# **IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**[S.C.R., Order XXII Rule 2(1)]**

**SPECIAL LEAVE PETITION (CRL.) NO.\_\_\_\_\_\_\_\_\_OF 2023**

**(Under Article 136 of the Constitution of India)**

(Against the Final Judgment and Order dated 13.10.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Criminal Revision Petition No.298 of 2014 - APPEALLED FROM)

**(WITH A PRAYER FOR INTERIM RELIEF)**

**IN THE MATTER OF:**

Sri Joy Panakkal …Petitioner

Versus

The State of Karnataka by CBI, SPE, Bangalore …Respondent

**WITH**

**CRL.M.P. NO. OF 2023**

**APPLICATION FOR EXEMPTION FROM SURRENDERING**

**P A P E R - B O O K**

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**ADVOCATE FOR THE PETITIONER: M/S AP&J CHAMBERS**

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**SYNOPSIS**

That the present Special Leave Petition impugns the Final Judgment and Order dated 13.10.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in CRP No.298 of 2014 whereby the Hon’ble High Court has dismissed the revision petition of the Petitioner and affirmed the conviction of the Petitioner u/s 120-B, 420, 468 and 471 of IPC and sentencing him for one-year simple imprisonment.

The Respondent has alleged that the Petitioner has caused a financial loss of Rs.2,87,900/- to Canara Bank (“**Bank**”) by aiding the directors (Accused No. 1 & 2) of a company named M/s Betamatix Private Limited (“***Company/BMP***”) to avail funds from credit limits sanctioned to the Company, by discounting three bills of supply/Hundis which were not backed with a genuine commercial transaction.

That the Petitioner would like to assert that the Impugned Order is erroneous, improper and opposed to the law for the following:

1. **PROSECUTION WAS VITIATED AS THE COMPANY WAS NOT ARRAYED AS ACCUSED**
2. It is submitted that the Hon’ble High Court in the Impugned Order has erred in holding that “*the offences were not committed by the company but the petitioners using their good office as directors have cheated the Bank but the company has not cheated*” thus the impleadment of the Company as accused would not be required. It is submitted that said finding is directly contrary to the alter ego principle laid by this Hon’ble Court in the catena of judgment as stated below.
3. It is submitted that the Company was the sole beneficiary of the monies received from the Bank, as the credit limit was sanctioned to the Company by the Bank and the funds were credited to the account of the Company, on discounting of the bills which the Respondent claims were false. There is no evidence on record which indicates that the said funds were ever transferred from the accounts of the Company to the Petitioner or that the Petitioner benefited from it.
4. It is submitted that the said finding of the Hon’ble High Court is directly contrary to the judgement of this Hon’ble Court, ***Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781***, wherein it is categorically held that principally the allegations are against the company and when a company has not been arrayed as a party, no proceeding can be initiated.
5. Furthermore, the findings are also directly contrary to the principle laid down by this Hon’ble Court in ***Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609*** wherein it is held that:
6. The person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as “alter ego” of the company. *(****Refer Para 40)***
7. 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 vice versa. *(****Refer Para 44).***
8. **INGREDIENTS OF THE ALLEGED OFFENCES NOT MET**
9. It is submitted that it is the case of the Respondent that the Company discounted 11(eleven) bills of supplies endorsed by the Petitioner, for the supply of computer equipment by the Company to its firm, namely M/s Advance Communication System, out of which only three were dishonoured and remaining were paid by the Petitioner. The following bills of were discounted:

|  |  |  |  |
| --- | --- | --- | --- |
| **S No.** | **Bill No.** | **Date of Discounting** | **Bill Amt.** |
| **1** | 1675/87 | 3-4-1987 | Rs.1,02,544 |
| **2** | 1076/87 | 3-4-1987 | Rs.1,25,528 |
| **3** | 1767/87 | 16-4-1987 | Rs.1,02,544 |
| **4** | 1768/87 | 16-4-1987 | Rs.1,02,544 |
| **5** | 1914/87 | 25-5-1987 | Rs.1,17,000 |
| **6** | 2137/87 | 20-6-1987 | Rs.1,02,000 |
| **7** | 2138/87 | 20-6-1987 | Rs.1,08,726 |
| **8** | 2576/87 | 19-8-1987 | Rs.1,05,105 |
| **9** | 1643/88 | 22-2-1988 | Rs.1,05,300 |
| **10** | 1641/88 | 22-2-1988 | Rs.1,15,700 |
| **11** | 1642/88 | 22-2-1988 | Rs.99,060 |

1. The Respondent alleges that the Petitioner had dishonoured only three bills, bearing no. 1643/88, 1641/88, 1642/88 and causing a total sum of Rs.2,87,900/- to the Bank, for which he had also issued three Hundis (***Refer: Annexure- No.P/3)***. It is submitted that the Petitioner Ld. Courts below have failed to appreciate that the Petitioner had paid the amounts due under the said bill which is categorically noted in the prosecution’s Exhibits no. P151-P153 (***herein Annexure No. P/2)***.
2. It is submitted that said exhibits are the invoices of the Company, which bear an endorsement “*Payments received pay to Canara Bank, Cantonment Branch”.* This clearly indicates that the amounts were paid by the Petitioner to the Company and the Company had received the amount in order to pay the same to the Canara Bank towards amounts due in Hundis and thereby the liability on the said Hundis were duly discharged.
3. It is also submitted the Ld. Courts below have failed to appreciate that the Manager of the Inspection wing of the Bank had prepared a report indicating the list of outstanding bills discounted by the Company and the same was filed as ***Exhibit D-69 (****Refer Annexure- P/6)*. From mere perusal of the said report, it is categorical that no bill which was endorsed by the Petitioner is pending. The Ld. Sessions Court despite noting the said report ***(in para 76 of Annexure-P/10)*** that the only bills executed by other companies are pending, failed to appreciate that consequently the Petitioner cannot be held liable for financial loss caused to the Bank. It is also apposite to mention that there were civil proceedings against the Company by the Bank for recovery of the alleged loss amount and majority of which has already been recovered. Thus, even if there was any wrongful loss caused to the bank, the same stands paid
4. Without prejudice to the above it is submitted that the Petitioner cannot be held liable for cheating u/s 420 of IPC, as it is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation and failure to keep promise subsequently, such a culpable intention cannot be presumed. (Ref: ***Hira Lal Hari Lal Bhagwati [Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257*** and ***V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78***]. In the instant case, the Petitioner had admittedly honoured at least 8 out of 11 bills, thus the Petitioner cannot be said to have the intention to cheat from the inception and the failure of the Petitioner to honour the bill of exchange would only lead to civil liability.
5. It is further submitted that the Petitioner cannot be held liable u/s 471 of IPC, in the absence of conviction and/or affirmative finding under section 464/470 of IPC as held by this Hon’ble Court in **Deepak Gaba v. State of U.P., (2023) 3 SCC 423**, wherein it is held that “*24. Unless the document is false and forged in terms of Sections 464 and 470IPC respectively, the requirement of Section 471IPC would not be met*.” Admittedly, the Ld. Trial Court has not given any finding under section 464/470 of IPC, thus the Petitioner’s conviction u/s 471 of IPC is bad in law.
6. It is submitted that the Ld. Courts below have erroneously relied upon the testimonies of PW 2, PW 3, PW 4, PW 5, PW 6, PW 15, PW16, PW17 and PW 18, as they were not the independent witnesses and if their testimonies are to be accepted, they are not impartial witnesses but potentially involved in the crime itself. Therefore, it's crucial to have corroborating evidence supporting their statements. None of the witnesses' testimonies have been supported by documents. The Respondent has failed to corroborate the testimonies of these witnesses.
7. It is submitted that Ld. Courts have erroneously shifted the burden of proof on the Petitioner in a Criminal Law, and failed to draw adverse inference against the prosecution when they rely on enquiry report of Vigilance Department of Canara Bank and admit such reports in their custody and failed to place the said report deliberately before the Courts below
8. **PLEA FOR PROBATION UNDER SECTION 3 AND 4 OF THE PROBATION OF OFFENDERS ACT 1958 R/W SECTION 360 OF CRPC**
9. Without prejudice to the abovementioned grounds, the Petitioner would like to humbly pray before this Hon’ble Court to be released on probation under ***Section 3 and 4 of the Probation of Offenders Act 1958 r/w section 360 of CrPC***. In this regard, it is pertinent to mention that the Petitioner is 78 years old and is a retired Indian Naval Officer, who had served during the 1971 war against Pakistan and was awarded with Pashim Star Award by the Hon’ble President of India for his meritorious service. Currently, the Petitioner is looking after his 83-year-old wife, who will be left without support if the Petitioner is sent for imprisonment as they do not have any dependent to look after.
10. The Petitioner is also suffering from several critical ailments, like diabetes (requires insulin shots 4 times a day), hypertension (under constant medication for 15 years), vertigo (under medication) and other orthopaedic ailments. The Petitioner has a history of having undergone angioplasty surgery and requires urgent surgery for prostate gland enlargement, knee replacement and cataracts.
11. The Petitioner is a law-abiding citizen, with no other antecedents, criminal complaints or cases against him. Since the filing of the present criminal case, the Petitioner has been granted bail and has consistently adhered to all the conditions set forth by the court. This steadfast compliance serves as a testament to the Petitioner's unwavering commitment to upholding the law and fully cooperating with the legal proceedings.
12. Thus, having regard to the circumstances of the case including the nature of the offence and the character of the Petitioner, it is expedient to release him on probation of good conduct and shall be released on his entering into a bond, with or without sureties.
13. Furthermore, to express the bona fide and also give the fact the conviction is done on allegations which are primarily of a civil nature, the Petitioner, if directed would be glad to deposit the amount of Rs. 2,87,900/- before this Hon’ble Court.

Hence, the present Special Leave Petition.

**LIST OF DATES AND EVENTS**

|  |  |
| --- | --- |
| **DATES** | **EVENTS** |
| **1984-1985** | M/s. Betamatix Private Limited (“Company”) a company involved in manufacturing electronic items and computer components, opened a current account with the Cantonment Branch of Canara Bank. Thereafter, the Bank sanctioned the credit limits to the Company, for bill discounting of supply bills. A true copy of the sanction memorandum dated 11.06.1985 issued by Canara Bank is attached herein and marked as **ANNEXURE-P/1 (Pgs. To ).** |
| **1987-1988** | The Petitioner had a proprietorship firm, namely M/s Advance Communication Systems (“**ACS**”), vide which the Petitioner used to assemble and supply computers after procuring them from various sources, including the Company. During the years 1987-1988, the Company supplied various goods to ACS and the following bills of supplies were discounted by the Company to the Bank:   |  |  |  |  | | --- | --- | --- | --- | | **S No.** | **Bill No.** | **Date of Discounting** | **Bill Amt.** | | **1** | 1675/87 | 3-4-1987 | Rs.1,02,544 | | **2** | 1076/87 | 3-4-1987 | Rs.1,25,528 | | **3** | 1767/87 | 16-4-1987 | Rs.1,02,544 | | **4** | 1768/87 | 16-4-1987 | Rs.1,02,544 | | **5** | 1914/87 | 25-5-1987 | Rs.1,17,000 | | **6** | 2137/87 | 20-6-1987 | Rs.1,02,000 | | **7** | 2138/87 | 20-6-1987 | Rs.1,08,726 | | **8** | 2576/87 | 19-8-1987 | Rs.1,05,105 | | **9** | 1643/88 | 22-2-1988 | Rs.1,05,300 | | **10** | 1641/88 | 22-2-1988 | Rs.1,15,700 | | **11** | 1642/88 | 22-2-1988 | Rs.99,060 |   It is admitted position that the Petitioner had honoured the bill of supplies, mentioned s.no. 1 to 8. However, the Respondent alleges that the Petitioner had dishonoured three bills, bearing no. 1643/88, 1641/88, 1642/88 and causing a total sum of Rs.2,87,900/- to the Bank, for which the Petitioner had also issued three Hundis (bearing no. 22/1987-88, 21/1987-88 & 23/1987-88). It is submitted that the Petitioner had paid the amounts due under the said bill which is categorically noted in the prosecution’s Exhibits no. P151-P153.  A true copy of bills, bearing no. 1643/88, 1641/88 and 1642/88 is attached herewith and marked as **ANNEXURE-P/2 (Pgs. To )**  A true copy of the hundis bearing no. 22/1987-88, 21/1987-88 & 23/1987-88 is attached herewith and marked as **ANNEXURE-P/3 (Pgs. To )** |
| **23.10.1991** | The Respondent registered a first information report, bearing no. BC.28 (S)/91, alleging that the Company has availed the benefit of credit limit by discounting various false bills and had caused financial loss to the Bank and thus liable for the offence under sections 120B, 420, 468 & 471 of IPC A true copy of the first information report, bearing no. BC.28 (S)/91 is attached herewith and marked as **ANNEXURE-P/4 (Pgs. To )** |
| **1995** | Thereafter, the Respondent filed a criminal complaint, bearing no. 2126/1995, against the directors of the Company and the Petitioner. Basis which the following charges were framed for the offences under Sections 120B, 420, 468 & 471 of IPC against the accused persons. It was alleged that Accused 1 and 2 ( i.e. the Directors of the Company) had forged bills of exchange to dishonestly induce the Bank to part with their funds. It was alleged that Accused 3 and 4 have abetted and conspired with Accused Nos.1 and 2 for committing offences punishable under Section 120B r/w 420, 468 and 471 of IPC. It was alleged that Accused No. 4 opened four fictitious accounts which were utilized to siphoning of the funds.  It is pertinent to mention that it is categorically noted from the charges framed against the Petitioner that the Bank had debited the liability corresponding to the dishonoured bills from the account of the Company, thus in the event of recovery of the amount, the allegation of causing financial loss to the Bank is untenable and bad in law.  A true copy of the charges in Criminal Complaint bearing CC No. 2126/1995, before the Court of the I Additional Chief Metropolitan Magistrate Bangalore is attached herewith and marked as **ANNEXURE-P/5 (Pgs. To ).** |
| 1995 to 2009 | To prove the guilt of the accused persons, the Respondent examined witnesses as PW1 to PW23 and placed reliance on Ex.P1 to Ex.P207. Accused persons got examined and placed reliance upon Ex.D1 to Ex.D114. From the said exhibits it is pertinent to highlight the following relevant exhibits:  **Exhibits no. P151-P153:** It is submitted that said exhibits are the invoices of the Company, which bear an endorsement “*Payments received pay to Canara Bank, Cantonment Branch”.* This indicates that the amounts were paid by the Petitioner to the Company and the Company had received the amount in order to pay the same to the Canara Bank towards amounts due in Hundies as and thereby the liability on the said Hundies were duly discharged.  **Exhibit D-69:** The manager of the Inspection Wing of the Bank had prepared a report indicating the list of outstanding bills discounted by the Company and the same was filed as Exhibit D-69. From mere perusal of the said report, it is categorical that no bill which was endorsed by the Petitioner is pending. The Ld. Trial Court despite noting as per the said report only bills executed by other companies are pending, failed to appreciate that consequently the Petitioner cannot be held liable for financial loss caused to the Bank.  A true of the list of outstanding Supply Bills Discounted by M/s Betamatix Private Limited, filed before Ld. Trial Court as Exhibit -D-69 is attached herewith and marked as **ANNXURE-P/6 (Pgs. To ).**  A true copy of the written arguments filed by the Petitioner in the Court of XVII Additional Chief Metropolitan Magistrate at Bangalore is attached herewith and marked as **ANNXURE-P/7 (Pgs. To ).** |
| 19.11.2009 | That the Ld. XVII Additional Chief Metropolitan Magistrate Bangalore vide its order dated 19.11.2009 in in CC No.2126 of 1995 passed the order of conviction and sentence against the Petitioner. A true copy of the order dated 19.11.2009 passed by the Ld. XVII Additional Chief Metropolitan Magistrate Bangalore in CC No.2126 of 1995 is annexed herewith and marked as **ANNEXURE-P/8 (Pgs. To ).** |
| 2009 | That aggrieved by the order dated 19.11.2009 passed by the Ld. XVII Additional Chief Metropolitan Magistrate Bangalore in CC No.2126 of 1995, the Petitioner herein preferred Criminal Appeal No.959 of 2009 before the Ld. XVIII Additional City Civil & Sessions Judge (Special Judge for CBI) Bangalore City. A true copy of the Criminal Appeal No.959 of 2009 filed by the Petitioner before the Ld. XVIII Additional City Civil & Sessions Judge (Special Judge for CBI) Bangalore City is annexed herewith and marked as **ANNEXURE-P/9 (Pgs. To ).** |
| 07.04.2014 | That the Ld. XVIII Additional City Civil & Sessions Judge (Special Judge for CBI) Bangalore City vide its order dated 07.04.2014 passed in Criminal Appeal No.959 of 2009 dismissed the appeal filed by the Petitioner and confirmed the judgment and order of conviction and sentence passed by the Ld. Magistrate. It is submitted that the Respondent’s case was primarily hinged upon the allegation that the A4 had opened fictitious accounts to siphon out the funds of the Bank. The Ld. Sessions Court had held that the claim of the prosecution is false and confirmed that all these accounts are genuine. Thus, Acquitted Accused No.4. Therefore, if the accounts opened for siphoning of the funds are genuine the plea of conspiracy does not survive and thus the Petitioner should also have been acquitted from the alleged offences.  A true copy of order dated 07.04.2014 passed by the Ld. XVIII Additional City Civil & Sessions Judge (Special Judge for CBI) Bangalore City. in Criminal Appeal No.959 of 2009 is annexed herewith and marked as **ANNEXURE-P/10 (Pgs. To ).** |
| 2014 | That aggrieved by the judgment and order dated 07.04.2014 passed by the Ld. XVIII Additional City Civil & Sessions Judge (Special Judge for CBI) Bangalore City, the Petitioner herein preferred Criminal Revision Petition No.298 of 2014 challenging the judgment of conviction and sentence dated 19.11.2009 and order dated 07.04.2014 confirming the judgment of conviction on the grounds stated in the petition. A true copy of the Criminal Revision Petition No.298 of 2014 filed by the Petitioner before the Hon’ble High Court of Karnataka at Bengaluru is annexed herewith and marked as **ANNEXURE-P/11 (Pgs. To )** |
| 13.10.2023 | The Hon’ble High Court of Karnataka at Bengaluru vide its final judgment and order dated 13.10.2023 dismissed the revision petition of the Petitioner in complete disregard of the contentions of the Petitioner herein. **(IMPUGNED ORDER)**. |
| 04.12.2023 | Hence, the instant Special Leave Petition. |

**‘A’**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CRL.) NO. OF 2023**

(Against the final Judgment and Order dated 13.10.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Criminal Revision Petition No.298 of 2014 – Appealed from)

**IN THE MATTER OF:**

Sri Joy Panakkal …Petitioner

Versus

The State of Karnataka by CBI, SPE, Bangalore …Respondent

**OFFICE REPORT ON LIMITATION**

1. The above Petition is within time.
2. The petition is barred by time and there is delay of NIL days in filing the same against final order dated 07.10.2023 and petition for Condonation of …Nil…… days delay has been filed.
3. There is delay of ………… days in refilling the petition and petition for Condonation of …… days delay in refilling has been filed.

(BRANCH OFFICER)

NEW DELHI

Date: 04.12.2023

**IN THE SUPREME COURT OF INDIA**

**(ORDER XXII RULE 2(1))**

**CRIMINAL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CRL.) NO. OF 2023**

**(Under Article 136 of the Constitution of India)**

**(WITH A PRAYER FOR INTERIM RELIEF)**

**IN THE MATTER OF**:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **IN THE**  **TRIAL COURT** | | **IN THE**  **HIGH COURT** | **IN THIS**  **HON’BLE COURT** | |
|  | Criminal Revision Petition No.298 of 2014 | | | | |
| SRI JOY PANAKKAL,  S/O P C OKKURU,  MAJOR,  R/O L-164,9TH MAIN,  10TH CROSS, LIC COLONY,  J.B NAGAR, HAL III STAGE,  BANGALORE – 75  KARNATAKA | Accused No.3 | Petitioner | | | Petitioner |
| VERSUS | | | | | |
| THE STATE OF KARNATAKA  BY CBI, SPE,  BANGALORE-560008  KARNATAKA | Complainant | Respondent | | | Contesting  Respondent |

THE PARTIES ARE SAME AS BEFORE THE HON'BLE HIGH COURT

To,

The Hon'ble Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India.

The Humble petition of the petitioner above named

**MOST RESPECTFULLY SHOWETH:**

1. That the present Special Leave Petition is against the final Judgment and Order dated 13.10.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Criminal Revision Petition No.298 of 2014 whereby the Hon’ble High Court has dismissed the revision petition of the Petitioner.
2. **QUESTIONS OF LAW:**
3. Whether the Hon’ble High Court failed to appreciate that criminal proceedings against the Petitioner was untenable and bad in law, in absence of arraying the Company as accused ?
4. Whether the Hon’ble High Court failed to appreciate that principal the allegations are against the Company and when the Company has not been arrayed as a party, no proceeding can be initiated ?
5. Whether the findings of the Hon’ble High Court are directly contrary to the principle laid down by this Hon’ble Court in **Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609** wherein it is held that where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not vice versa ?
6. Whether the Impugned Order is bad in law as it is directly contrary to principles laid down by this Hon’ble Court in **Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781** and ***Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609***?
7. Whether given the peculiar facts and circumstances given in this case, the Petitioner can be released on probation under section 3 and of the Probation of Offenders Act 1958 r/w section 360 of CrPC ?
8. Whether the Petitioner conviction u/s 471 of IPC is bad in law, in the absence of conviction and/or affirmative finding under section 464/470 of IPC as per ***Deepak Gaba v. State of U.P., (2023) 3 SCC 423*** ?
9. Whether the Ld. Courts below have failed to appreciate that the Petitioner had paid the amounts due under the said bill which is categorically noted in the prosecution’s Exhibits no. P151-P153 ?
10. Whether the Ld. Trial Court despite noting the said report that the only bills executed by other companies are pending, failed to appreciate that consequently to the said finding the Petitioner cannot be held liable for financial loss caused to the Bank ?
11. Whether the Courts below are right in shifting the burden of proof on the Petitioner in a Criminal Law, it is always for the prosecution to prove and establish the alleged offence of the Accused?
12. Whether the Ld. Courts below are right in stating about the vicarious liability on the Petitioner though the prosecution has not established their case beyond reasonable doubt, the vicarious liability unknown to Criminal Law?
13. Whether the Ld. Courts below failed to draw adverse inference against the prosecution when they rely on enquiry report of Vigilance Department of Canara Bank and admit such reports in their custody and failed to place the said report deliberately before the Courts below?

3. **DECLARATION IN TERMS OF RULE 2 (2):**

The Petitioner states that no other Petition seeking special leave to appeal has been filed by the Petitioner against the impugned order dated 13.10.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Criminal Revision Petition No.298 of 2014.

4. **DECLARATION IN TERMS OF RULE 4:**

The Petitioner states that the Annexures P/1 to P/11 produced along with the present Special Leave Petition are true and correct copies of their respective originals and formed a part of the record of the Court(s) below against whose Order/Judgment the leave to appeal is sought in the present Petition.

5**. GROUNDS:**

1. Because the Hon’ble High Court in the Impugned Order has erred in holding that “*the offences were not committed by the company but the petitioners using their good office as directors have cheated the Bank but the company has not cheated*” thus the impleadment of the Company as accused would not be required.
2. Because that said finding is directly contrary to the alter ego principle laid by this Hon’ble Court in the catena of judgment as stated below.
3. Because the Company was the sole beneficiary of the monies received from the Bank, as the credit limit was sanctioned to the Company by the Bank and the funds were credited to the account of the Company, on discounting of the bills which the Respondent claims were false. There is no evidence on record which indicates that the said funds were ever transferred from the accounts of the Company to the Petitioner or that the Petitioner was benefited from it.
4. Because the Hon’ble High Court is directly contrary to the judgement of this Hon’ble Court, ***Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781,*** wherein it is categorically held that principally the allegations are against the company and when a company has not been arrayed as a party, no proceeding can be initiated even where vicarious liability is fastened under certain statutes.
5. Because the findings are also directly contrary to the principle laid down by this Hon’ble Court in **Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609** wherein it is held that:
6. The person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as “alter ego” of the company. *(****Refer Para 40)***
7. 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 vice versa. *(****Refer Para 44).***
8. Because it is the case of the Respondent that the Company discounted the following 11(eleven) bills of supplies endorsed by the Petitioner, for the supply of computer equipment by the Company to its firm, namely M/s Advance Communication System, out of which only three were dishonoured and remaining were paid by the Petitioner:

|  |  |  |  |
| --- | --- | --- | --- |
| **S No.** | **Bill No.** | **Date of Discounting** | **Bill Amt.** |
| **1** | 1675/87 | 3-4-1987 | Rs.1,02,544 |
| **2** | 1076/87 | 3-4-1987 | Rs.1,25,528 |
| **3** | 1767/87 | 16-4-1987 | Rs.1,02,544 |
| **4** | 1768/87 | 16-4-1987 | Rs.1,02,544 |
| **5** | 1914/87 | 25-5-1987 | Rs.1,17,000 |
| **6** | 2137/87 | 20-6-1987 | Rs.1,02,000 |
| **7** | 2138/87 | 20-6-1987 | Rs.1,08,726 |
| **8** | 2576/87 | 19-8-1987 | Rs.1,05,105 |
| **9** | 1643/88 | 22-2-1988 | Rs.1,05,300 |
| **10** | 1641/88 | 22-2-1988 | Rs.1,15,700 |
| **11** | 1642/88 | 22-2-1988 | Rs.99,060 |

1. Because the Respondent alleges that the Petitioner had dishonoured three bills, bearing no. 1643/88, 1641/88, 1642/88 and causing a total sum of Rs.2,87,900/- to the Bank, for which he had also issued three Hundis. It is submitted that the Petitioner Ld. Courts below have failed to appreciate that the Petitioner had paid the amounts due under the said bill which is categorically noted from the prosecution’s Exhibits no. P151-P153.
2. Because the said exhibits are the invoices of the Company, which bear an endorsement “*Payments received pay to Canara Bank, Cantonment Branch”.* This clearly indicates that the amounts were paid by the Petitioner to the Company and the Company had received the amount in order to pay the same to the Canara Bank towards amounts due in Hundis as and thereby the liability on the said Hundis were duly discharged.
3. Because the Ld. Courts below have failed to appreciate that the Manager of the Inspection wing of the Bank had prepared a report indicating the list of outstanding bills discounted by the Company and the same was filed as Exhibit D-69. From the mere perusal of the said report, it is categorical that no bill which was endorsed by the Petitioner is pending. The Ld. Trial Court despite noting the said report that the only bills executed by other companies are pending, failed to appreciate that consequently the Petitioner cannot be held liable for financial loss caused to the Bank.
4. Because, and without prejudice to the above, the Petitioner cannot be held liable for cheating u/s 420 of IPC, as it is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation and failure to keep promise subsequently, such a culpable intention cannot be presumed. (Ref: Hira Lal Hari Lal Bhagwati [***Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257 and V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78]***.
5. Because in the instant case, the Petitioner had admittedly honoured at least 8 out of 11 bills, thus the Petitioner cannot be said to have the intention to cheat from the inception and the failure of the Petitioner to honour the bill of exchange would only lead to civil liability.
6. Because the Petitioner cannot be held liable u/s 471 of IPC, in the absence of conviction and/or affirmative finding under section 464/470 of IPC as held by this Hon’ble Court in Deepak Gaba v. State of U.P., (2023) 3 SCC 423, wherein it is held that “24*. Unless the document is false and forged in terms of Sections 464 and 470IPC respectively, the requirement of Section 471IPC would not be met.”* Admittedly, the Ld. The Trial Court has not given any finding under section 464/470 of IPC, thus the Petitioner’s conviction u/s 471 of IPC is bad in law.
7. Because the Ld. Courts below have erroneously relied upon the testimonies of PW 2, PW 3, PW 4, PW 5, PW 6, PW 15, PW16, PW17 and PW 18, as they were not the independent witnesses and if their testimonies are to be accepted, they are not impartial witnesses but potentially involved in the crime itself. Therefore, it's crucial to have corroborating evidence supporting their statements. None of the witnesses' testimonies have been supported by documents. The Respondent has failed to corroborate the testimonies of these witnesses.
8. Because, without prejudice to the abovementioned grounds, the Petitioner would like to humbly pray before this Hon’ble Court to be released on probation under section 3 and 4 of the Probation of Offenders Act 1958 r/w section 360 of CrPC. In this regard, it is pertinent to mention that the Petitioner is 78 years old and is a retired Indian Naval Officer, and is looking after his 83-year-old wife, who will be left without support if the Petitioner is sent for imprisonment as they do not have any dependent to look after. The Petitioner is also suffering from several critical ailments, like diabetes (requires insulin shots 4 times a day), hypertension (under constant medication for 15 years), vertigo (under medication) and other orthopedic ailments. The Petitioner has a history of having undergone angioplasty surgery and requires urgent surgery for prostate gland enlargement, knee replacement and cataracts. The summary of medical condition of the Petitioner is as follows:
9. The Petitioner, aged 78, and his wife, aged 83, are living alone and taking care of each other in their old age.
10. The Petitioner, who is a heart patient, and has a history of heart attacks and had also undergone angioplasty to address a blockage.
11. The Petitioner has been a diabetic for 28 years, and the condition is in an advanced stage, requiring insulin support. Insulin injections are administered four times per day.
12. The Petitioner has been dealing with hypertension for the past 15 years and is on heavy medication for it.
13. Due to severe wear and tear in the Petitioner's right knee, the Petitioner are unable to walk comfortably or perform daily activities without difficulty, for which surgery is required.
14. The Petitioner also experiences urinary problems due to an enlarged prostate gland, which requires surgery.
15. The Petitioner needs cataract surgery for their right eye
16. The Petitioner is also suffering from Vertigo, which causes constant neck pain and difficulty.
17. The Petitioner also suffers from spinal issues, resulting in constant pain and difficulty is walking.
18. Because the Petitioner is a law-abiding citizen, with no other antecedents, criminal complaints or cases against him. Since the filing of the present criminal case, the Petitioner has been granted bail and has consistently adhered to all the conditions set forth by the court. This steadfast compliance serves as a testament to the Petitioner's unwavering commitment to upholding the law and fully cooperating with the legal proceedings.
19. Because having regard to the circumstances of the case including the nature of the offence and the character of the Petitioner, it is expedient to release him on probation of good conduct and shall be released on his entering into a bond, with or without sureties.

6. **GROUNDS FOR INTERIM RELIEF:**

i. That the Petitioner has a good case on merits and;

ii. That thus the Petitioner has a good prima facie case in law and has every hope to succeed in the instant Special Leave Petition. That the balance of convenience is also in favour of the Petitioner, and the Petitioner would suffer grave hardship if the interim relief as prayed for is not granted.

iii. That it is pertinent to mention that the Petitioner is 78 years old and is a retired Indian Naval Officer, and is looking after his 83-year-old wife, who will be left without support if the Petitioner is sent for imprisonment as they do not have any dependent to look after. The Petitioner is also suffering from several critical ailments, like diabetes (requires insulin shots 4 times a day), hypertension (under constant medication for 15 years), vertigo (under medication) and other orthopedic ailments. The Petitioner has a history of having undergone angioplasty surgery and requires urgent surgery for prostate gland enlargement, knee replacement and cataracts.

iv. That therefore it is in the interests of justice that pending final disposal of the present SLP the Impugned Order may be stayed.

7. **MAIN PRAYER:**

It is most respectfully prayed that this Hon’ble Court may be pleased to:

1. Grant special leave to appeal the final Judgment and Order dated 13.10.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Criminal Revision Petition No.298 of 2014;
2. Pass any other or further orders as may be deemed fit and proper in the circumstances of the present case.

8. **PRAYER FOR INTERIM RELIEF:**

In the facts and circumstances mentioned above an in light of the grounds mentioned above, it is most respectfully prayed that this Hon’ble Court may kindly be pleased to:

1. Pending the hearing and final disposal of the present Special Leave Petition grant stay of the final judgment and order dated 13.10.2023 passed by the Hon’ble High Court of Karnataka at Bengaluru in Criminal Revision Petition No.298 of 2014;
2. Grant stay of the order dated 19.11.2009 passed by the Ld. XVII Additional Chief Metropolitan Magistrate Bangalore in CC No.2126 of 1995; and

(b) Pass any other orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

**DRAWN AND FILED BY:**

**DRAWN ON-15.11.2023 (M/S AP&J CHAMBERS)**

**FILED ON- 04.12.2023 ADVOCATE FOR THE PETITIONER**

**NEW DELHI**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CRL.) NO. OF 2023**

**IN THE MATTER OF:**

Sri Joy Panakkal …Petitioner

Versus

The State of Karnataka by CBI, SPE, Bangalore …Respondent

**CERTIFICATE**

“Certified that the Special Leave Petition is confined only to the court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon’ble Court. This certificate is given o the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.”

FILED BY:

**(M/S AP&J CHAMBERS)**

**ADVOCATE FOR THE PETITIONER**

**NEW DELHI**

**DATED: .12.2023**

**PROFORMA FOR FIRST LISTING**

SECTION:

The case pertains to (Please tick/ check the correct box):-

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| □ | Central Act: (Title) | | | INDIAN PENAL CODE, 1860 | | | | | | |
| □ | Section: | | | Sections 120B, 420, 468 & 471 | | | | | | |
| □ | Central Rule: (Title) | | | NA | | | | | | |
| □ | Rule No(s): | | | NA | | | | | | |
| □ | State Act: (Title) | | | NA | | | | | | |
| □ | Rule No(s): | | | NA | | | | | | |
| □ | Impugned Interim Order: (Date) | | | 13.10.2023 | | | | | | |
| □ | High Court: (Name) | | | THE HIGH COURT OF KARNATAKA AT BENGALURU | | | | | | |
| □ | Names of Judges: | | | Hon’ble Mr. Justice Rajendra Badamikar | | | | | | |
| □ | Tribunal/ Authority: (Name) | | | NA | | | | | | |
| 1. | Nature of matter: | |  | Criminal | | | | | | |
| 2.(a | Petitioner/ appellant No. | | | Sri Joy Panakkal | | | | | | |
| (b) | e-mail ID: | | | NA | | | | | | |
| (c) | Mobile phone number: | | | NA | | | | | | |
| 3.(a | Respondent: | | | The State of Karnataka by CBI, SPE, Bangalore | | | | | | |
| (b) | e-mail ID: | | | NA | | | | | | |
| (c) | Mobile phone number: | | | NA | | | | | | |
| 4.(a | Main category classification: | | | 14 | | | | | | |
| (b) | Sub classification: | | | 1408 Others | | | | | | |
| 5. | Not to be listed before: | | | NA | | | | | | |
| 6 | Similar/Pending matter: | | |  | | | | | | |
| (a) | Similar disposed of matter with Citation, if any, & case details | | | No similar disposed off matter | | | | | | |
| (b) | Similar pending matter with case details | | | No similar pending matter | | | | | | |
| 7. | Criminal Matters: | | | Yes | | | | | | |
| (a) | Whether accused/convict has surrendered: | | | | | | | YES |  | |
| (b) | FIR No. | RC.23(S) 91 | | | 28.10.1991 | | | | |  |
| (c) | Police Station: | | | | Bangalore Karnataka | | | | | |
| (d) | Sentence Awarded: | | | | 1 year | | | | | |
| (e) | Sentence Undergone: | | | | NA | | | | | |
| 8: | Land Acquisition Matters: | | | | | | | | | |
| (a) | Date of Section 4 notification: | | | | NA | | | | | |
| (b) | Date of Section 6 notification: | | | | NA | | | | | |
| (c) | Date of Section 17 notification: | | | | NA | | | | | |
| 9. | Tax Matters: State the tax effect: | | | | NA | | | | | |
| 10. | Special Category (first petitioner/appellant only): | | | | | | | | | |
|  | (i) [**X** ] Senior citizen | | | | | (ii) [**X** ] SC/ST | | | | |
|  | (iii) [ **X**] Woman/child | | | | | (iv) [**X** ] Disabled | | | | |
|  | (v) [**X** ] Legal Aid case | | | | | (vi) [**X** ] In custody | | | | |
| 11. | Vehicle Number (in case of Motor Accident Claim matters): | | | | | | NA | | | |
| (M/S AP&J CHAMBERS)  AOR FOR THE PETITIONER  CHAMBER NO.87, OLD LAWYERS CHAMBER,  SUPREME COURT, NEW DELHI-110001  NEW DELHI MOB:9999570591,  Date: 04.12.2023 Registration No.1552 | | | | | | | | | | |

**APPENDIX–1**:

True copy of Section 3 and 4 of Probation of Offenders Act, 1958

**Section 3:** Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition. Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

**Section 4:** Power of court to release certain offenders on probation of good conduct.—

[(1)](https://indiankanoon.org/doc/1828439/) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

[(2)](https://indiankanoon.org/doc/937408/) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

[(3)](https://indiankanoon.org/doc/810837/) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

[(4)](https://indiankanoon.org/doc/490161/) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

[(5)](https://indiankanoon.org/doc/1616052/) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

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**APPENDIX–2**:

True copy of Section 360 of the Code of Criminal Procedure, 1973

**Section 360:** Order to release on probation of good conduct or after admonition.

[(1)](https://indiankanoon.org/doc/387681/) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

[(2)](https://indiankanoon.org/doc/117606/) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

[(3)](https://indiankanoon.org/doc/1432169/) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860 ), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

[(4)](https://indiankanoon.org/doc/1694906/) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

[(5)](https://indiankanoon.org/doc/1336498/) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

[(6)](https://indiankanoon.org/doc/1410081/) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

[(7)](https://indiankanoon.org/doc/1669772/) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

[(8)](https://indiankanoon.org/doc/1980686/) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

[(9)](https://indiankanoon.org/doc/517132/) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

[(10)](https://indiankanoon.org/doc/67988/) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958 ), or the Children Act, 1960 (60 of 1960 ), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

**//TRUE COPY//**

**APPENDIX-3**

**True copy of Sections 120B, 420, 468, 471 of the Indian Penal Code, 1860**

**Section 120B:** Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

**Section 420:** Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person de­ceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Section 468:** Forgery for purpose of cheating.—Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either de­scription for a term which may extend to seven years, and shall also be liable to fine.

**Section 471:** Using as genuine a forged 1[document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record.

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