allotted to such investors.

5. Noting that, *prima facie*, there were financial misdeeds of huge magnitude and that government projects were allotted to the investors in Mr. Y.S. Jagan Mohan Reddy's companies, CBI was directed to conduct inquiry.

6. The order dated 10.08.2011 specifically records the allegations against the petitioner herein that he had invested huge amounts in Mr. Y.S. Jagan Mohan Reddy's companies. The allegations also note that the present petitioner was allotted the Vanpic Project to develop ports, in exchange for his investment in Mr. Y.S. Jagan Mohan Reddy's companies. It was alleged that, after the allotment of the project, the petitioner used his influence with the then Chief Minister and his son - Mr. Y.S. Jagan Mohan Reddy and got allotted huge chunks of lands.

Charge sheet filed by the CBI and cognizance by the Trial Court

7. Based on the order dated 10.08.2011 in W.P. Nos. 794/2011 and 6604/2011, the CBI registered a case (RC No. 19(A)/HYD/2011) under Sections 120B, 420, 409, 419, 467, 468, 471 and 477A of the Indian Penal Code. A total of seventy-three (73) accused were named including the petitioner herein.

8. The petitioner herein was arrested on 15.05.2012. He was enlarged on bail on 18.10.2013. On 13.08.2012, the CBI filed a charge sheet against fourteen (14) accused.

9. Mr. Y.S. Jagan Mohan Reddy was arraigned as Accused No. 1 and his financial advisor was arraigned as Accused No. 2. Petitioner herein was arraigned as Accused No. 3. Mr. Mopidevi Venkata Ramana Rao, the then Minister for Infrastructure & Investment was arraigned as Accused No. 4. Mr. Dharmana Prasada Rao, the Minister for the Revenue Department was named as Accused No. 5. Mr. K.V. Brahmananda Reddy, the then Special Secretary of Infrastructure & Investment department and Dr. Manmohan Singh, the then Secretary of the Infrastructure & Investment department were named as Accused Nos. 6 and 7 respectively. Mr. M. Samuel, the then Principal

Secretary to the Revenue Department was named as Accused No. 8. Mr. Nimmagadda Prakash, brother of the petitioner herein was named as Accused No. 9. M/s Vanpic Projects Pvt. Ltd., the company of the petitioner herein was named as Accused No. 10. Accused Nos. 11 to 14 were the companies owned by Mr. Y.S. Jagan Mohan Reddy in which the petitioner herein and others purchased shares.

10. Based on the charge sheet, the Trial Court *vide* order dt. 13.09.2012 took cognizance against all the fourteen (14) accused. It noted that such cognizance is being taken after perusal of the charge sheet, relevant documents and office note.

11. It is after the cognizance was taken that the present petitioner has filed the present criminal petition seeking to quash the entire criminal proceedings.

Allegations against the petitioner as per the charge sheet

12. The allegations against the petitioner can be divided into two parts. The first part involves him investing in the companies of Mr. Y.S. Jagan Mohan Reddy at a higher premium. The second part of the allegations concerns the *quid pro quo* allotment of the Vanpic

Project to the petitioner's company and the alleged misdeeds committed by the petitioner in execution of the project.

Investments by the petitioner in the companies of Y.S. Jagan Mohan Reddy

13. Coming to the first part of the allegations regarding investments in Mr. Y.S. Jagan Mohan Reddy's companies by the petitioner, it is alleged that the petitioner invested a total of Rs. 854.50 crores in Mr. Y.S. Jagan Mohan Reddy's companies.

14. The alleged investments began in the year 2006 when M/s Beta Avenue Pvt. Ltd. (owned by the petitioner) invested Rs. 20 crores in M/s Carmel Asia Pvt. Ltd. (owned by Mr. Y.S. Jagan Mohan Reddy). As a result of such investment and as part of the alleged *quid pro quo* deal, M/s Indu Tech Zone Pvt. Ltd., in which the petitioner was a director, was allotted 250 acres of land in Shamshabad.

15. Seeking a similar *quid pro quo* deal, it is alleged that, the petitioner herein invested Rs. 450 crores in M/s Jagati Publications (owned by Mr. Y.S. Jagan Mohan Reddy).

16. The charge sheet at paragraph no. 1 provides the following table detailing the investments made by the petitioner in the companies of Mr. Y.S. Jagan Mohan Reddy:

S. No	Name	Period of investment	Amount - Rs. In Crore	Remarks	Present Status
1	Carmel Asia Holdings Pvt. Ltd.	Dec. 2006	20.00	—	Still holding.
2	YS Jagan Mohan Reddy	Jan. to Jul., 2007	35.00	Towards secondary purchase of shares of Sandur Power Company Ltd. from Sri YS Jagan Mohan Reddy	Still holding.
3	Raghuram / Bharati Cement Corporation Ltd.	Jan., 2007 to Nov.2009	252.50	Including Rs.8.50 Crore in individual capacity	Disposed off in April, 2010
4	Jagati Publications Ltd.	Aug., 2007 to Apr., 2010	450.00	—	Still holding.
5	YSR Foundation	Aug. 2007 & April/May, 2010	7.00	...	Donation
6	Silicon Builders Pvt. Ltd.	Jan. to Dec., 2008	57.00		Disposed off in April, 2010 to Classic Realty another group company of Sri YS Jagan Mohan Reddy at cost price
7	YS Jagan Mohan Reddy	July/August 2009	33.00	Towards secondary purchase of shares of Bharathi Cement Corporation Ltd. from Sri YS Jagan Mohan Reddy	Disposed off in April, 2010
	Total	---	854.50	---	---

17. As the petitioner invested in M/s Jagati Publications Pvt. Ltd., as part of the alleged *quid pro quo* deal, the petitioner was allotted the Vanpic Project. The said project was to develop two sea ports in Vadarevu and Nizampatnam.

18. The first part of the allegation as per the charge sheet is that the investments made by the petitioner are in the form of bribe to get government projects allotted in his favour.

Allotment of the Vanpic Project, the alleged misdeeds and the role of the petitioner herein

19. As stated above, the Vanpic Project concerned development of two sea ports in Vadarevu and Nizampatnam. It is alleged that the petitioner in conspiracy with the other accused obtained the project.

20. It is relevant to note that the project was allotted to Government of Ras Al Khaima [hereinafter 'RAK']. RAK is one of the seven emirates of the United Arab Emirates.

21. The allotment of the project began with one Mr. A.J. Jagannathan acting as the representative of RAK submitted an

expression of interest to develop the ports in Vodarevu and Nizampatanam. The expression of interest proposed the contract to be performed on a Government to Government (G2G) basis. Meaning that the contract/agreement was to be executed between the Government of RAK and Government of Andhra Pradesh.

22. It is alleged in the charge sheet that Mr. A.J. Jagannathan is connected to the petitioner herein. He was the director along with the petitioner in M/s Indu Projects Ltd.

23. After the submission of the expression of interest, the Government of Andhra Pradesh and Government of RAK signed an MOU dated 11.03.2008. The MOU provided that Government of RAK will be represented through RAK Investment Authority [hereinafter 'RAKIA']. The CEO of RAKIA was one Dr. Khater Massad.

24. The MOU also defined the scope of the project stating that the same includes development of integrated ports in Vodarevu and Nizampatnam; development of port-based industries consisting of port for handling bulk cargo, liquid cargo terminal, ship building industry, container terminal and port related industrial corridor. **As will be**

discussed *infra*, the scope also included construction of a port related industrial corridor.

25. The terms of the MOU stated that RAKIA has the necessary technical know-how to develop the project. It was also provided that RAKIA will partner with an Indian company to execute the project. It was stated that along with the Indian partner, RAKIA will form a Special Purpose Vehicle [hereinafter 'SPV'] to give effect to the project.

26. Dr. Khater Massad informed the Government of Andhra Pradesh that RAKIA chose M/s Matrix Enport Holdings Pvt. Ltd. (owned by the petitioner herein) as its Indian partner to develop the port. The charge sheet alleges that Dr. Khater Massad, CEO of RAKIA was acting in conspiracy with the petitioner and in furtherance of the said conspiracy the petitioner's company was named as the partner to develop the project.

27. RAKIA and M/s Matrix Enport Holdings Pvt. Ltd., entered into agreements to create an SPV and an SPV by the name of Vanpic Ports Pvt. Ltd. was created by RAKIA and M/s Matrix Enport Holdings Pvt. Ltd. 51% of the shares in Vanpic Ports Pvt. Ltd. were

owned by RAKIA and 49% were owned by M/s Matrix Enport Holdings Pvt. Ltd. It is alleged that, despite the terms of the MOU which provided that the SPV should be in control of RAKIA, 74% of the equity in the SPV vested in M/s Matrix Enport Holdings Pvt. Ltd., which is owned by the petitioner herein. Further, the agreement between RAKIA and M/s Matrix Enport Holdings Pvt. Ltd. provided that RAKIA cannot transfer any shares in the SPV without the consent of M/s Matrix Enport Holdings Pvt. Ltd. However, M/s Matrix Enport Holdings Pvt. Ltd. did not require consent of RAKIA. Likewise, the petitioner herein had the majority votes (03 out of 04 directors were to be nominated by the petitioner) and was in total control of the board of the SPV (Vanpic Ports Pvt. Ltd.). **Therefore, it is alleged that the petitioner herein through his company M/s Matrix Enport Holdings Pvt. Ltd. retained control of the SPV which was supposed to execute the project of developing the port.**

28. After the creation of the SPV (Vanpic Ports Pvt. Ltd.), a draft concession agreement was prepared. On 19.06.2008, a Note was circulated by Accused No. 6 (Mr. K.V. Brahmananda Reddy) stating that the draft concession agreement was in line with other concession agreements dealing with various ports in the State. Based

on the Note prepared by Accused No. 6, a Cabinet Memorandum was prepared and placed before the Council of Ministers, which in turn approved the draft concession agreement.

29. It is alleged that the petitioner herein in connivance and conspiracy with Accused Nos. 4, 5, 6, and 7 failed to bring the following aspects of the concession agreement before the Council of Ministers:

- Ports, power plants and industrial corridors are proposed to be developed by different SPVs;
- Only two ports are to be developed on BOOT model by the SPV 'M/s Vanpic Ports Pvt. Ltd.'
- Power plants are proposed to be developed by 'Genexx Enpower Corporation Pvt. Ltd.;
- Industrial corridor is to be developed by 'Matrix Enport Holdings Pvt. Ltd.', a private company exclusively owned by Sri Nimmagadda Prasad;
- Requirement of about 27,257.33 acres of land proposed for the entire project as per the Initial Master Plan;
- Cost of port lands to be initially borne by the company and would be adjusted later against concession fee payable to Government.

30. After the approval of the Council of Ministers, a Concession Agreement dated 11.07.2008 was entered into between Government of Andhra Pradesh and the SPV (Vanpic Ports Pvt. Ltd.).

31. As stated above, the allegation is that, the approval of the Concession Agreement was obtained fraudulently. It is alleged that the Concession Agreement included terms which gave more control to the petitioner and his company M/s Matrix Enport Holdings Pvt. Ltd. For instance, the Concession Agreement stated that different SPVs will develop various parts of the project like power plants and industrial corridors. M/s Matrix Enport Holdings Pvt. Ltd., the company of the petitioner, was named as the SPV to develop the industrial corridor. Likewise, M/s Gennexx Enpower Corporation Ltd. was named as the SPV to develop a power plant forming part of the Vanpic Project. Therefore, it is alleged that, neither M/s Matrix Enport Holdings Pvt. Ltd. nor M/s Gennexx Enpower Corporation Ltd. were SPVs with RAKIA holding 51% shareholding. The same is contrary to the MOU dated 11.03.2008. The detailed allegations in this regard are stated from paragraph 37 to paragraph 47 of the charge sheet.

32. Another allegation pertaining to the Concession Agreement is that the Build-Operate-Own-Transfer [hereinafter 'BOOT'] model is applicable only to the development of two ports. The effect of the said clause was that the remaining development activity (industrial corridor and power plant) would be owned by the other companies

(M/s Gennexx Enpower Corporation Ltd., and M/s Matrix Enport Holdings Pvt. Ltd.) developing them.

33. It is also alleged that by naming his company - M/s Matrix Enport Holdings Pvt. Ltd. as the SPV to develop the industrial corridor, the petitioner ensured that huge chunks of land were assigned to his company. As part of his criminal misdeeds, it is alleged that, the petitioner changed the name of his company - M/s Matrix Enport Holdings Pvt. Ltd. to M/s Vanpic Projects Pvt. Ltd. to get the lands acquired in his favour. In other words, in the name of development of the industrial corridor, the petitioner got allotted land in his company's name. To support his illegal action, he changed the name of the company to M/s Vanpic Projects Pvt. Ltd.

34. More than 15,000/- acres of land was allotted in favour of the petitioner's company to develop the industrial corridor. As the BOOT model was not made applicable to the industrial corridor, the result was that the petitioner's company became the owner of the said lands.

35. It is alleged that the development project was entrusted to Vanpic Ports Pvt. Ltd. which was an SPV comprising of RAKIA and

M/s Matrix Enport Holdings Pvt. Ltd. However, the petitioner and the companies promoted by him took over the project.

36. To sum up, the allegations against the petitioner are that he offered bribe in the form of investments in Mr. Y.S. Jagan Mohan Reddy's companies. In exchange, he was allotted the Vanpic Project. After allotment of the said project, he in conspiracy with other accused deceived the Council of Ministers and obtained a concession agreement favourable to him. He also fraudulently obtained land in his company's favour.

37. At this juncture, this Court clarifies that the above allegations only give a broader picture of the allegations against the petitioner. There are many minute details and facts in support of the allegations. For the sake of convenience, the allegations are not stated in detail. In any case, this Court feels that the above extracted allegations are sufficient to decide the present petition.

Contentions of the petitioner

38. The petitioner contends that he was falsely implicated. The investments made by him in Mr. Y.S. Jagan Mohan Reddy's

companies were genuine and cannot be equated to a bribe. Further, there is no proof of the alleged *quid pro quo* deal. Neither the petitioner nor his companies had any role to play in the MOU that was entered into by the Government of RAK and Government of Andhra Pradesh.

39. Petitioner's company was selected as the Indian partner within the four-corners of the MOU. The Concession Agreement was approved by the Council of Ministers after examining the clauses/terms mentioned therein. The petitioner had no role to play in the approval of the Concession Agreement. Therefore, it cannot be alleged that the petitioner Concession Agreement was approved fraudulently.

40. The cognizance order dated 13.09.2012 suffers from non-application of mind. No reasons were stated in the order. Further, the final report, statements of witnesses and connected material do not make out a *prima facie* case against the petitioner. The ingredients of the alleged offences are not satisfied.

41. Relying on **Arvind Kumar v. State of Rajasthan**¹ and **Kumar v. State**², the petitioner contended that the criminal proceedings against him are colourable and *mala fide*. Further, relying on **K.R. Purushothaman v. State of Kerala**³, the petitioner contended that no *prima facie* case was made out under the alleged offences.

Contentions of the prosecution/CBI

42. Reiterating and supporting the contents of the charge sheet, it was contended that a *prima facie* case is made out against the petitioner. The contentions raised by the petitioner are to be decided during trial and the power under Section 482 of CrPC cannot be exercised at this stage.

43. The cognizance order specifically records that all the relevant material was perused before passing the order. Therefore, it cannot be contended that there was non-application of mind.

Findings of the Court

¹. 2021 SCC OnLine SC 1099

². (2018) 7 SCC 536

³. (2015) 12 SCC 536

44. Before appreciating the contentions of the parties, it is appropriate to discuss the scope of power under Section 482 CrPC while dealing with an application to quash the criminal proceedings.

45. The Apex Court in **Amit Kapoor v. Ramesh Chander**⁴, after examining various precedents, laid down the following principles while dealing with an application to quash the entire criminal proceedings:

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic

⁴. (2012) 9 SCC 460

ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a

“civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal.

The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; *MadhavraoJiwajiraoScindia v. SambhajiraoChandr ojiraoAngre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] ; *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] ; *Rupan Deol*

Bajajv. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] ; *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] ; *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703] ; *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] ; *State of U.P. v. O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] ; *Ganesh Narayan Hegde v. S. Bangarappa* [(1995) 4 SCC 41 : 1995 SCC (Cri) 634] ; *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] ; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869] ; *Shakson Belthissor v. State of Kerala* [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412] ; *V.V.S. Rama Sharma v. State of U.P.* [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356] ; *Chunduru Siva Ram Krishna v. Peddi Ravindra Babu* [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297] ; *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82] ; *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] ; *Lalmuni Devi v. State of Bihar* [(2001) 2 SCC 17 : 2001 SCC (Cri) 275] ; *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] ; *Savita v. State of Rajasthan* [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and *S.M. Datta v. State of*

Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] .]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

46. As can be seen from the above decision, the scope to quash criminal proceedings is extremely limited. The Court only needs to see if the collected material and the allegations in the charge sheet make out a *prima facie* case. The validity, admissibility, relevancy of the material cannot be gone into by the Courts while dealing with an application to quash the criminal proceedings. A roving inquiry and a mini-trial are proscribed. Unless, the continuation of the prosecution will result in abuse of process, the Courts shall favour the continuation of prosecution. It is important to stress that once the prosecution lays

down a factual foundation against the accused, the Courts shall leave such facts to be determined during trial.

47. In **CBI v. Aryan Singh**⁵, the Apex Court held that even where it is alleged that the initiation of criminal proceedings is malicious, the Courts shall leave it for the trial court to decide the question of malice. Further, the Apex Court reiterated that evidence cannot be appreciated under Section 482 CrPC. The relevant paragraphs are extracted below:

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. **The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are**

⁵. 2023 SCC OnLine SC 379

required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

11. One another reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been charge sheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be

considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.”

48. Now coming to the case at hand, we have heard the learned senior counsel appearing for the petitioner at length. The issues raised on behalf of the petitioner mostly dealt with factual aspects which require trial.

49. The contention that the investments were *bona fide* and cannot be treated as a bribe needs examination. The charge sheet alleges that even before the petitioner’s company was announced as RAKIA’s investment partner, the petitioner was present during the signing of the MOU. The question whether he was present and

whether his presence shows his involvement as part of the *quid pro quo* deal can only be decided during the trial.

50. Another main contention of the petitioner was that the allotment of the Vanpic Project was as per the MOU and the subsequent allotment of land to his company was as per the Concession Agreement. These allegations involve a trial as they deal with the interpretation of the MOU and the Concession Agreement.

51. Likewise, the allegations are not just restricted to the alleged financial misdeeds in the Vanpic Project. The allegations also include payment of bribes and investments in multiple companies. As stated in the charge sheet, the petitioner is also accused of investing in other companies of Y.S. Jagan Mohan Reddy. The petitioner only states that investments were genuine. Whether the allotment of Vanpic Project and the lands in Shamshabad were mere coincidence or part of a larger criminal conspiracy is to be decided during trial.

52. There is a *prima facie* case is made out against the petitioner herein which requires a trial. Therefore, the contention that the criminal proceedings are *mala fide* cannot be accepted. Likewise,

the petitioner's contention that the ingredients of the alleged offences are not satisfied is liable to be rejected.

53. The other contention raised by the petitioner was that he cannot be made an accused for the illegal acts of the company. He relied on **Sunil Bharti Mittal v. Central Bureau of Investigation**⁶. According to this Court, the said contention is misconceived and the reliance on **Sunil Bharti Mittal (supra)** is misplaced. In **Sunil Bharti Mittal**, the Apex Court held that there can be no automatic fastening of criminal liability for the acts of a company. However, where there are specific allegations against the person at the helm of the company, he/she can be made an accused. The relevant paragraphs are extracted below:

“42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal

⁶. (2014) 4 SCC 609

jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in

which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241], the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent,

that is to be imputed to the body corporate and not the vice versa. **Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.**”

54. As noted above, there are specific allegations against the petitioner. The role of the petitioner and his alleged criminal acts can only be determined during trial. Therefore, the petitioner cannot contend that for the wrongs of the company, he cannot be arraigned as an accused.

55. It was also contended that the cognizance order was passed without application of mind and the same was devoid of reasons. The said contention is liable to be rejected as the order records that the material placed before it was perused. It is trite that while taking cognizance, a detailed-reasoned order is not necessary. In **State of Gujarat v. Afroz Mohammed Hasanfatta**⁷, the Apex Court held as follows:

“23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage

⁷. (2019) 20 SCC 539

of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. **In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the**

accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file.”

56. The decision in **Afroz Mohammed Hasanfatta (supra)** was followed and reiterated by a full bench in **Pradeep S. Wodeyar v. State of Karnataka**⁸. The Court held as follows:

“108.5. It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no “failure of justice” under Section 465CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465CrPC.

108.8. Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that

⁸. (2021) 19 SCC 62

the Special Judge has applied his mind to the material.”

57. Lastly, during the course of the hearing, it was brought to the notice of this Court that in a connected criminal petition i.e., CRLP No. 8113 of 2021 filed by M/s Vanpic Projects Pvt. Ltd., the criminal proceedings were quashed *vide* order dated 28.07.2022. It is pertinent to note that in the cognizance order as well as the charge sheet, M/s Vanpic Projects Pvt. Ltd. was noted as Accused No. 10 and was also noted to be represented by the petitioner herein. It is the same company which was earlier named as M/s Matrix Enport Holdings Pvt. Ltd. However, the co-ordinate bench noting that M/s Vanpic Projects Pvt. Ltd. was being represented by its chairman quashed the criminal proceedings noting that there cannot be any automatic fastening of criminal liability. The order in CRLP No. 8113 of 2021 was challenged in SLP (Crl.) No. 2099/2023 and the same is pending.

58. In any case, the said order in Crl.P. No. 8113 of 2021 stands on a different footing and cannot be used by the petitioner herein. As stated above, there are specific allegations against the petitioner which are to be determined in trial.

59. In light of the above discussion, the present criminal petition is liable to be dismissed and is accordingly dismissed.

60. At this juncture, Mr. T. Niranjan Reddy, learned Senior Counsel representing Mr. T. Nagarjuna Reddy, learned counsel for the petitioner, seeks liberty to file discharge petition and let the trial Court decide the same without being influenced by any of the observations made by this Court in the present criminal petition. In the light of the same, the petitioner is at liberty to file discharge petition and learned trial Court shall decide the same in accordance with law and without being influenced by any of the observations made by this Court in the present criminal petition.

As a sequel thereto, miscellaneous petitions, if any, pending in the criminal petition shall stand closed.

8th July, 2024
Mgr

K. LAKSHMAN, J