Smt. K.Ratna Prabha vs State Of Telangana Rep. By Its Special ... on 20 June, 2017

Author: B. Siva Sankara Rao

Bench: B. Siva Sankara Rao

HONBLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.143 of 2016

20-06-2017

Smt. K.Ratna Prabha Petitioner/A.1

State of Telangana rep. by its Special Standing Counsel ACB, Hyderabad & Another.Respond

Counsel for the petitioners:Sri T. Niranjan Reddy Sri T.Nagarjuna Reddy
Sri T.S.Anand
Sri T.Pradyumna Kumar Reddy
Sri Siddartha Luthra
Sri N.Naveen Kumar
Sri P.Sri Raghu Ram
Sri P.Sri Ram

Counsel for the respondents:Sri V. Ravi Kiran Rao
Sri G. Mohan Rao

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>HEAD NOTE:

? Cases referred
1. 2001(5)SCC 407
2. 2007(15)SCC 494
3. 1984(2)SCC 500
4. (2012) 3 SCC 64
5. 1995(1)SCC 684
6. 1989(1)SCC 715
7. 2013(10)SCC 705
8. AIR 1980 SC 1883
9. 1991 CRLJ 1069
10. AIR 1989 SC 885
11. 1997(2)SCC 397
12. 2002(9)SCC 709
13. AIR 2013 SC 3018=(2013) 8 SCC 83

14. CrI.P.No.4319 of 2015, dt.28-01-2016=2016(1)ALT.
15. CrI.P.No.5797 of 2015 & batch, dt.01-04.2016=2016(2)ALT(CRL)-165.
16. (2008)17 SCC 157
17. (2015) SCC online 151
18. (2010) 10 SCC 660
19. AIR 2005 SC 3512: (2005) 8 SCC 89
20. (2015) 4 SCC 609
21. CrI.P.No.7584 of 2015, dt.18-03.2016=2017(1)ALT(CRL)457.
22. [28] (2009)1 SCC 516; [29] 2008(5)SCC 662; [30] (2006) 10 SCC 581; [31] 2008 (5) 668; [32] 2007(3) SCC 693; [33] 2007(5) SCC 54; [34] 2005 4 SCC 70; [35] 1998(5) SCC 749; [36] (2009)6 SCC 475; [37] (2005)4 SCC 530; [38] 2007 (3) SCALE 245; [39] (2010)3 SCC 330; [40] (2011) 1 SCC 74; [41] (2015) 4 SCC 609; [42] (2012)5 SCC 661; [43] (2000)1 SCC 1; [44] (2008)13 SCC 703; [45] 1973 SCC 491; [46] (2014)10 SCC 373; [47] 2010(2) ALD (Crl.) 564 (SC); [48] AIR 2015 SC 675; [49] 2015(3) L.S 239; [50] (2013)4 SCC 505; [51] 2011 (13) SCC 412; [52] (2015)1 SCC 103; [53] (2014) 3 SCC 206; [54] (2012) 5 SCC 661; [55] (2011)1 SCC 74; [56] (2014)2 SCC 62; [57] (2005)1 SCC 568 & [58] 2009 CrLJ 822.
23. 2003(2) ALD (CRL). 905
24. 2004(7) SCC 338
25. (2007) 1 SCC 45
26. (2014) 14 SCC 155
27. AIR 1998 SC 128
28. AIR 1967 SC 1639
29. 1958 SCR. 1226
30. (1997) 4 SCC 241
31. (1980) 2 SCR 380=1980 (2) SCC 665
32. (1977) 4 SCC 551
33. 2016 SCC On-Line SC 905
34. (2013) 7 SCC 789
35. (2006) 7 SCC 296
36. AIR 1976 SC 1152
37. AIR 2003 SC 4482
38. (2009) 1 SCC 516
39. (2008) 2 SCC 705
40. (2005) 13 SCC 540
41. (1988) 1 SCC 692
42. 2005(1)SCC 122
43. 2012(9)SCC 460
44. 2014(6)SCC 495
45. (2009) 7 SCC 495
46. (1996) 5 SCC 591
47. (2015) 1 SCC 513
48. (2007) 12 SCC 1
49. 2013(10)SCC 591
50. AIR 1998 SC 2796
51. AIR 2000 SC 754
52. (2011) 12 SCC 437
53. 2008(14)SCC-1=AIR 2009 SC 1013
54. (2013)6 SCC 740
55. (1977) 3 SCR 113
56. AIR 1925 PC 1
57. AIR 1978 SC 1647
58. AIR 1989 SC 1137

59. 2005 10 SCC 228
60. (2005) 10 SCC 336
61. AIR 1974 SC 1811
62. (2009) 6 SCC 77
63. (2003) 3 SCC 11
64. 1991 SCC (Crl.) 84
65. (2014) 15 SCC 242
66. 2010 (10) SCC 361
67. 2000 (3) SCC 269
68. 2003 (5) SCC 257
69. AIR 1963 SC 1572
70. 1999 (2) SCC 617
71. (2009) 8 SCC 751
72. (2002) 1 SCC 241
73. (2014) 13 SCC 553
74. (1988) 1 SCC 692
75. (2006) 11 SCC 473
76. (2009) 15 SCC 200
77. AIR 1979 SC 826
78. AIR 1977 SC 822
79. AIR 1963 SC 1116
80. 2009 (8) SCC 617
81. [2006 (3) SCC 143]
82. [2007 AIR SCW 2532]
83. [1992 (4) SCC 54]
84. 2009 (6) SCC 587
85. 1952 ILR Bombay 900
86. 2009 (9) SCC 729
87. 2007 (1) SCC 1
88. (1995) 2 SCC 437
89. (2013) 1 SCC 205
90. (2016) 9 SCC 598
91. (2011) 7 SCC 141
92. (1998) 6 SCC 411
93. 2007 (1) SCC 49
94. (2006) 1 SCC 557
95. AIR (1988) SC 257
96. 1996 AIR 901=1996 SCC (1) 478
97. [2004] 2 SCC 349
98. [2004] 8 SCC 40
99. [2004] 8 SCC 31
100. 2016(2)SCC 143
101. AIR 1939 43
102. AIR 1948 128
103. AIR 1950 437
104. AIR 1951 207
105. AIR 1955 287
106. AIR 1955 309
107. AIR 1956 44
108. AIR 1960 266
109. AIR 1962 1573
110. AIR 1966 220
111. 1979 (4) SCC 177

112. 1984 (2) SCC 183
113. 1996 (1) SCC 478
114. 2000 (8) SCC 500
115. 2006 (1) SCC 557
116. 2006 (4) SCC 584
117. AIR 2001 SC 2547
118. (2012) 12 SCC 72
119. AIR 2016 SC 3014
120. (2009) 6 SCC 372
121. [2012] 5 SCR 599
122. [2014] 16 SCC 807
123. 2005(8)SCC 37
124. (2010) 14 SCC 527
125. 2015 (3) ALT (Crl.) 143 SC
126. (2012) 10 SCC 1
127. 1992(supp) 1 SCC 335 paras 102 & 103
128. 2000 2 SCC 57 paras 4-7
129. (2003) 3 SCC 11
130. (2014) 15 SCC 242
131. 2010 (10) SCC 361
132. 2000 (3) SCC 269
133. 2003 (5) SCC 257
134. AIR 1963 SC 1572
135. 1999 (2) SCC 617
136. (2009) 8 SCC 751
137. (2002) 1 SCC 241
138. (2014) 13 SCC 553
139. (1988) 1 SCC 692
140. 1995 Supp (3) SCC 333
141. SLP No.1565 of 2017, dt.04.01.2017
142. 2003(2) ALD (CRL). 905
143. 2004(7) SCC 338

HONBLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.143, 290, 291, 272, 273,

279 & 262 of 2016
COMMON ORDER:

The respective revision petitioners in the Crl.R.C.Nos.143, 290, 291, 272, 273, 279 & 262 of 2016 are the accused Nos.1 to 7 respectively of C.C.No.21 of 2015, by names Smt. K.Ratna Prabha, IAS, the then Principal Secretary, I T & C. Dept., Hyderabad(A.1), Sri M.Gopi Krishna, IPS, the then Special Secretary, I T & C. Dept., Hyderabad(A.2), Sri P.Satyanaraya Murthy, the then Joint Secretary, I T & C. Dept., Hyderabad(A.3), Sri B.P.Acharya, IAS, the then M D & V C, APIIC, Hyderabad(A.4), Sri Neil Raheja, M D, M/s. K.Raheja I T Park Pvt. Ltd.,(A.5) and Sri B.Rabindranath, Head, Raheja Mindspace, Hyderabad(A.6) and one Sri L.V. Subrahmanyam, IAS, the then M D & V C, APIIC, Hyderabad(A.7), the predecessor in Office to A.4. A.1 to A.4 and A.7 are all in service, but for A3 since retired.

2. The accused supra maintained the revisions by impugning the orders dt.30.12.2015 in Crl.M.P.No.447 of 2014, passed by the learned Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Courts, Hyderabad, (for short the Special Judge) by rejecting the closure final report dated 14.07.2014 against all the six accused of FIR, (A1-6 in crime No.6/CAN.CIU/HYD/2011, ACB, Hyderabad), and taken cognizance of the offences punishable against A1-4 and one Sri L.V. Subrahmanyam, IAS as A7 under Sections 13(1)(d) r/w. 13(2) of the PC Act and under Sections 420 and 409 read with 34 IPC and so far as against A5&6 under Section 12 of the PC Act and Sections 420 and 409 read with 34 IPC.

3. The crime No.6/CAN.CIU/HYD/2011,ACB, Hyderabad(supra), was registered on 22.02.2011 for the offences punishable under Sections 11, 12 & 13(1)(i)(d)(i),(ii) and (iii) of the Prevention of Corruption Act (for short PC Act) and Sections 420, 409, 427 read with Section 34 IPC based on a private complaint 31.01.2011 filed by the defacto complainant by name Sri T.Sriranga Rao, Advocate by profession of Barkatpura, Hyderabad, before the learned Special Judge, against A.1 to A.6 only. Same was referred by the learned Special Judge, u/s. 156(3) CrPC, on 19.02.2011 to the D.G. ACB, Hyderabad, with a direction to entrust the same to the concerned officer having jurisdiction and to submit a report.

4. The gist of the allegations in the original complaint in CCSR.No.108 of 2011, needful to refer is that:

> 4(a). The Govt. has allotted an extent of 110 acres at S.No.64(P) at Madhapur, Serlingampally Mandal of Ranga Reddy District to M/s. K. Raheja Corporation Pvt. Ltd., (for short Raheja), for development of Mind Space Hyderabad Project under a joint venture between Raheja and Andhra Pradesh Industrial Infrastructure Corporation,(for short APIIC). A Memorandum of Undertaking,(for short MOU) dated 19.05.2003, was entered between the Govt. through Information, Technology and Communications Department (for short ITCD) and Raheja. As per the MOU, a joint venture company,(for short JVC), was to be formed between the two parties in which the Govt., through APIIC shall hold an equity share of 11% and Raheja shall hold the balance 89%. As per the joint venture agreement(JVA) dated 23.08.2003, the authorized capital of the JVC shall be Rs.1crore, out of which both the parties contributed their respective shares. The APIIC transferred land admeasuring 890.31 square meters to the JVC towards its share contribution of 11%. The Govt. through APIIC transferred land to an extent of 109 acres at rate of Rs.50 lakhs per acre in favour of JVC. As per MOU, the JVC is entitled for rebate of Rs.20,000/-per every job created in the Mindspace Cyberabad Project either by the company directly or any of its occupants or its tenants and the duration of the project is for 10 years and at the end of 10 years, if the rebate amount to be paid is equal or more of the land cost, in that case the JVC is not required to pay any amount towards the cost of the land. The Govt. at the same location in the year 2003 allotted land to software companies at price ranging from Rs.1.5 crore to Rs.2.5 crore per acre without calling for any tenders or applications from the prospective developers or IT Companies. In May 2005, Raheja proposed to increase its equity capital of the JVC from Rs.1 crore to

Rs.20 crores in order to avail finance from the Banks etc. and the APIIC was requested further to contribute an amount of Rs.2.09 crores towards its share of 11%. The APIIC in turn addressed a letter dated 12.05.2005 to the Principal Secretary to the Govt., ITCD informing their proposal to transfer land at Nanakramguda to the JVC towards the APIICs contribution of Rs.2.09 crores.

4(b). It is averred that as on that date, though an amount of Rs.31,09,42,568.60(Thirty one crores nine lakhs forty two thousands and five hundred and sixty eight rupees and sixty paisa only) liquid cash was available in the account of the APIIC, it was in pursuance of conspiracy hatched by all the accused and to cheat the Govt., a letter was addressed to the Govt. seeking their permission to transfer the land at Nanakramguda in favour of M/s K.Raheja IT Parks Ltd., towards the APIICs share contribution of Rs.2.09 crores for the proposed hike in the share capital of the JVC instead of transferring the amount. It is also averred that in view of the deal struck with Sri Neil Raheja(A.5), Managing Director of K.Raheja Corp., and Sri Rabindranath(A.6), Head, Mindspace Project, with the officials of the APIIC and the ITCD, the accused officials of ITCD i.e. A.1 to A3, instead of placing the file before the Chief Secretary, concerned Minister and the Chief Minister, directed the APIIC to restrict their share to 0.55% only from the existing 11%. By this the Govt. suffered massive loss of Rs.500 Crores and an equal gain of Rs.500 Crores to Sri Neil Raheja and his company by the not investing of the Rs.2.09Crores. It is averred that the Govt. transferred an extent of Ac.110 prime land located at Sy.No.64(P) of Madhapur village, Serlingampally Mandal in Ranga Reddy District in favour of the JVC and the present value of the land itself is about Rs.3,000/-Crores. On said land, the JVC has constructed, as on today, 11 buildings for the IT purpose, one five star hotel by name and style Westin and one Maal by name and style Inorbit Maal with a built up space of 60 lakh square feet and four IT buildings with a built-up space of 17 lakh square feet also nearing completion and besides this, the JVC also developed an IT Special Economic Zone of 15 lakh square feet. The total assets, including the land and built up area as on today is over Rs.6,000/- Crores. The JVC is getting a rental income of Rs.30 Crores per month=Rs.360/-Crores per year. The Inorbit Maal with a proposed eight cinema theatres is run by the JVC only and separate income is received through said activity. If the APIICs share maintained at 11%, the value of the share would have been more than Rs.500 Crores.

4(c). It is averred that when letter dated 12.05.2005 of the APIIC is pending with the Govt., A.6 on 14.12.2005 addressed a letter to A.1, the then Secretary of the ITCD, informing the Govt. that despite the reduction of APIICs share percentage in the equity share capital of the company, they are willing to appoint one Director from APIIC on the Board of the company till such time as APIICs shareholding does not reduce below 0.55% of the equity capital of the company. In said letter, there is a reference to the discussion and APIICs letter dated 12.05.2005. Copy of the APIICs letter is a correspondence between APIIC and the Govt. only. Further, the note sheet was put up in the ITCD concerning the issue only on 15.12.2005 by (A3)-Sri

P.S.Murthy, J.D.(FAC) and before that no note file was put up. The above sequence of the events clearly indicate that the accused with a common intention hatched a conspiracy to reduce the Govt.s share in order to cause loss to the Govt. exchequer by Rs.500Crores and to make illegal gain to Sri Neil Raheja and his company. It is averred that A.4-Sri B.P.Acharya, V.C.&M.D. of APIIC even though surplus liquid cash was available with the APIIC as on that day addressed letter to the JVC not to allot further land for the Mindspace Cyberabad Project towards equity contribution in the project by the APIIC, however stating that a nominee of the APIIC to be continued on the Board of the company irrespective of the equity percentage is nothing but causing loss in crores to the Govt. and illegal gain to Sri Neil Raheja and his company, being fully aware of the things and this act of A.4-Sri B.P.Acharya, without intimating and seeking approval by the Industries Department (the administrative control) as per the Govt. Business Rules and allowing reduction of APIICs share is deliberate and intentional on his part. It is further averred that A.1 to A.4 supra who are duty bound to protect the Govt.s interest and safe guard public money, deliberately and intentionally allowed enrichment of private persons at the cost of public money by reducing the APIICs share in the JVC resulting in huge loss to Govt. as a result of a deal struck with them as a quid pro quo are punishable for the offences alleged against them as per law. It is also averred that the decision taken not to maintain the APIICs stake in the JVC at 11% by allotting land or transfer of money by A.1 to A.4 are motivated by illegal considerations and as quid pro quo received huge amounts from A.5 and unduly favoured A5 and therefrom A.1 to A.4 as public servants, committed criminal breach of trust by deliberately causing loss to public exchequer.

5). It was pursuant to the specific request of the complainant to refer the complaint to D.G. ACB, Hyderabad, for investigation and report, the special judge simply and for mere asking referred so for entrusting the complaint to the concerned ACB Officer for investigation under Section 156(3) CrPC, with out any reasons and with out even disclosing any application of mind for not as a matter of course for mere asking as per the settled law even by then, leave about it is the courts discretionary power on facts to refer or not irrespective of asking, even it is the social need of any offender to be put to trial as held in Manoharlal Vs. Vinesh Anand , it is only if there is a factual foundation of prima-facie accusation and not on suspicions or assumptions as held in Harischandra Prasad Mani Vs. State of Jarkhand ; that too with no prior sanction proceedings or showing of applied at least and not a case made out of no sanction required for either IPC offences or PC Act offences respectively, that too from very allegations of complaint show mandatory requirement of sanctions to maintain for taking cognizance, though there is no dispute on locus of the complainant to maintain the private complaint and the right to apply for sanction to prosecute-vide., A.R.Anthulay Vs. R.S.Nayak and Subramanium Swamy V. Man Mohan Singh and another , but for to say, though court is not required to pass a reasoned order, must apply its mind to the material on record in passing an order. No doubt in case of cognizance orders, it was held so at para-78 in State of W.B. Vs. Mohd. Khalid

referring to Virodhi Parishads case . Further in Anil Kumar and others v. M. K. Aiyappa (which is subsequent to Subramanium Swamy) it was held that a Special Judge/Magistrate cannot refer a private complaint for investigation under Sec.156(3) of the CrPC against a Public Servant without sanction order and without application of mind to facts. However that stage under Sec.156(3) of the CrPC since crossed in this case on hand, including from the A1 to 6 were unsuccessful in their impugnment by filing revisions earlier, it is thus not necessary to go into that aspect herein the facts on hand, but for validity of the impugned cognizance order of the Learned Special Judge, with in his power as held in H.S. Bains Vs. The State(UTC) , including against non-accused of FIR as even from- Jagdish Sahai Mathur Vs. State(DA) , in doing so with own reasons in support of the protest petition version of original private complaint and in differing to the reasons of the Investigating Officer in the referred report-though entitled to differ as held in M/s. India Carat Pvt. Ltd. Vs. State of Karnataka ; for not a case of first time private complaint to proceed on face value of allegations therein or taking cognizance on police final report by its acceptance as in Rashmi Kumar Vs. Mahesh Kumar Bhada and Ajay Mehra Vs. Durgesh Babu , if at all by giving cogent reasons to differ with the reasons of the Investigating Officer and not done so, with reference to what protest raised to the final referred report and in what manner and with what reasons in differing to it to take cognizance from the settled legal position laid down in resolving the conflicting expressions by the five Judge Bench in Dharam Pal & Ors Vs. State Of Haryana , relied and reiterated by this court in S.Bala Krishna Vs. The State of Telangana and in M/s. Ranbaxy Lab. Ltd.(M/s.

Sun Pharmaceuticals Ltd. & others Vs. State of Telangana & another , that Magistrate is bound not only simply to accept the facts referred in the protest application and the sworn statement of protest petitioner-cum-any other witnesses but also bound to consider earlier police referred report and also if necessary accept any explanation impugning the investigation including among those witnesses examined by the Investigating officer if explained away as to they did not so state before investigating officer or they were not even examined or of what they stated was not correctly reflected. Without which, that too, when police filed referred report outcome of earlier crime registered is part of the Court record and it is based on that report alone, protest application is filed impugning the referred report from the very protest raises against that referred report as form part for consideration to consider the protest against; that too when the Learned Special Judge observed to consider the referred report material that also relied upon by the protest petitioner in saying reasoning only not correct and not in attack of investigation in this regard to decide on merits, undoubtedly by reapreciation and on referring to the entire material as held in Fakhruddin Ahmad Vs. State of Uttaranchal in deciding the correctness of the impugned order, including on vicarious liability to fix, there must be specific allegations of the persons accused are in charge of, or responsible for, the conduct of the business of the company at the relevant time, for other than its Managing Director as held in Sharad Kumar Sanghi Vs. Sangita Rane that where allegations made against Company and the Company was however not arrayed as accused and there are no specific allegations against the Managing Director even to make him liable. In Asoke Basak Vs. State of Maharashtra and by the three judge Bench of the Apex Court in S.M.S. Pharmaceuticals Ltd. vs.

Neeta Bhalla that was quoted with approval by the three judge Bench of the Apex Court in Sunil Bharati Mittal Vs. CBI and those along with other expressions of the Apex Court right from S.K.Alagh etc., are reiterated by this court in N. Srinivasan Vs. CBI including on reasons for cognizance and issue of process and consequence of mere non-giving and right to bring material by accused for consideration etc., that:

> 35) Coming even to the legal position till date on Vicarious liability, in R.Kalyani V. Janak C.Mehta [28] it was held that vicarious liability can be fastened only by reason of a conferment by a statute and not otherwise, and for said purpose a legal fiction has to be created thereby for the I.P.C offences of cheating and forgery or breach of trust of the respondents charged in individual capacity in the absence of showing how personally liable, referring to several expressions and upholding the F.I.R proceedings quashed by the High Court, by the Apex Court for no interference.
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> 36) In S.K.Alagh Vs. State of U.P. [29] it was held that vicarious liability in I.P.C offences does not cast on the party not directly charged for commission of offence unless specifically provided there for like under Sections 34 or 149 I.P.C etc., The relevant paras 20&21 read that:
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> 20. Indian Penal Code save and except some provisions specifically providing there for, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. A criminal breach of trust is an offence committed by a person to whom the property is entrusted. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically there for. In the absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself, as held in Sabitha Rama Murthy V. R.B.S. Channabasavaradha [30].
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> 21. We may, in this regard, notice that the provisions of the Essential Commodities Act, Negotiable Instruments Act, Employees' Provident Fund (Miscellaneous Provision) Act, 1952 etc. have created such vicarious liability. It is interesting to note that Section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to Section 405 of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Where a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the companySee Maksud Saiyed v.

State of Gujarat.

37) Apart from the above in Maksood Saiyed Vs. State of Gujarat [31], which not only deals with requirement of judicial application of mind even to refer a private complaint for police investigation under Section 156(3) CrPC, but also on the principle of alter-ego of no vicarious liability in IPC offences on mere status or holding office by persons of an entity, without specific allegations in the complaint to entertain for referring to police for investigation or to record sworn statements as pre-cognizance enquiry to take cognizance or not or even on police final report/charge sheet to take cognizance, as the case maybe, as to how they or any of them individually liable and on what basis.

38) For that it also referred on the principle of alter-ego of no vicarious liability in IPC offences, the earlier expression of Apex Court in Saroj Kumar Poddar Vs. State [32] , that placed reliance on Everest Advertising Private Limited Vs. State Government of NCT of Delhi [33] and S.M.S.Pharmaceuticals Limited Vs. Neeta Bhalla [34] in observing The Penal Code does not contain any provision for attaching vicarious liability on the part of Managing Director or Director of a Company when the accused is the company. The learned Magistrate did not pose unto himself the correct question as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion of the quash petitioners are personally liable for any offence. The bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Even for the said purpose to fix vicarious liability from a statutory provision, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

39) This Court in Pepsi Foods Limited Vs. Special Judicial Magistrate [35] at para-28 held that summoning of accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have criminal law set into motion. The order of Magistrate summoning the accused must reflect that he had applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations in the complaint and evidence both oral and documentary in support of thereof and to see would that be sufficient for the Complainant to succeed in bringing charge the home to accused.

40) It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Then the learned Magistrate in our opinion should have kept said principle in the mind and thereby held no merits in the appeal impugning the order of the High Court to quash the proceedings.

41) Leave it as it is, so far as the accused other than the entities concerned, from the expressions more particularly from Maksood Sayeed and S.M.S. Pharmaceuticals supra, law is very clear on the principle of alter-ego. Further, in Keki Hormusji Gharda V. Mehervan Rustom Irani [36] it was held at para17 that:

> The Indian Penal code, save and except some matters does not contemplate any vicarious liability on the part a person. Commission of an offence by raising a legal

fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

42) In fact in the three Judges bench expression in Standard Chartered Bank V. Director of Enforcement [37] , it was held that a Company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment, though not expressed any opinion on the question whether a Corporation could be attributed with requisite Mensrea to prove the guilt, the same is later clarified by the subsequent three Judge bench expression in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. [38] of a Corporation could be attributed with requisite mensrea to prove the guilt and same is reiterated in several later expressions including in National Small Industries Corporation V. Harmeet Singh [39] and subsequent expressions following it and mainly in Iridium India Telecom Ltd. v.

Motorola Inc [40] referring to the several expressions of the Apex Court and of American and England Courts in paras 59 to 64 of the expression page Nos.98 to 100 in nutshell that a Company in many ways be like a human body they have a brain and nerve centre which controls what they do. Some of the people in the Company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent directing the mind and will of the Company and control what they do. The state of mind of these managers is the state of mind of the Company and is treated the law as such. The fault of the manager will be the personal fault of the Company. The knowledge and intention must be imputed to the body corporate. It was concluded therefrom by referring to Standard Chartered Bank (para No.6) supra of a Company is liable to be prosecuted and punished for criminal offences in deviation to the earlier authorities in India of Corporations cannot commit a crime, for generally accepted modern rule is that except for such crime as a corporation is held incapable of committing by reason of the fact that they involve personally with malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agent. The criminal intent of the alter-ego of the Company that is the personnel group of persons that guide, the business of the Company would be imputed to the Company/corporation. It was the conclusion in S.M.S Pharmaceuticals and Iridium supra that was again followed in the latest three Judge Bench expression of the Apex Court in Sunil Bharti Mittal Vs.CBI [41]. It was observed in Sunil Bharti Mittal supra that the corporate entity, an artificial person acts through its Officers, Directors, Managing Director, Chairman etc, if such fact constitutes an offence involving Mensrea, it would normally be evident and action of that individual who would act on behalf of the Company in particular in relation to criminal conspiracy . However, the cordial principle of criminal jurisprudence is that there is no vicarious liability unless the statute specifically provides so. An individual who has perpetrated the commission of an offence on behalf of a Company can be made as an accused along with the Company, if there is sufficient material on his active role. Second

situation of knowledge it may be implicated is in those cases where statutory regime itself attracts the doctrine of vicarious liability by specifically incorporating by such a provision. It was held referring to Maharashtra State Electricity Distribution Co. Ltd supra that merely on the basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy.

43) It was held further referring to the Section 141 of N.I. Act in particular as an example at para No.44 of Sunil Bharti Mittal supra and also from the expression of the Apex Court in Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd [42] that the group of persons that guide the business of the company if the criminal intent that would be imputed to the body corporate and in this back drop Section 141 of the N.I. Act has to be understood. Such a position is therefore because of statutory intendment making it a deemed fiction. In Sunil Bharti Mittal supra it also referred the observations in the three Judge Bench expression of the Apex Court in S.M.S. Pharmaceuticals supra at para No.8 that there is no universal rule that a Director of a Company is in-charge of its every day affairs. It all depends upon the respective roles assigned. A company have managers or secretaries for different Departments and may have more than one Manager or Secretary. In Aneeta Hada supra it is observed with reference to Section 141 of N.I. Act that the deeming fiction therein makes the functionaries of the Companies to be liable as its own signification. In fact before Aneeta Hada, S.M.S. Pharmaceuticals, Standard Chartered Bank and Iridium India supra, some of which referred in Sunil Bharti Mittal supra, the expression of the Apex Court in Anil Hada V. India Accrelic Limited [43] speaks in a case under Section 141 of the N.I. Act that even the Company or Corporation not impleaded as accused the proceedings against a Director can be issued. The same was later held as not good law in Aneeta Hada(I) V. Godfather Travels & Tours (P) Ltd. [44] saying without the Company impleaded as accused on the principle of Lex non cogit ad impossibilia and from that legal snag if the Company is not made accused, the proceedings against others cannot be survived. The said principle of Aneeta Hada (1) then came before three Judge bench expression in Aneeta Hada (2) supra, where the Anil Hada supra is over ruled and Aneeta Hada (1) supra is affirmed in saying at paras 51 to 59 the relevancy of which reads the decision in Anil Hada has to be treated not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the Company on the doctrine referred supra. Section 141 of the N.I. Act makes the other persons vicariously liable for commission of an offence --------- For maintaining prosecution under Section 141 of the N.I. Act, arraying of a Company as an accused is imperative. The other categories of offenders can only be brought in the drag net on the touch stone of vicarious liability as the same has to be stipulated in the petition itself as held in State of Madras V. C.V.Parekh [45]. The same question when again came for consideration before the two Judge bench in Anil Gupta V. Star India Private Limited [46], Aneeta Hada(2) of two Judge bench referred supra is reiterated in para No.12 in saying the decision in Anil Hada supra is over ruled with the clarification as stated in Para No.51 of Aneeta Hada(2) and the decision in U.P. Pollution Control Board supra has to be restricted to its own facts. In S.M.S Pharmaceuticals supra also it is made clear with reference to section 141 of the N.I. Act that it is necessary to aver that at the time the offence was committed, the person accused was in charge of and responsible for conduct of business of the Company and without this averment being made in the complaint, the requirements of Section 141 of the N.I. Act cannot be said to be satisfied. A clear case should be spelled out in the complaint against the persons sought to be made liable to show as in charge of and responsible to

the Company for the conduct of its business. Every person connected with the Company thereby shall not fall within the ambit of Section 141 of the N.I. Act but of those persons who were in charge of and responsible for the conduct of business of the Company at the time of commission of the offence. The liability arises on account of conduct or act or omission on the part of a person and not merely on account of holding an offence or a position in a Company. The complaint therefore must disclose the necessary facts which make a person liable, specifically aver that at the time of offence committed, the person accused was in charge of and responsible for conduct of the business of the company. A Director cannot be deemed to be in charge of and responsible to the Company for the conduct of the business for no deemed liability of a Director from that status, unless the aforesaid requirement of Section 141 of the N.I. Act has been averred as a fact in the complaint. In another expression referring to Section 141 of the N.I. Act by the Apex Court in Saroj Kumar Poddar supra referring to S.M.S. Pharmaceuticals supra apart from other expressions that for dishonour of cheque making of requisite averments in the complaint is a statutory requirement and the allegations satisfy the same, in the absence of which the proceedings are liable to be quashed. The other expression of the Apex Court two Judge bench in National Small Industries Corporation on supra also referring to Parekh and S.M.S. Pharmaceuticals supra among other expressions held that vicarious liability on the part of any Director or other person as in charge and responsible to the conduct of business be specifically averred . It is not even sufficient to make a bald and cursory statement in a complaint that the Director is in charge of and responsible to the Company for conduct of its business without saying anything more as to his role. The complaint should spell out as to how and in what manner a co- accused was in charge of or responsible to the accused company for conduct of its business. Same is also reiterated in another two Judge Bench expression of the Apex Court in Central Bank of India V. Asian Global Limited [47] relying upon S.M.S. Pharmaceuticals. Even other latest expression in Poojari Ravinder Devi Dasani V. State of Maharashtra [48] reiterates the same relying upon National Small Industries Corporation supra. The same has been reiterated in the latest expression by this Court in Narendra Urangi V. M/s.Greenmint India Agritech Pvt. Ltd. [49] 44) In GHCL Employees Stock Option Trust V. India Infoline Limited [50] at para Nos.18 and 19 it was observed by the Apex Court as follows:

> 18. From bare perusal of the order passed by the Magistrate, it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein.
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> 19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondent Nos.2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them.

44) Recently, in the case of M/s. Thermax Ltd. & Ors. vs. K.M. Johny & Ors.[51], while dealing with a similar case, this Court held at para Nos.20 and 21 as under:-

> 20. Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of

> settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1 Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role. 21. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of vicarious liability is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company.

45) In the latest expression of the Apex Court in Gunmala Sales Private Limited V. Anu Mehta[52] it is held no doubt a case under Section 138 read with Section 141 of the N.I. Act, that the necessary requirements of the complaint which need to be indicated in the complaint are how, in what manner, the role, description and specific allegation as to the part played by a person before he could be made an accused. These conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principle accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable.

46) Having regard to the above propositions which are in one line speak that a bald averment is not at all sufficient even from any statutory legal fiction to make person liable on showing responsible from the status coupled with in charge of day to day affairs, but for a specific allegation to plead and show as to how, in what manner, the role, description and specific allegation as to the part played by a person before he could be made an accused for vicarious liability, leave about such vicarious liability does not exist for IPC offences. Thus, a Director of a company who stands in a different footing to the Managing Director by his status under Section 141 of the N.I. Act is liable or to be made liable for the offences punishable under Section 138 of the N.I. Act, even from the statutory fiction of vicarious liability under the Act, subject to specific allegations showing how liable for the acts alleged.

47) So far as the I.P.C offences concerned it is held that there is no such statutory fiction or vicarious liability, but for individually made liable for their individual acts, and not merely while holding an office of the Company for acts of the persons concerned with the affairs of the Company are the acts of the Company under the principle of alter-ego. It is what is reaffirmed and detailed for the IPC offences and for offences under the prevention of corruption Act, in the latest expression of the Apex Court in Sunil Bharti Mittal supra of the concept of vicarious liability is unknown to criminal law.

48) In Sunil Bharti Mittal supra, on facts, the C.B.I. registered the crime, investigated and filed final report. The person not named in the final report as accused by differing to the police Investigating officers opinion, the learned Magistrate has taken cognizance under Section 190 CrPC after hearing public prosecutor and in issuing process against the non-accused of charge sheet and the same was impugned and the matter reached before the Apex Court on the question when a person not named in the charge sheet as accused though the trial court has adequate powers to take cognizance and

summon if found from perusal of charge sheet and documents and other material placed with the charge sheet disclosed sufficient prima facie material to proceed against such person as well, however where there is sufficient material or not be reflected in the order of the learned Magistrate. On facts it was held that the Special Judge for C.B.I. has not stated in the order that after examining of the final report with relevant documents and the statements of the witnesses satisfied on sufficient material incriminating to proceed against the police as well. The learned Special Judge did not record any reasons for his satisfaction to take cognizance on any incriminating material and even C.B.I. did not implicate the appellants in the final report. It is held further that the sine-qua-non of taking cognizance for an offence is application of mind, for Special Judges satisfaction of the allegations if proved constitute an offence and it is imperative from the complaint or on the police report. The Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion and then only to issue process to say said to have taken cognizance of the offence and the only consideration at this stage of taking cognizance if any is prima facie case to take from the material or not. It is held further that cognizance of offence and prosecution of offender, are two different things. Section 190 of CrPC empowers taking cognizance of an offence and not to deal with the offenders. Thereby cognizance can be taken even offender is not known or named. When the complaint is filed and F.I.R. is registered and even their names may transform through investigation or in post-complaint enquiry. Thereby a person who is not even joined as an accused in the charge sheet, if there is material to take cognizance, he can be summoned to proceed with; as a Magistrate is not bound and otherwise empowered to ignore the conclusions arrived by the investigating officer, provided apply his mind independently on the facts emerging from investigation to take cognizance of the case and at this stage not permissible to consider any material other than the material covered by the police final report. On the other hand, Section 204 CrPC deals with issuing process after taking cognizance on the private complaint from sworn statement recorded where there is sufficient ground for proceeding as per Section 204 of CrPC which is of immense importance. It was observed in Sunil Bharathi Mittal supra that the learned Special Judge on the basis of the material on record, done no such exercise and thereby the impugned order dated 19.03.2013 is held unsustainable so far as it relates to implicating the appellants and summoning them as accused. For that on facts observed, the allegation against the appellants is a ground of additional spectrum by luring condition of 9 lakhs subscribers to 4.50 lakhs subscribers be only charging additional 1% A.G.R. instead of charging 2% AGR which caused loss to governments revenue and further the case of prosecution that this was the result of conspiracy hatched between the then Minister concerned as well as the accused- cellular operator. The decision taken in haste on 31.01.2002 itself exchanges notes prepared by J.R.Gupta, the then Secretary telecom, on that day, which was agreed 2/5 th and thereafter approved by the Minister on the same day. On that basis circular was issued on next day on 01.02.2002 as per the charge sheet, investigation has also revealed that all this was done in haste to help M/s. Bharati Cellular Limited which had come out with Initial Public Offer (IPO) that was opened and it was not getting good response from the public as it had remained under-subscribed. The moment such a decision of allocating additional spectrum was taken on 31.01.2002, on the very next day, the issue got over-subscribed. In that charge sheet filed, Mr.J.R.Gupta was not made accused as no material of any conspiracy or being a part of decision being attributed to him.

49) In this charge sheet, the C.B.I. named Shyamal Ghoshthe complainant and three companies namely Mr.Bharati Cellular Limited, M/s Hatchison Max Telecom(P) Limited and M/s Sterling Cellular Limited as accused persons in respect of offences under Sections 13(2) r/w 13(i)(d) of the P.C.Act and allied offences impleaded as accused persons in this charge sheet one of the two appellants, Sunil Bharathi Mittal Chairmancum Managing Director of Bharati Cellular Limited, was interrogated but in the opinion of the C.B.I. case was not made out. The Special Judge in para-2 of the impugned order discussed the submissions of Public Prosecutor in respect of the proceedings who are made accused in the charge sheet and so far as ------ is concerned it has name of complaint who was the public servant and other three accused are corporate entities. The submission of the learned Public Prosecutor is that there is enough incriminating material on record against them and they may be proceeded against as per law. Immediately thereafter the Special Judge in para-3 of the impugned order recorded his satisfaction on the perusal of the record namely FIR, charge sheet, submissions of witnesses and documents and states that he is satisfied that there is enough incriminating material on record to proceed against the accused persons. Para-30 clearly relatable to para-2. Here the accused persons referred to are those 4 persons whose names are mentioned in para-3 obviously till that stage, appellants were not accused persons as they are not named as such in the charge sheet. After recording satisfaction against said accused persons, discussion about other three individuals including two appellants supporters from para-4 where Special Judge also finds and reference to the decisions which these three persons held/hold in the three cases (companies) respectively.

50) In para-4 the special Judge did not mention about any incriminating material against them in the statements of witnesses and documents etc. On the other hand, the reason for summoning these persons and proceed against them are specifically described in this paragraph which prima facie are these persons were in control of affairs of the respective companies, as such, they represent the directing mind and will of each company and their state of mind is the state of mind of the companies. Thus, they are described as alter ego of their respective cases. It is on this basis these three persons are treated as alter ego of their respective companies and in the opinion of the learned Special Judge, the acts of the companies are to be attributed and imputed to them. On the erroneous presumption in law the special Judge/Magistrate issued summons. For the learned Magistrate/Special Judge, it is always open to invoke special exercise after going through the material on record, if he is satisfied that there is enough incriminating material on record to proceed against he may pass appropriate orders in this behalf. Even if at this stage no such prima facie material is found, if in future such evidence surpasses against the appellant, the special Judge got liberty to exercise his powers under Section 319 of CrPC to rope all or any of the appellants by passing orders in accordance with law. For that conclusion the expressions referred are of Dharampal Vs. State [53] , Aneeta Hada Vs. Godfather Travels and Tours (P) Ltd. [54] , Iridium India Telecom Limited [55] , Maksood Sayed supra, Sabita Rama Murthy supra, SMS Pharmaceuticals supra, Standard Chartered Bank supra among other expressions.

51) Now coming to the requirement of reasons showing judicial application of mind for taking cognizance from the expressions supra; from non giving reasons whether fatal or not concerned, no doubt in the latest Four Judges Bench expression of Sarath Mathew V. IOCVD [56] in dealing with limitation to count from the date of filing and not from later date of taking cognizance, it was held

that the phrase taking of cognizance, the application of mind by the learned Magistrate or Court to the suspected offence and whether Magistrate has taken cognizance or not will depend upon the facts and circumstances of each case for cognizance is an act of Court and not defined in Cr.P.C, but for to say Section 190 Cr.P.C empowers a Magistrate to take cognizance either on receiving a complaint or on police report or upon own knowledge and a Magistrate or Judge takes cognizance when he applies his mind or taken judicial notice of the offence with a view to initiate proceedings in respect of offence which is said to have been committed. No doubt, in this expression it is not visualized of assigning of reasons mandatory but for judicial application of mind and whether there is judicial application of mind or not to be decided from the facts and circumstances of a case on hand it can be culled out there from to say mere omission to assign reasons for cognizance in the order of cognizance no way fatal though reasons are required to be given generally, once on perusal of the material the order of taking cognizance if sustainable otherwise for not to interfere against the cognizance order.

52) In this context it is contended by the learned Counsel for CBI that from the latest Four Judges Bench expression in Sarath Mathew supra of what is laid down in Sunil Bharti Mittal supra is to understand of reasons are required to be given generally and not that for mere omission to give reasons fatal to quash the order of cognizance taken, if otherwise it is sustainable. Even from that, when there is nothing to show judicial application of mind to the material on record in taking cognizance of the offences under Sections 420 & 120B IPC & Section 12 of the PC Act, so far as the petitioner/A3-Sri N. Srinivasan concerned, the cognizance taken by the special judge for CBI cases requires to be quashed for no basis to sustain the cognizance order from the material on record from what is elaborately discussed supra on facts and law. Thus, the proceedings so far as petitioner/A3 concerned are liable to be quashed for above material on its face when can be held not sufficient to accuse in the police final report or to take cognizance by the learned Special Judge there from against the petitioner/A-3 personally, to say no prima facie material to make him liable to face the ordeal of trial or even to frame charge against him from the prosecution material placed reliance with the police final report that is the criterion for the charge to be framed as per the settled expression of the Apex Court more particularly from the three Judge bench expression in State of Orissa V. Debendranath Padhi[57] , though so far as the quash petition concerned, the accused is also entitled to bring any additional material in asking the Court to receive to consider and the Court can receive to consider as held by referring to Debendranath Padhi supra also in the subsequent expressions and in particular in Rukmini Narvekar V. Vijaya Satardekar[58] .

6. The Inspector of Police, ACB, Hyderabad, to whom the case entrusted D.G. ACB, Hyderabad, for investigation on the private complaint 31.01.2011, forwarded by Court on 19.02.2011, therefrom registered the crime supra on 22.02.2011 and after investigation filed the final referred report dated 14.07.2014 under Section 173(2) CrPC for closure of the crime against all the accused Nos.1 to 6 of the FIR supra, which is after examination of 13 witnesses by names (1) the complainant-Sri T. Sri Ranga Rao, (2) Dr. Ch. Sridhar-ED(S) of APIIC, (3) Sri M.S.S. Reddy-Company Secretary of APIIC), (4) Sri A.B. Rao-JD(P) ITCD, (5) Sri CPE. Jozef- Alternate Director & Sri HH Subrahmanyam-Head India Operations of Colryut ITCI Pvt. Ltd., (7) Sri G.M. Rao-Ex CGM Law of APIIC, (8) Sri D.P. Rao-Ex PM/CE (IPU) of APIIC, (9) Sri V.Ramesh-E/D of M/s.Chalet Hotels PVt. Ltd., (10) Sri NB Murthy-Ex DGM (D) of APIIC, (11) Sri KG Subudhi-GM A&F in KRITHPL (Raheja Corp group),

Hyd., (12) Smt. Shail-ID M/s. ISS Pvt. Ltd., and (13) Sri K.Bhatija-MD and CEO of Inorbit Maal (I) Pvt. Ltd. And also examined the accused persons 1, 2, 4 to 6 and received their replies and referred 81 documents.

6(a). Needful to say in continuation of what is referred supra, the A1-6 supra earlier filed Crl.R.C. Nos.428, 429, 442 & 443 of 2011 against the order of the learned Special Judge in referring the private complaint u/s.156(3) CrPC directing the ACB officials to register FIR and to investigate and file report. Initially there was interim stay dated 25.02.2011 and the same was later vacated on 19.10.2012, by common dismissal order holding there is nothing to interfere with said order to prohibit investigation. Therefrom the investigation was conducted and final referred report was filed. That is not a bar of said result of earlier stage, for impugning the subsequent cognizance order in differing to the final referred report based on protest petition as also held in this regard in M/s. Ranbaxy Lab. Ltd. (M/s. Sun Pharma. Ltd.) supra.

7. The gist of the final referred report dated 14.07.2014 filed from competition of the investigation under Section 173(2) CrPC for closure of the FIR and the relevant factual backdrop about APIIC, ITCD & Raheja (save the facts covered supra) is that:

> 7a). On 19.02.2011 the learned special Judge forwarded the compliant of the complainant under Section 156(3) CrPC to the Director General, ACB, Hyderabad, wherein the complainant alleged that Govt. allotted the Mind space Project to Raheja without calling any tenders or applications from the prospective developers with undue favour of Raheja and subsequently allotted 109 acres of land @ Rs.50 lakhs, whereas at the same location Govt.

has allotted land to different software companies ranging from Rs.1.5 crore to Rs.2.5 crore per acre and caused loss to the Government Exchequer. Further though there were sufficient funds in the account of APIIC, A.4 in collusion with A.1 and A.2 reduced share capital of APIIC from 11% to 0.55%. Thus, A.1 to A.6 in connivance with each other have caused wrongful loss to the Government to a tune of Rs.500 crores and caused wrongful gain to Raheja. Since the above facts revealed commission of offences under PC Act on 22.02.2011 crime No.6/ACB-CIU-HYD/2011 has been registered by ACB, Hyderabad against A.1 to A.6 under Sections 11, 12 & 13(1)(i)(d)(i)(ii) & (iii) of PC Act & Sections 409, 420 IPC r/w 34 IPC and took up investigation.

7b). Coming to relevant factual backdrop about APIIC, ITCD & Raheja:

> 7b)(i). APIIC: It was established in the year 1973, as a wholly owned company of the Government of Andhra Pradesh (for short Govt.) for making industrial layouts and allotting the government lands to the various industries, companies, firms and individuals for promotion of industries etc., in the public interest and as per the regulations. It is headed by a Senior IAS Officer of Principal Secretary cadre with Head Office at State Secretariat to take care of overall growth & development, IT industry and to get investments to the State in accordance with ICT policy, implementation of e-governance project and ITHR development in creation of

employment opportunity to rural youth, act as nodal agency of ITCD as far as allotment of lands and providing infrastructure to the IT companies as ITCD attracts multinational companies and top Indian IT majors to the State to get investment and generate employment. The assets and liabilities of industrial estates in the State under the control of the Industries Department were transferred to APIIC w.e.f. 01.01.1974 the APIIC identifies industrial potential areas, acquiring land and developing infrastructure facilities for industrial establishment in facilitating industrial investment on behalf of Govt. and it promotes infrastructure projects under private public partnership (PPP). It developed about 320 industrial parks which include Autonagar growth centers, commercial complexes, apparel bio-tech and IT parks and also special economic zones. There are about 73 economic zones of which 17 owned by APIIC and 4 with private sector in Joint Venture. It got 12 zonal offices with man power of marketing, administration, engineering, quality control, legal, finance and internal audit. It has been conferred with the powers of Panchayat Raj Department & Municipal Administration for approval of building plans, industrial licenses and also levy and collection of property tax, advertisement tax and license fees. It has created a land bank of 1,36,838.11 acres of land in the process of acquisition and alienation and including Govt. land. The first PPP project of it is development of Hi-tech at Madhapur with L&T Ltd., as Joint Venture. The other projects are Indian School of Business, Industrial Water Supply Scheme to VSP, Gangavaram Port, NTPC at Visakhapatnam, JNP at Parwada with association of Ramky Infra. It developed IT parks and financial district at Nanakramguda, hardware park and Fab City at Maheswaram, APSE Zone at Visakhapatnam, MP Sez at Naidupeta and Apparel park at Gundlapochempally.

7b)(ii). RAHEJA: M/s. K.Raheja IT Park Private Limited is part of M/s. Raheja Corp, Mumbai, that was incorporated in 1956 as a real estate developer grown into a multi-dimensional organization in real estate, retailing and hospitality, having constructed about 2,200 buildings comprising residential and commercial projects in major cities like Mumbai, Hyderabad, Pune, Bangalore, Coimbatore and Chennai etc. The Mindspace Mumbai which is a group of Raheja commenced in 1997 with multinational facilities for IT and ITES, media, entertainment, insurance, telecom, infrastructure and other industries. The other groups of Raheja are Leela Business Park and Raheja Vihar at Andheri East.

7c). The final report dealt with the 3 allegations of the FIR that was investigated viz., Govt. allotted Mindspace project to M/s. Raheja without calling any tenders or applications from prospective developers, Govt. allotted 109 acres of the land at Rs.50 lakhs per acre to the JVC in 2003, whereas Govt. allotted to different software companies at Rs.1.5 crore to Rs.2.5 crore per acre and that though there were sufficient funds with APIIC, the Officers did not contribute proportionate share increase to represent 11% that got reduced share capital of APIIC to 0.55%, which is the outcome of connivance of A.1 to A.4 with A.5 & A.6 that caused loss to the Govt. of Rs.500 crores that was gained by Raheja, which are the offences allegedly committed.

7c)(i). In respect of first allegation the final report speaks from the investigation that during the year, 2002 the Govt. has appointed McKinsey Consultant for identification of (3) top reputed companies for development of IT Sector proposed at Madhapur, Hyderabad. Accordingly, Govt. basing on ICT policy and recommendation of Mckinsey Report, without going for any auction or tender the development of IT project was entrusted to L&T company and as the L&T company declined to take up the Project and submitted its no objection letter to Govt. to allot the project to some other reputed company, subsequently the Govt.

allotted the land of 109.36 acres in S.No.64(P) of Madhapur, to Raheja for development of Mindspace project under a joint venture between Raheja and APIIC limited. Thus, the Govt. without calling for any tenders or open auction, has entrusted the Project to Raheja as per Rule 37(1)(e) and there is approval of the Council of Ministers by resolution No.8(b)(1) dt.01.05.2003 for the 109 acres of the allotted land @ Rs.50 lakhs since the investment of project was estimated over Rs.100 crores as part of the ICT Policy. Thus, there is no evidence forthcoming against A.1 & A.2 to prove the allegation or to make them liable for prosecution since it is the approval by the Council of Ministers.

7c)(ii). In respect of second allegation the final report speaks from the investigation that as per the Govt. Industrial Friendly Incentive Policy for IT sector in May, 1999, and to continue the trust being given to the IT sector, the IT policy approved by G.O.Ms.No.27 dated 27.06.2002 and Annexure VII of it speaks that a special land policy for sale of land in and around Hi-tech City for Mega IT projects is provided with terms and conditions that (a) an IT project with an investment of Rs.50 crores or more is to be treated as a Mega Project and for such mega projects land shall be offered at a cost of Rs.50 lakhs per acre at the Hi-tech City layout. Thus, as per said G.O. Govt. allotted the land at such rate to the JVC, whose project cost estimated about 100 crores, which was during the year 2003 and as per the terms and conditions of MOU and MOA. Since the decision was taken by the Govt. (covered by the resolution of Council of Ministers) as per said G.O. dt.27.06.2002, there is nothing to say any role of the official accused persons in said allotment of the land at said rate to the JVC and thereby they are not liable for prosecution and there is nothing even to say there is any collusion or conspiracy on any of their part with A.5 & A.6. It is observed the accused Nos.1 to 6 cannot be prosecuted on the above.

7c)(iii). In respect of third allegation the final report speaks from the investigation that as per the MOU dt.10.06.2002 and MOA dt.19.05.2003 and as per clause 2.3 of MOA, the share capital shall be 11:89 for APIIC and Raheja and accordingly, for the initial subscribed capital of JVC Rs.1 crore, APIIC contributed Rs.11 lakhs (by adjustment out of the land cost of Rs.54.68 crores) and Raheja contributed Rs.89 lakhs respectively. In order to secure financial assistance from Banks by enhancing the net worth and decision was taken in the board meeting held on 03.12.2004 to increase the share capital from Rs.1 crore to Rs.20 crores. In said board meeting of JVC, it was recorded that APIICs nominee suggested to execute deed of rectification for land already transferred under development agreement to treat part of land given towards the APIICs additional share capital of Rs.2.09 crore (11% of Rs.20 crores=Rs.2.20 crores-11 lakhs). Said proposal was however differed and not even taken up in the EOGM held on 10.05.2005 in which APIIC representative was

present and to meet the increase, the APIIC by letter dated 12.05.2005 requested the Govt.-ITCD to allot land at Nanakramguda if at all for no land at Madhapur. In fact, APIIC got Rs.37 crores in its account. The then MD & VC Sri L.V. Subramanyam at the Board meetings of APIIC held on 03.12.2004 not discussed the issue and not intimated the Govt. which is an omission. Due to wrong interpretation by APIIC, essence of the letter dt.15.12.2005 of Govt., APIIC intimated to the JVC on 22.12.2005, that Govt. instructed of no need to subscribe to the rights issued but must insist to continue participation in the board and thus, the share capital of APIIC remains to be Rs.11 lakhs only out of the increased share capital of Rs.17.91 crores in the JVC and therefrom the equity participation of APIIC has fallen from 11% to 0.55%, w.e.f. 20.05.2006. However, subsequently, APIIC has paid Rs.2.09 crore to JVC on 18.09.2012, by cheque Nos.011364, 011365 & 011368 (Rs.90 lakhs, Rs.20 lakhs and Rs.90 lakhs respectively) towards its balance contribution and thus, the equity of APIIC was restored to 11% in the year 2012. Not only that, regarding dividends payable to APIIC, from the total dividend declared of Rs.158.17 lakhs during 2006-07 to 2010-11, in addition to what was paid to APIIC of Rs.9.75 lakhs as per original contribution and received Rs.1548.60 lakhs by Raheja of its contribution, from contribution of balance Rs.2.09 crore to JVC on 18.09.2012 by APIIC, the equity share was restored to 11% and difference dividend amount of Rs.181.83 lakhs paid by Raheja to APIIC as exgretia. Raheja agreed to offer preferential shares to APIIC to represent 11% equity share in JVC with increased corporate benefits of dividends etc., retrospectively and APIIC was paid total Rs.2,07,88,410/-. In this regard, the question of violation of business rules does not arise, A.1 to A.4 not liable for prosecution. A.5 agreed to have a nominee of APIIC in JVC board of Directors relaxing the provision in the MOA etc., from which APIICs nominee continued in the Board and thus, there is no material against A.5 and A.6 of acts of cheating or conspiracy etc. No doubt A.4 and Sri L.V. Subrahmanyam did not inform about availability of bank balance of APIICs account to contribute in cash and it requires departmental action and the FIR thus to close.

8. It was aggrieved by said final referred report dated 14.07.2014, the defacto complainant filed protest petition dated 02.09.2014, in Crl.M.P.No.447 of 2014.

8(a). Said protest petition dated 02.09.2014, in Crl.M.P.No.447 of 2014, was taken up for pre-cognizance enquiry as contemplated by sections 200 to 204 CrPC and the learned Special Judge has also recorded the sworn statement of the defacto complainant/protest petitioner on 26.09.2015, for no more witnesses produced and not even sought, muchless by filing petition for summoning any witnesses to record their sworn statements and it was while so under consideration, ended in dismissal by the closure order of the learned Special Judge, on 11.12.2015 (sic.11.12.2014) as merit less.

8(b). It was subsequently, the learned Special Judge on 28.12.2015 suo-motto reopened the matter, despite the same Court has no power to reopen the matter by review of the earlier order in view of the specific bar under Section 362 CrPC, for not a mere correction of any clerical or arithmetical or typographic mistake in the order so to do even if at all on any application. There is no any application of the defacto complainant, much less for reopen by review of the matter, for which also there is as stated supra legal bar for the learned Special Judge of the trial Court, for it has no inherent powers saved under Section 482 CrPC. Even no power is available to the court of learned Special Judge-vide Division Bench expression of this court in a maintenance case restored of

dismissed in C. Subrahmanyam Vs. C. Sumathi and in a case of process issued under Section 204 CrPC was recalled in the expression of the Apex Court in Adalat Prasad Vs. Rooplal Jinfdal , for not having the powers of High Court either under Section 482 CrPC or under Section 483 CrPC, much less with any plenary powers under Articles 226 and 227 of the Constitution of India, even to overcome the bar under Section 362 CrPC for reopen by review of the matter. Thus, suffice to say the very cognizance order is per-se unsustainable and liable to be set a side without going into other merits at the threshold, but for raised several contentions with reference to provisions and propositions touching merits on other aspects in detail to answer those also in the ends of justice for this court is not powerless much less functus officio from above observations.

8(c). The learned Special Judge having suo-motto reopened the matter on 28.12.2015 with no such power even as referred supra, posted the matter for orders to 30.12.2015, from the sworn statement of the defacto complainant dated 26.09.2015 was on record and by stating even in the protest petition examination of other witnesses also sought for by the defacto complainant/protest petitioner, recording of sworn statements of other witnesses of the protest petition is not necessary, from the say by memo of the defacto complainant and as the investigation referred final closure report contains statements of witnesses recorded during investigation to consider the same also.

8(d). It was there from, by the impugned orders dt.30.12.2015, the learned Special Judge has chosen to pass orders rejecting the closure final report against all the six accused of FIR- A1-6 and taken cognizance of the offences punishable against A1-4 and one Sri L.V. Subrahmanyam, IAS as A7 under Sections 13(1)(d) r/w. 13(2) of the PC Act and under Sections 420 and 409 read with 34 IPC and so far as against A5&6 under Section 12 of the PC Act and Sections 420 and 409 read with 34 IPC.

9. The impugned orders dt.30.12.2015 of the learned Special Judge particularly from para-7 speaks that:

> 7. Since the main complaint filed by the petitioner/complainant in CCSR No.108/2011 was referred to the D.G, ACB, Hyderabad for entrusting the complaint to concern ACB officer for investigation under section 156(3) CrPC, the said complaint in CCSR No.108/2011 is deemed to have been closed after registration of the said referred complaint as FIR in Cr.No.6/ACB.CIU-Hyd/2011. Therefore, the order of this court to take up this protest petition in Crl.M.P.No.447/2014 in the main complaint in CCSR No.108/2011 by closing the protest petition is an irregularity committed by this court in inadvertently by mistake.

The said irregularity is curable one. Hence this court has rectified the said mistake and ordered to reopen this protest petition in Crl.M.P.No.447/2014 for hearing and to decide this protest petition. Since this court has already recorded the sworn statement of petitioner/defacto-complainant and heard the learned counsel for petitioner/ defacto-complainant and the learned Special Public Prosecutor on the points framed in this protest petition the same is taken as one taken in this protest petition and proceeded with.

8. It is averred in the complaint filed by the complainant that the accused Nos.1 to 4 in connivance with the A.5 caused loss to the Govt. to a tune of Rs.500/- crores and the same has to be investigated and as such the complainant sought to refer his complaint to the ACB authorities to register as FIR and for investigation. According to the complainant, that as per MOU dated 19/5/2003 entered into between the Govt. of AP through Information Technology and Communication department (in brevity refer herein after to as IT & C) and K. Raheja corporation private limited, the APIIC shall hold an equity share of 11 percent and K.Raheja Corporation private limited shall hold the balance of 89 percent and accordingly a joint venture agreement dated 23/8/2003 was entered between the two parties. As per the Joint Venture agreement, the authorized capital of the joint venture company shall be Rs.1.00 crore out of which Rs.11.00 lakhs shall be contributed by APIIC by land or cash and the remaining Rs.89.00 lakhs shall be contributed by the co-promoter i.e K.Raheja corporation private limited. While the matters stood thus, in the month of May, 2005 M/s. K.Raheja corporation private limited proposed to increase its equity capital of the joint ventures company form Rs.1 Crore to Rs.20 crores in order to avail finance from the banks etc. The APIIC was requested to contribute an amount of Rs.2.09 crores towards its share of 11 per cent in the joint venture company. The APIIC in turn addressed a letter dated 12/5/2005 to the Principal Secretary to Government, IT & C Dept. informing their proposal to transfer land at Nanakramguda to the joint venture company towards the APIIC contribution of Rs.2.09 crores to the joint venture company. As on the date, an amount of Rs.31,09,42,568.60 Ps. liquid cash was available in the account of the APIIC limited. There was no need or necessary for the APIIC to address any letter to the IT & C Department, Government of Andhra Pradesh on the subject. However in pursuance of the conspiracy hatched by all the accused, a letter was written to the Government by the APIIC seeking their permission to transfer the land at Nanakramguda in favour of M/s. K.Raheja. IT parks limited towards APIIC's share contribution of Rs.2.09 crores for the proposed hike in the share capital of the joint venture company. Any decision of dilution of the Government's share in a joint venture company is required to be taken by the Cabinet as per the business rules of the Government. However, in view of the deal struck with Sri Neil Raheja, Managing Director of K.Raheja Corporation, with the officials of APIIC and the IT & C Department, the accused nos.1 to 3 instead of placing the file before the Chief Secretary, concerned Minister, and the Chief Minister, directed the APIIC to restrict their share to 0.55% only from the existing 11%. The reasons given for not agreeing to transfer 5.25 acres of land at Nanakramguda is that "if an main MNC IT company come and ask for a continuous piece of land say 12 acres. It is difficult to allot. In view of the said decision A.1 to A.3 the Government suffered massive loss of Rs.500 crores and at the same time the accused no.5 Sri Neil Raheja and his company gain Rs.500/- crores. Hence the complaint.

9. After filing of the complaint, this court has referred the complaint to the DG, ACB, Hyderabad, under section 156(3) of CrPC with a direction to entrust the same to the concern officer for investigation and a report. Subsequently the complaint that was referred to the DG, ACB, Hyderabad, has registered in Cr.No.6/ACB.CIU.HYD/2011. After the investigation, the inspector of Police, ACB, CIU, Hyderabad has filed a final report on 14/ 7/ 2014 requesting this court to close the FIR. The petitioner/defacto- complainant has filed this protest petition which was numbered as Crl.M.P.No.447/ 2014 on the file of this court. The complainant was examined and his sworn statement was recorded by this court. The complainant has filed a memo stating that the statements of the witnesses already recorded by the investigating officer are available in the record. There is no

need to again record the statements of the cited witnesses.

10. As per the main allegations in the complaint/ petition filed by the complainant under section 200 of CrPC are (i) The Government of Andhra Pradesh allotted Mind space project to M/s. Raheja corporation, Mumbai, without calling any tenders or applications from prospective developers (ii) the Government of Andhra Pradesh allotted 109 acres of land @ 50 lakhs per acre to Joint Venture company in the year 2003, whereas at the same location in the year 2003, Government of Andhra Pradesh has allotted land to different software companies ranging from Rs.1.5 crore to Rs.2.5 crore per acre and (iii) Though there was sufficient funds in the account of APIIC, the accused persons did not contribute proportionate share and get reduced the share capital of AAPIIC from 11% to 0.55%. The accused nos. 1 to 4 in connivance with the accused nos.5 and 6 caused loss to the Government to a tune of Rs.500 crores and caused wrongful gain to M/s. K.Raheja Corporation limited by committing the offences of Prevention of Corruption Act as well as Indian Penal Code.

11. The investigating officer in his final report has come to a conclusion that the Government of Andhra Pradesh without calling for any tenders or open auction has entrusted the IT & ITES project to M/s. K.Raheja Corporation by entering into Memorandum of Understanding dated 10/6/2002 and Memorandum of agreement dated 19/5/2003. But he further concluded that however council of Ministers has approved the proposal vide Council Resolution No. 8

(b)(1) dated 1/5/2003 and thus there is no evidence that has come forth against the A.1 and A.2 to prove the allegations, since the council of Ministers, itself have approved the proposal. Therefore, the accused nos.1 and 2 are not liable for the prosecution for the first allegation.

12. The investigating officer has also come to conclusion that since the decision was taken by the Government of Andhra Pradesh for allotment of an extent of 109.36 acres of land @ Rs.50 lakhs per acre as it is a Mega Project as part of IT policy vide G.O.Ms.No.27, dated 27/6/2002. The accused nos.1 to 4 have no role in allotment of the land to Joint Venture company @ Rs.50 lakhs per acre. Therefore the accused nos. 1 to 4 are not liable for the prosecution and further there is no evidence has forth coming against the accused nos.5 and 6 to prove collusion or conspiracy on their part. Hence, the accused nos.1 to 6 are not liable for the second allegation.

13. The investigating officer has also come to a conclusion that the APIIC has wrongly interpreted the essence of letter dated 15/12/2005 of the Government of Andhra Pradesh and therefore APIIC has intimated the Joint Venture company on 22/12/2005 that the Government of Andhra Pradesh has instructed as the APIIC need not subscribe to the rights issue but must insist for the Board seat to be continued. Consequently, the share capital of APIIC remains to be Rs.11.00 lakhs only out of increased share capital of Rs.17.91 crores in JVC. The equity participation of APIIC reduced from 11% to 0.55% w.e.f. 20.5.2006. In his final report the Investigating officer has also stated that after the registration of the criminal case by the APIIC to Joint Venture company for rectification of certain alleged major deviations and finally, KRITI-IPL has agreed to offer preferential shares to enable AAPIIC to increase 11% equity stake in Joint Venture company with the benefit 'i.e. dividends and other corporate benefits retrospectively. As if APIIC continues to hold 11% stake in the equity of Joint Venture Company and APIIC was paid an ex-gratia of Rs.2.07,88,410/-towards loss of all

corporate benefits from KRITHPL. The purport of the final report of the investigating officer with regard to the certain allegations is that since the 11% equity stake of APIIC in Joint Venture Company has been restored after registration of a criminal case by the ACB officials, here is no need to prosecute the accused persons.

14. It is the contention of the complainant that the material on record collected by the investigating officer is sufficient to file the charge sheet against the concern accused persons and in spite it, the investigating officer without application of mind recommended for closing of the FIR. The evidence collected by the investigating officer clearly shows that there under valuation of the land coupled with non-calling for tenders or auctions is clear contrary to the concept of trustee principal and in violation of breach of trust and the said decision is taken to benefit the private party in violation of the public trust principle. It is also the further contention of the complainant that the investigating officer contrary to the plain language of the notings in the letter gave his own interpretation to the letter dated 15/12/2005 of Government of Andhra Pradesh and ignored the note file, in order to give clean chit to the accused persons. It is also the further contention of the complainant that as per Clauses 2.3; 2.4 and 2.5 of the Memorandum of Agreement dated 19/5/2002 (document no.54) there is a lock in period of 5 years to the share holding of APIIC in joint venture company and during the said period the share holding of the APIIC in the joint venture company cannot be diluted or reduced. Contrary to the said provisions the APIIC share holding is reduced from 11% to 0.55% in the year 2006 and the said deduction was on account of the collusion in between of the accused nos. 1 to 4 on one side and the accused nos. 5 and 6 on other side.

15. As per the final report dated 14/7/2014 filed by the investigating officer even though the Government of Andhra Pradesh has entrusted the IT & ITES project to M/s. K.Raheja Corporation by entering into a MOU dated 10.06.2002 without calling for the tenders, the said action/proposal was approved by the council of Ministers vide council resolution no. 8(b)(1) dated 11/5/2003. In the final report it was stated on this allegation that no evidence has come forth against the accused officer nos.1& 2 to prove the allegations since Council of Ministers itself has approved the proposal. The said conclusion of the Investigating officer is not correct. Since the approval by the Council of the Ministers will be basing on the note file put up by concern Secretaries and Head of the Departments. Therefore it cannot be said that there is no evidence come forth against accused officers nos.1-4 to prove the allegation no.1.

16. With regard to the allegation no.2 the investigating officer in his final report dated 14/7/2014 has submitted that the investigation revealed that the Government of Andhra Pradesh has announced an industry friendly incentives policy for the IT sector in May, 1999 to promote the growth of IT industries within the State and as the IT industry has grown significantly during the last 3 years, the Government felt that it was necessary to continue the thrust being given to the ICT sector and give it a new direction. Accordingly, in continuation and modification of all the orders issued earlier on the subject of JCT policy, the Government approved the JCT policy for the ICT industries with incentives and accordingly issued G.O.Ms.No.27 on 27.06.2002. G.O.Ms.No.27 department of IT & C dated 27.06.2006 Annexure VII speaks as under: (1) A special land pricing policy for the sale of land in and around Hi-tech City fir Mega IT projects is provided as per the following terms and conditions (a) An IT project with an investment of Rs.50 crores or more is

treated as a Mega project (b) The land shall be offered at a cost of Rs.50 lakhs (Rs.5 Millon) per acre at the Hi-tech city layout prospectively for Mega IT projects. As per above G.0.Ms.No.27, an IT project with an investment of Rs.50 crores or more is treated as a Mega project and the land shall be offered at a cost of Rs.50 lakhs per acre at the Hi-tech city layout. Accordingly, the Government of Andhra Pradesh has allotted an extent of 109.36 acres in Sy.No.64(P) at Madhapur, Serlingampally Mandal of Ranga Reddy District to JVC following with the conditions of MOU and MOA during the year 2003 @ Rs.50 lakhs per acre treating the Mindspace project as Mega project since the investment of the project was estimated over Rs.100 crores. Since the decision was taken by the Govt. of A.P. for allotment of an extent of 109.36 acres of land @ Rs,.50 lakhs per acre as it is a mega project as part of ICT policy vide G.O.Ms.No.27 dated 27.06.2002, the accused Nos.1 to 4 have no role in allotment of land to JVC @ Rs.50 lakhs per acre. Therefore, they are not liable for prosecution and no evidence has come forth against the accused Nos.5 and 6 to prove collusion and conspiracy on their part. As such the A.1 to A.6 are not liable.

I7. The reasons given by the Investigating officer with regard to this allegation no.2 cannot be said as baseless. Hence we can accept the said reasoning so far as it relates to the allegation No.2.

18 With regard to the allegation no.3, the investigating officer in his final report dated 14/7/2014 has submitted that when the Joint Venture company in order to secure financial assistance from banks by enhancing the net worth, JVC issued rights shares in the year 2005 to increase the share capital from Rs.1 crore to Rs.20 crores. Then the share capital of the APIIC should have been Rs.2.2 crores. The APIIC addressed a letter to the Government of Andhra Pradesh to allot land in Nanakramguda since there was no land at Madhapur) towards difference of share capital extent to Rs.2.09 crores. It is also submitted in the final report that however the APIIC has wrongly interpreted the essence of letter dated 15/12/2005 of Government of Andhra Pradesh and has informed to the Joint Venture company on 22.12.2005 that the Govt. of A.P. has instructed not to subscribe to the rights issue but insisted for the board seat.

19. It is the contention of the learned counsel for the petitioner/complainant that as on that date an amount of Rs.31 crores 9lakhs and odd liquid cash that was available in the account of APIIC Limited. Therefore there was no necessity to address a letter to the Government of Andhra Pradesh on the said subject. It is also the further contention of the complainant that the said letter was addressed on account of conspiracy but the investigating officer has interpreted the name as if the APIIC has wrongly interpreted the essence of letter dated 15/12/2005.

20. In this case, along with the final report, the Investigating officer has filed 81(eighty one) documents which the investigating officer referred during the investigation. The petitioner/ defacto-complainant filed the present complainant before this court on 31/1/2011 and this court has passed orders referring the complaint under section 156(3) of CrPC to the ACB officials on 19/2/2011. The document no.63 filed along with the final report is the photo copy of the letter dated 23/2/2011 addressed by the Vice Chairman and Managing Director of APIIC (accused no.4) to M/s. Raheja Corporation Private Limited and K.Raheja IT park (accused no.5) given that letter to the accused No.4 after filing of the private complaint by the petitioner/defacto complainant herein has called up the accused No.5 to cancel the sale deeds pertaining to the lands which were transferred by

the APIIC to Joint Venture company towards its share, which prima facie shows that prior to filing of the present complaint by the petitioner/defacto complainant the accused no.4 has allowed the accused no.5 to sell the lands which was taken up by APIIC towards its share in the joint venture or to utilise the said lands as they like by the accused no.6. The copy of the statement of the account dated 9/6/2011 given by the Vice-Chairman and Managing Director of APIIC which came into existence subsequent to filing of the present complaint which also clearly shows the irregular acts committed by the accused nos.5 and 6 on account of collusion among the accused nos.1 to 6.

21. Document no.47 is the photo copy of the letter addressed by the then Vice-chairman and Managing Director of APIIC by name Sri L.V.Subrahmanyam, IAS shows that he addressed a letter to the Principal Secretary to Government IT&C Department dated 12/5/2005 proposing to allot and transfer the land in Nanakramguda instead of the land in Madhapur being the contribution of APIIC towards the increased authorized paidup capital in Joint Venture Company.

22. The document no.48 is the photo copy of the statement of account of the APIIC limited with ING Vysya Bank, Basheerbagh branch, Hyderabad shows that there was liquid cash balance of Rs.40,07,42,609.90 Ps. (Forty cores seven lakh s forth two thousand six hundred and nine and ninety paise only) as on 12/5/2005 i.e. as on the date of the letter under document no.47 addressed by the then Vice chairman and Managing Director of APIIC by name Sri L.V.Subrahmanyam, IAS. The amount payable by APIIC was Rs.2,09,00,000/- (Two crores and nine lakhs only) When there was liquid cash available in the bank account of the APIIC, why the then Vice chairman and Managing Director of APIIC suggested to the Government to allot lands which worth more than the amount equivalent to the balance of the share amount payable is not explained, which clearly show that there is prima facie case to conclude that the then Vice-Chairman and Managing director by name Sri L.V. Subramanian, IAS want to do favour to the said accused nos.5 and 6 at the cost of the interest of the Government. The said act of the said officers create doubt about his integrity and we also have to suspect that he has obtained some pecuniary advantage for himself doing that act in favour of the accused nos.5 and 6.

23. When we peruse the document No.57 filed along with the final report which is a copy of the letter dated 16.08.2005, the accused No.4 Sri B.P.Acharya., IA.S, the then Vice-chairman and Managing Director of APIIC shows that the accused no.4 has recommended to the Government to increase the paid up share capital by way of allotting additional extent of land or to allow dilution of share capital with possible consequences such as reducing 11% share held by APIIC to nominal level. He has not stated whether there was liquid cash available in the account of APIIC as on the date or not, it also prima facie shows that the accused officer no.4 has addressed the said letter with a view to help to the accused nos. 5 and 6.

24. The document no.65 is filed along with the final report shows that after the registration of the FIR only the steps were taken by the Vice chairman and Managing Director of APIIC to enhance the equity of APIIC to 11% which shows that on account of the acts of the accused nos.1 to 4 and Sri L.V.Subrahmanyam, IA.S, the then Managing Director and Vice Chairman of AAPIIC, there was a reduction of the equity in Joint Venture Company from 11% to 0.55% which clearly creates doubt about the acts of the accused nos.1-4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director

and Vice Chairman of APIIC.

25. In a case between Kujana Venu Vs. State of Andhra Pradesh reported in 2014 (2) ALD (Crl.) 638 the Honble High Court of A.P. held that: For framing of charge the Court is required to look into the final report and the documents filed along with it including the statements of the witnesses recorded under section 161of CrPC. The court is not expected to weigh the evidence on record if a prima facie case is made out; the Court is obliged to frame a charge. The concern of the Court is only to see whether there are reasonable grounds for presuming commission of offence by the accused. Even a strong suspicion can be basis for framing of the charge. The accused is entitled to be discharged only where no prima facie case is made out or the accusation itself is groundless.

26. In view of the above decision it is clear that even a strong suspicion is sufficient to frame charge against the accused. The observations in the above said decision is also applicable at the stage of taking cognizance of the offences. Therefore, we have to conclude that there is prima facie case against the accused nos.1 to 4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice chairman of APIIC for criminal misconduct by public servant punishable under section 13(1)(d) r/w Sec.13(2) of PC Act and also for the offences of criminal breach of trust by a public servant punishable under section 409 IPC and also cheating punishable under section 420 r/w Sec 34 of IPC. In view of my above discussions, I am also of the view that there is prima facie to proceed against the accused Nos.5 & 6 for abetting the offence punishable under Section 12 of PC Act and also for the offences punishable under sections 420, 409 r/w 34 IPC. Sri L.V.Subrahmanyam, IAS, the then Managing director and Vice Chairman of APIIC has not been named in the complaint as well as in the protest petition filed by the petitioner/complainant as the accused person, but in the protest petition, overt acts committed by Sri L.V. Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC have been clearly stated. Therefore it is just and necessary to prosecute the said Sri L.V.Subrahmanyam, IAS, the then Vice chairman and Managing Director of APIIC also as accused no.7.

27. The accused nos.1-4 & 7 Sri L.V. Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC are the public servants and they are not now working in the same positions as noted in the complaint and Sri L.V.Subrahmanyam, IAS (Accused no.7) is also not working in the same position as Managing Director and Vice Chairman of APIIC at present.

28. In a case between Balakrishnan Ravi Menon Vs. Union of India reported in 2007(1) SCC 45, the Honble Supreme Court observed that Clauses (a) and (b) of sub-section(1) of Section 19 of Prevention of Corruption Act, 1988 specifically provide that in case of a person who is employed and is not removable from his office by the Central Government or State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or State Government. The emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction, Further, under sub-section (2) the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have been retired, superannuated, be discharged or dismissed then the question of removing would not arise. Admittedly, when the

alleged offence was committed, the petitioner was appointed by the Central Government. He demitted his office after completion of five years' tenure. Therefore, at the relevant time when the charge-sheet was filed, the petitioner was not holding the office of the Chairman of Goa Shipyard Limited, Hence there is no question of obtaining any previous sanction of the Central Government.

29. In view of the above decision, it is clear that by the date of taking cognizance of the offence against the public servant if he is not serving the office in which he was at the time of committing the offence, no sanction is required for the acts committed by him in his formal office. So, as the accused officer nos.1 to 4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC (accused No.7) are not serving the same office which they were holding at the time of committing the offence in this case, no sanction under section 19 of Prevention of Corruption Act, 1988 is required in this case.

30. In this case, at the time of final report, the investigating officer has filed all the material including 161 of CrPC statements of LWs 1 to 13 noted in the final report. Therefore, I am of the view that there is no necessity for ordering for further investigation. Hence this point is hereby answered accordingly in favour of the petitioner/ complainant.

31. In view of my findings on the above point, the protest petition filed by the petitioner/complainant is to be allowed.

32. In the result, the petition is hereby allowed and the final report filed by the Inspector of Police, ACB, CIU, Telangana State, Hyderabad dated 14.07.2014 is hereby rejected. The case is taken on file for the offences under Sections 13(1)(d) r/w Sec.13(2) of PC Act and under Sections 409 & 420 r/w Section 34 IPC against the accused officer Nos.1 to 4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC (accused No.7) and for the offence under Section 12 of PC Act and under Sections 409 & 420 r/w Section 34 IPC against the accused Nos.5 & 6. The office is directed to register this case in Cr.No.6/ACB.CIU-HYd/2011 as Calendar Case against the accused nos.1 to 6 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC as the accused no.7. The Inspector of Police, ACB, CIU, Hyderabad, is directed to file sufficient copies of the case records to furnish to the accused officer nos. 1 to 7.

10. Impugning said order, the respective accused maintained the respective revisions supra, seeking to set aside the cognizance order passed by the learned Special Judge dated 30.12.2015 in Crl.M.P.No.447 of 2014.

11. The grounds of the respective revisions and the oral submissions in support of the revision grounds by the learned counsel for the respective revision petitioners in nutshell-

11a). In the Crl.R.C.No.262 of 2016 of A.7 that:

> 11a)(i). The order of the lower Court is incorrect and vitiated by material irregularity, apart from the material allegations in the private complaint and sworn statement on protest petition, particularly against the petitioner-A.7 are frivolous, bald and

baseless and acting thereon in taking cognizance and issuance of summons is arbitrary, illegal and erroneous, that too for no reason in ignoring the final referred report material, despite the learned Special Judge having suo-motto reopened the matter on 28.12.2015 with no such power even as referred supra, while posting the matter for orders to 30.12.2015, observed that the sworn statement of the defacto complainant dated 26.09.2015 was on record and even in the protest petition, examination of other witnesses also sought for by the defacto complainant/protest petitioner, recording of sworn statements of other witnesses of the protest petition is not necessary from the say by memo of the defacto complainant and as the investigation referred final closure report contains statements of witnesses recorded during investigation to consider the same also. The learned Special Judge is contended thus as gravely erred in taking cognizance of the offences against not only the FIR accused 1-6, but also against the petitioner though his name is not mentioned in the FIR as well as final report.

11a)(ii). The learned Judge failed to see that the protest petition and material relied therein does not indicate the ingredients of either IPC offences much less those punishable under Sections 120B or 420 or 409 IPC or those punishable under Section13 of the PC Act, particularly so far as the petitioner-A7 is concerned.

11a)(iii). The learned Judge failed to see that there is absolutely no iota of material on record to indicate that the petitioner had any deceptive intention at the inception to cheat the organ of the State and as such there is no prima facie material to attract Section 420 IPC.

11a)(iv). The learned Judge failed to see that there is absolutely no incriminating material to come to the conclusion that there was any entrustment of property to petitioner in his individual capacity and thereby the provisions of Section 409 IPC not attracted.

11a)(v). The learned Judge failed to see that the protest petition, material relied on and evidence gathered by the investigating agency would categorically indicate that it is a case of no material to sustain any accusation.

11a)(vi). The learned Judge failed to see that the Govt. entered into MOU on 19.05.2003 with Raheja and on 23.08.2003 a Joint Venture Agreement was entered, wherein the equity shares were fixed at 11% and 89% respectively and the allegation that the equity share of APIIC has come down from 11% to 0.55% in the year 2005, whereas the complaint filed was in the year 2011, therefrom there is inordinate delay of 6 years in filing the complaint and absolutely there is no explanation in the complaint for filing the complaint with such an inordinate delay, that too with out any police report in filing private complaint directly and asking to refer the private complaint to a particular designated police officer for registering crime and for investigation.

11a)(vii). The learned Judge failed to see that the APIIC had in fact passed Resolution, wherein it was resolved that in the future investment, in stead of money, the land has to be invested towards the share of APIIC.

11a)(viii). The learned Judge failed to see that the letter dated 12.05.2005 addressed by A.7 to the Principal Secretary to Government, ITCD, is only recommendatory in nature.

11a)(ix). The learned Judge failed to see that neither there was any pecuniary loss to the Govt. nor pecuniary advantage to the petitioner nor any public interest is involved.

11a)(x). The learned Judge failed to see that the earlier transfer of the land towards share capital of APIIC at initial stage was accepted and a similar recommendation was made by letter dated 12.05.2005 and as such, no inference can be drawn against the petitioner for making such and similar recommendation.

11a)(xi). The learned Judge failed to see that the entire transaction had taken place between the Govt. and Raheja, wherein the APIIC was only acting as Agent of the Govt.

11a)(xii). The learned Judge failed to see that the protest petition filed by the defacto-complainant was dismissed on 11.12.2014 on merits and as such, once the order was passed on merits, the same Court has no power to review the order in view of the bar under Section 362 CrPC.

11a)(xiii). The learned Judge failed to see that the protest petition and sworn statement refers the letter dated 12.05.2005 addressed by the petitioner to the Govt. which categorically indicates to transfer the land equivalent to Rs.2.09 crores at Nanakramguda to maintain the equity of Govt. in the JVC, but the learned Judge misinterpreted the letter.

11a)(xiv). The learned Judge failed to see from the matter on record that the petitioner was transferred from APIIC on 13.05.2005 and consequently, he resigned as a Director of Raheja Mindspace M/s K.Raheja I.T.Park, Hyderabad Pvt. Ltd.

11a)(xv). The learned Judge failed to see that the petitioner has no personal role whatsoever in taking any decision unilaterally for and on behalf of APIIC and he has acted only on behalf of APIIC as per the authority given to him by the resolution/s passed by the Board from time to time.

11a)(xvi). The learned Judge also failed to see that it is unsustainable to take cognizance against the petitioner as A.7 merely basing on the sworn statement of the complainant alleging a stray sentence for the first time therein and that too when not a party to the complaint or to the protest petition and also without examination of other witnesses and without considering the final referred report material of no accusation even against A1-6.

11a)(xvii). The learned Judge also failed to see that in cases instituted against the public servants acting in discharge of duties for their acts alleged as offences punishable under the provisions of the IPC and PC Act, the Court has no power to take cognizance of the same without previous sanction by the competent authority of the concerned Government, that too, while they are in service and also that too mere change of office or seat of office is not only not enough to exempt need of sanction even to take cognizance of PC Act offences, leave about for the offences under IPC or other enactments governed by the CrPC the previous sanction by the competent authority of concerned

Government is required even subsequent to the acts while in service alleged as offence, the person concerned has demitted offence or attained superannuation, for those including any suspension or removal or dismissal no way exempt the mandatory requirement of prior sanction to file private complaint or there on even at least after taken sworn statement/s therefrom to take cognizance.

11b). The grounds in Crl.R.C.Nos.143, 290 & 291 of 2016 of A.1 to A.3 respectively which are almost similar in nature and save as those covered supra and including from the oral submissions of the respective counsel for the petitioners A.1 to A.3 the contentions in brief are that:

11b)(i). The order of the lower Court is illegal, improper and unsustainable on facts and law.

11b)(ii). The learned Judge also failed to see that on closure of CCSR.No.108 of 2011 on 01.10.2014 as infructuous after accepting by the learned Judge, the final report dt.14.07.2014, including after protest petition filed by the defacto complainant on 02.09.2014, the same cannot be revived by it on the premise that it is only a mere irregularity which is curable one. The lower Court failed to see that when the protest petition and the CCSR were closed, no cognizance could be taken by the competent Court on its own.

11b)(iii). The learned Judge also failed to see that there was a sound and full-fledged investigation in which the petitioners role is absent in the entire scheme of facts and circumstances and as such the report filed seeking closure does not warrant any interference.

11b)(iv). The learned Judge also failed to see that there without being any sanction passed by the State any order for enquiry/investigation itself is illegal and also taking cognizance of the offences on said complaint in the teeth of decision of the Apex Court in 2013 (2) Scale 283 and the impugned order is liable to be set aside in limini.

11b)(v). The learned Judge also failed to see that there are no specific allegations of demand or acceptance of any illegal gratification by the petitioners/A.1 to A.3 and in the absence thereof, there cannot be any presumption or assumption of the commission of an offence under the provisions of the PC Act.

11b)(vi). The learned Judge also failed to see that the APIIC was made as the nodal agency for undertaking the activity of implementing the policy of the Govt. to create the IT parks developed either by itself or by entering into a joint venture with the real estate developers in the State and the ITCD in particular has no role of administrative control over the decisions of the APIIC.

11b)(vii). The learned Judge also failed to see that the G.O.Ms.No.133 of the General Administration Department (AR & TI) Govt., of Andhra Pradesh dated 10.04.2000 created the department of ITCD which will function as an officer oriented

department intending to discharge the responsibilities of distribution/allocation of lands of the State to other departments of like nature of APIIC.

11b)(viii). The learned Judge also failed to see that the role assigned to the ITCD Secretary(A.1), Additional Secretary(A.2) and Joint Director(A.3) as in-charge of protocol programs and IT Promotions till August 2012 and then attained age of superannuation and thereby not connected with facts in issue) is only to refer the applications of the prospective entrepreneurs to the APIIC for verification of their credentials and to see that the policy is implemented in accordance with law and rest are with the APIIC and when such is the case there is no justification to take cognizance against the petitioners for any offence, differing to the final closure report.

11b)(ix). The learned Judge also failed to see that the Court must take extreme care and caution while exercising jurisdiction under Sections 200 to 204 CrPC as per the settled law before brushing aside the final report filed by the investigating agency after the complaint referred to it under Section 156 (3) CrPC.

11b)(x). The learned Judge also failed to see that the ingredients of Section 409 IPC does not attract against the petitioners as they are neither having dominion over the subject matter property nor there was any trust placed on them which was breached by them as alleged by the defacto complainant over the reduction of the equity of APIIC from 11% to 0.55% in the joint venture.

11b)(xi). The learned Judge also failed to see that the civil service has not constitutional personality or responsibility, separate from the duly constituted by Govt. and as per Article 77 (1) and (2) of the Constitution of India, whatever executive action is taken by the Government of India the same shall be expressed to have been taken in the name of the President of India and in the light of the same it cannot be said that the petitioners are liable for any offences alleged against them.

11b)(xii). The learned Judge also failed to see that the Doctrine of Trust cannot be invoked in fixing criminal liability and the whole matter is to decide on principles of criminal jurisprudence.

11b)(xiii). The learned Judge also failed to see that the ingredients of Section 420 IPC do not attract to the petitioners as they were not the persons with respective designations at the relevant point of time when the State taken the decision for execution of MOU and even after assumption of charge by the petitioners, it is only the implementation of the earlier decisions of the State by them.

11b)(xiv). The learned Judge also failed to see that the entire note file coupled with the letters dated 15.12.2005 makes it clear that no decision was taken by the Government and in fact the APIIC was called upon to inform their decision and the

same shows that the petitioner/A.1 is unnecessarily implicated and the proceedings against her would result in grave injustice to her.

11b)(xv). The learned Judge also failed to see that the letter communicated to the Govt. by the ACB in furtherance of its final report, the Govt. in its memo dated 24.02.2014 refused to take action even against A.4 and A.7 which clearly shows that the State/Govt. is not willing to grant sanction in the proceedings.

11b)(xvi). The learned Judge also failed to see that Section 19 of PC Act clearly shows that no cognizance can be taken by the Court unless previous sanction by the Government or by the authority concerned, where the persons so employed are in service.

11b)(xvii). The learned Judge also failed to see that the decision in Balakrishnan Ravi Menon Vs. Union of India is applicable to the facts of the present case and even by ignoring the law of the Apex Court wherein it is clarified in catena of judgments that, unless the Public Servant is discharged, removed or dismissed or superannuated from service, the order of sanction should precede the act of the Court of competent criminal jurisdiction to take cognizance of the alleged offences including the offences under the provisions of PC Act, so long as said employee is continuing the services of the employer competent to remove him.

11b)(xviii). The grounds of revision of A4 covered by one or other grounds of A7, 1-3 above and thereby it no way requires repetition, but for to say further of he was not serving the office at the time of alleged offence occurred and sanction is mandatory to prosecute and he acted bonafide in discharge of his duties and there is no offence committed by him and the cognizance order is liable to be set-aside in limini.

11b)(xix). The learned counsel for A1-4&7 submit further that most of the grounds in one are similar in the others among the above revisions of them in their seeking for setting aside the impugned cognizance order of the lower Court against all of them.

11c). The contentions almost similar in nature in brief in the grounds of Crl.R.C.Nos.273 & 279 of 2016 of A.5 Neel Raheja, Director of M/s K.Raheja I.T.Park (Hyd) Pvt. Ltd. & A.6 B.Rabindranath (Former Head of Raheja Mindspace), respectively including from the oral submissions of their counsel in brief, save those contentions covered supra to adopt to the extent applicable and to avoid repetition are that:

11c)(i). The Complainant after receiving the extensive material on record of the Final Report, deliberately and fraudulently suppressed several material facts before the lower Court while recording sworn statement, with the object of mis-directing and misleading the lower Court to take cognizance and to issue summons on the accused.

11c)(ii). The cognizance order deserves to be set aside by the High Court in exercise of its revision jurisdiction u/sec.397 and 401 CrPC on the following grounds:-

11c)(ii)a). The learned Special Judge failed to examine or read the documents and materials in the Final Report and the order passed is on the basis of fraudulent suppression of material facts by the complainant.

11c)(ii)b). The learned Special Judge without application of mind and without any additional material passed the impugned order, which is grossly erroneous and contrary to provisions of law.

11c)(ii)c). The impugned order of the learned Special Judge suffers from patent defects apparent from the record and thereby liable to be set-aside.

11c)(ii)d). It is contended that the observation of lower Court drawing an inference of criminality in the allotment of land to the JVC without inviting bids is baseless as the same is neither alleged in the complaint, nor outcome of final referred report containing factual background in this regard.

11c)(ii)e). The lower Court has erred in holding that valuable land was given to KRCPL/JVC without calling for auction.

Firstly the project in question was earlier offered to L& T, and it was only after its refusal that the proposal was made to M/s K.Raheja Corporation Pvt. Ltd. Secondly, the decision to give the land was in accordance with the Govt.s IT&C Policy. Thirdly, the learned Special Judge does have jurisdiction to second guess the policy decision of the Executive. Fourthly, the Apex Court in the case of Natural Resources Allocation, In Re, Special Reference 1 of 2012, (2012) 10 SCC 1 has observed that auction/tender is not the only way of allotting state largesse.

11c)(ii)f). The Court below by completely ignoring the facts on record erroneously held that the approval of council of Ministers would be based on the note file of the concerned Secretaries of the Heads of the Departments and in that view, the finding of the lower Court is untenable, 11c)(ii)g). The Court below on one hand accepted transfer of land to the JVC @ Rs.50 lakhs per acre as proper and the A.1 to A.4 are not liable for prosecution and no evidence against the A.5 and A.6 (the petitioners herein) to prove conspiracy or collusion, however on the other hand grossly erred to hold that the allotment of the project to the KRCPL is contrary to the procedure, without showing on what basis to so hold.

11c)(ii)h). There is no material to show that the allotment of the project to KRCPL was contrary to the procedure contemplated and the KRCPL was identified for execution of the project by the Govt. and its appointed consultant and no officers from Govt. had any role in that regard.

11c)(ii)i). The lower Court failed to appreciate that the MOU is dt.10.06.2002 was signed before 2003 to 2009 (which is the period of offence alleged by the Complainant) and the APIIC was not a party to the MOU and in any event, the MOU was terminated by the Memorandum of Agreement dated 19.05.2003.

11c)(ii)j). The raising of further capital was done in normal and ordinary course of business in consonance with the terms of Joint Venture Agreement and the Articles of Association and after following due process of law and after consideration of the matter by the Govt. and APIIC.

11c)(ii)k). The learned Special Judge failed to see that the APIICs percentage of share in capital has gone down only due to its not subscribing to the Rights Issue despite the offer made by the JVC and despite all the indulgence and time granted to it in this regard. The issue of investing further capital/contribute further capital was pending with the Government for more than one year and after due deliberations and considerations it was informed to the JVC that the Government is not willing to contribute any capital further in the form of cash and despite the same, the JVC agreed to nominate representative of the APIIC as a Director to its Board and by it there was no damage caused due to the dilution of the stake of APIIC in the JVC. The development of the project was in terms of MOA and the JV agreement; therefore, there is no ground for any mischief with malice to be attributable to the petitioner. The APIICs share was restored to 11% pursuant to the mutual discussions and deliberations between the JVC and APIIC retrospectively with all corporal benefits being paid to APIIC. To the said extent the APIIC has subscribed to 20,90,000/-, closing the disputes in relation to restoration of equity claim of APIIC. On verification of entire accounts the Govt. requested to pay an amount of Rs.181.3 lakhs as total dividends receivable as corporate benefits receivable by the APIIC on its restoration of stake to 11% retrospectively, which was paid as ex-gratia. This belies the contentions of the petitioner that a loss aggregating to Rs.500 crores was caused to Government exchequer on dilution of stake of APIIC in the JVC.

11c)(ii)l). The learned special Judge has failed to see that there is no question of conspiracy on the part of the petitioners (A.5 and A.6) with regard to the enhancement of equity capital by payment of its share in cash or through transfer of land, despite the delay at the end of APIIC and/or Govt., the JVC not going ahead with a unilateral decision in increase of equity but waited for more than one and half years, and the JVCs agreeing to retain the nominee Director of APIIC despite its shareholding falling below 11%, as required for the same. The Board of Directors of the JVC were legally and contractually entitled to issue shares only to KRCPL group of shareholders (and not to APIIC).

11c)(ii)m). The learned Special Judge has failed to appreciate that the validity of a decision taken in different circumstances cannot be alleged to be dishonest only because in hindsight it proved to be more or less profitable for one or the other party. Future is always in the realm on uncertainty and the brave who take opportunity risks sometimes suffer heavy losses and at other times make high profits. That is the very nature of the real estate business.

11c)(ii)n). The power to quash proceedings after completion of investigation is wider as the Courts can look into the material revealed by investigation for the purpose of drawing satisfaction that such material does not in any manner disclose commission of offence alleged against the accused as held in Satish Mehra Vs.State (NCT of Delhi)-2012) 13 SCC 614.

11c)(ii)o). That as regards offence u/sec.12 of PC Act, the learned Sessions Judge, has erred in not appreciating that there is no specific instance of any illegal gratification having been paid by the

petitioners and demanded or accepted by any of the accused officers which is a sine qua non and foundational fact to constitute an offence under Section 12 of PC Act and that a vague allegation can hardly lay foundation of an offence under the P.C. Act as held in State of Maharashtra Vs. J.L.Wankhede (2009) 6 SCC 587 para 13-15.

11c)(ii)p). The learned Special Judge has not considered that none of the ingredients of Section 420 IPC are disclosed during the investigation and there is not even an allegation of any dishonest inducement on the part of the petitioners. The complainant or the State does not allege that it was dishonestly induced to deliver any property to the petitioner. On the other hand, the transfer of lands is part of the well documented correspondence between the JVC on one hand and the Govt. on the other. Even the ingredients of Section 409 IPC are attracted and even alleged as the land having been purchased by the JVC on payment of consideration amount mutually agreed upon between the parties cannot be construed as entrustment in any manner whatsoever.

11c)(ii)q). The offence u/sec. 409 IPC cannot be alleged against the JVC and its collaborators as they themselves are owners of the land. In CBI Vs. Duncan Agro (1996) 5 SCC 591, Para 27, the Apex Court held that for a charge u/sec. 409 IPC, ownership or beneficial interest in property must be in some person other than the accused. In the present case the learned Special Judge has erred in taking cognizance u/sec. 409 IPC even though the JVC was owner of the land in question.

11c)(ii)r). The learned Special Judge has failed to appreciate that in order to attract Section 34 IPC, the complaint and investigation report must, prima facie, reflect a common prior concert or planning amongst petitioner and other accused, which is wholly missing in this case.

11c)(ii)s). The learned Special Judge has failed to pose unto himself the correct question viz. as to whether the complaint and the material collected during investigation, even if taken on its face value to be correct in its entirety(without conceding so), would lead to the conclusion that the Petitioner was personally liable for any offence.

11c)(ii)t). The learned Special Judge ought to have appreciated that the complaint is nothing but an attempt by the Complainant to give the cloak of a criminal offence to a purely civil commercial transaction and rope in Petitioner and others, despite the fact that they had no role or participation in the alleged offences; with the sole purpose of browbeating and tyrannizing the petitioner with criminal prosecution.(Suneet Gupta Vs. Anil Sharma(2008) SCC 11 670, Para 25-26 and Devendra Vs. State of UP(2009) 7 SCC 495,para 27), 11c)(ii)u). The learned Special Judge has failed to appreciate that the MOA contains an arbitration clause for resolution of any dispute between the APIIC and KRCPL. Without prejudice, the controversy in the present case is a shareholders dispute under the MOA that could have been resolved through Arbitration. In fact, after the registration of case, JVC on the request of APIIC and acting in good faith in view of its long standing relationship agreed to offer preference share to enable APIIC to increase 11% equity stake in the JVC. In view of this development, further continuation of the criminal proceedings would be an abuse of process and exercise in futility.

11c)(ii)v). The learned Special Judge has conveniently overlooked that even though prior sanction u/sec.19 of the PC Act, may not be the requirement in view of the fact that accused officers were not serving in the same office, however, protection u/sec.197 CrPC is available to accused persons in respect of offences under IPC even after retirement or their transfer. Hence, to set aside the impugned order of the lower Court.

12. whereas it is the contention of the learned counsel for the defacto complainant and also the learned Standing Counsel for SPE & ACB Cases of the State of Telangana by supporting the cognizance order and by drawing attention right from the private compliant and protest petition and sworn statement averments by impugning the correctness of the referred report and by saying the inherent power even not conferred specifically under Section 482 CrPC on the learned special Judge, to rectify the inadvertent and mistaken outcome of the closure/dismissal order from the principle of actus curia neminem gravabit the restoration of the protest petition and the taking of cognizance are thereby sustainable and all the ingredients of the offences referred supra are clearly making out against all the respective accused persons and there are no grounds to quash the cognizance order by sitting in revision against the same for no illegality and impropriety therein and within its limited jurisdiction and the conspiracy can be proved from the circumstances covered by the facts during trial from the prima facie accusation on face value of the complaint averments covered by the FIR reiterated in the protest petition and sworn statement and even the offences under Section 420 and 409 IPC are attracting against all accused and against the respective officials under Section 13 PC Act and against A.5 & A.6 under Section 12 PC Act and thereby sought for dismissal of all the revision petitions.

13). Heard both sides and perused the decisions placed reliance respectively and also the material on record with reference to the respective contentions in the oral and written submissions referred above. The decisions placed reliance respectively to avoid repetition is chosen to refer contextually in the course of discussion in the decision to be arrived.

14). The points for consideration that arise now to decide are:

> i). Whether the cognizance taken by the learned Principal Special Judge for SPE & ACB cases, Nampally, Hyderabad on the protest petition in Crl.M.P.No.447 of 2014 differing to referred final report in Cr.No.6/ACB.CIU/ HYD/ 2011, for the offences punishable under Sec.13(1)(d) r/w Sec.13(2) of the P.C.Act and 420 and 409 r/w. 34 of IPC against A1-4 & 7 and Sec.12 of the P.C.Act and 420 and 409 r/w. 34 of IPC against A5 & 6, in CC.SR.No.108 of 2011 (C.C.No.21 of 2015), is unsustainable and is liable to be quashed either for want of sanction for prosecution from any legal bar against A1-4 & 7 or for want of prima-facie accusation from even face value of the protest petition enquiry read with final referred report material covered by the investigation and if so to what extent and for what offence
>
> ii). To what result

15). Coming to the rival contentions on maintainability of the petitions under Section 482 CrPC to sit against the impugned cognizance order of the Learned Special Judge, it is needful to consider the scope on exercise of inherent powers u/s.482 CrPC by High Court, referring to the expressions save those covered by N. Srinivasan supra that:

15.a). The three Judge Bench of the Apex Court in Common Cause Vs. Union of India , held at Para 179 that the powers that can be exercised by the Supreme Court under Article 32 and by the High Court under Article 226 are plenary and are not even fettered by any legal constraints. No doubt it was observed at Para 178 that there should be accountability and liability of the executive including public servants in administrative matters and there should be transparency in all what they do, especially where grant of larges concerned. It was also observed at Para 86 that the officers of the Government would also be liable in damages for their wrongful acts provided the act does not fall within the purview of act of State. It is to say for acts not falling with in the purview of act of state, the liability of the officials for their wrongful acts is damages, rather criminal liability, unless malice and mensrea shown to make them liable for the actions.

15.b). The Apex Court in Pepsi Food Ltd. Vs. Special Judicial Magistrate held referring to catena of earlier expressions that the powers conferred on the High Court under Article 226 and 227 of the Constitution of India and under Section 482 CrPC have no limit, but more the power, more due care and caution should be exercised while invoking these powers and same is quoted with approval in several expressions later even.

15.c). It is also as per the well laid down expression of the Apex Court five judge Bench way back in Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, Bombay referring to the earlier three judge bench expression in Talab Haji Hussain Vs. Madhukar Purshottam Mondkar that the High Court is having the inherent power under Section 561-A(old) 482(new) CrPC, where such an order is necessary to secure the end of justice or to prevent abuse of process of Court as this power is always preserved to the High Court under the Code. It was also observed that the inherent power of the High Court is not conferred by CrPC. The power which inheres in the High Court is no way limited or affected by the provisions of CrPC.

15.d). The three Judge Bench of the Apex Court in Krishnan V. Krishnaveni relying upon the earlier Four Judges Bench expression in V.C.Shukla V. State through C.B.I that refers the three Judge Bench expression in Madhulimaye v. State of Maharashtra that where it is found any miscarriage of justice or abuse of process of the Court or required statutory procedure not been complied with or the order passed or sentence imposed requires correction, it is but the duty of the High Court to exercise the inherent powers.

15.e). The latest three Judge Bench of the Apex Court in Prabhu Chawla v. State of Rajasthan held explaining Mohit v.

State of Uttar Pradesh that Section 482 CrPC begins with a non- obstante clause to state: Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. abuse of the process of the Court or other extraordinary situation excites the courts jurisdiction. The limitation is self-restraint, nothing more.

15.f). It was also held by the Apex Court in Popular Muthaiah Vs State rep. by Inspector of police that the inherent power is not confined to procedural or adjectival law, but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts ex debito justitiae -to mean to do real and substantial justice in the lis for which alone the power exists inherently. The Apex Court in Popular Muthaiah (supra) referred the earlier expressions in 1) Nawabganj Sugar Mills Vs. Union of India holding that, though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is coextensive with the necessity and in 2) South Eastern Coal Fields Ltd. Vs State of M.P. holding that act of court does not confine to act of primary court, but even appellate or revisional or other superior court, as it is an act of court as a whole. In Popular Muthaiah(supra) it is also held referring to the scope of the Maxim actus curiae neminem gravabit- that this principle is not confined to erroneous act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and the law.

15.g). In R.Kalyani V. Janak C.Mehta , it was held that for invoking the inherent power in discharge of paramount duties by the High Court, it is to see a person apparently is not subjected to persecution and humiliation on the basis of wholly untenable complaint/report.

15.h). In Sunitha Jain V. Pavan Kumar Jain at Para No.39 it was held that, inherent power of High Court would not embark upon an enquiry as to whether evidence is reliable or not which is a function of trial Magistrate to appreciate as to the accusation is sustained or not ultimately, but for to appreciate the facts of case on hand on its face value.

15.i). In State of Orissa V. Saroj Kumar Sahu it was also held in para Nos.11 and 14 that though no hard and fast rule can be laid down in exercise of the extraordinary jurisdiction of the High Court, but for to say it is not permissible for the High Court in exercise of the jurisdiction to act as if it was a trial Court but for prima facie to satisfy about existence of sufficient ground of accusation for proceeding or not and to evaluate the material for the limited purpose with reference to documents.

15.j). In Punjab National Bank V. Surender Prasad Sinha it was held in para No.6 that: It is also salutary to note that judicial process should not be an instrument of oppression or needles harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank

by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta. Same is the principle also laid down in Zandu Pharmaceuticl Works Ltd. Vs Mohd. Sharaful Haque , Amit kapoor Vs Ramesh Chander , Satish Mehra supra and Rajat Prasad Vs CBI .

15.k). No doubt where the dispute is of civil nature the criminal prosecution ordinarily cannot be resorted to, though there is no bar for simultaneous civil and criminal proceedings in a given case, but for to say the criteria for both is different and the result of the one is not binding on the other as held in Devendra Vs. State of U.P. and CBI Vs. Dunkans Agro Industries Limited , where it is also discussed the ingredients respectively of the offence of cheating and criminal breach of trust, particularly in reference to those facts.

15.l). In Rajib Ranjan and Ors. v. R. Vijaykumar referring to the three Judge Bench expression in Inder Mohan Goswami and another v. State of Uttaranchal , it was observed at Para 19, that the Court reiterated the scope and ambit of power of the High Court under Section 482 of the Code in the following words:

> 23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:
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> (i) to give effect to an order under the Code;
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> (ii) to prevent abuse of the process of court, and
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> (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then he would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases:

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v DPP, 1964 AC 1254 Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in DPP v Humphrys, 1977 AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

15.m). In Umesh Kumar Vs. State of Andhra Pradesh referring to (Pepsi Food Ltd. supra; Ashok Chaturvedi v. Shitulh Chanchani ; G. Sagar Suri v. State of U.P. and Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy), it was held that the scope of Section 482 CrPC as well defined and the inherent powers could be exercised by the High Court to give effect to an order under the CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution, but can be exercised to save the accused from undergoing the agony of a criminal trial. Thus, even to examine the same, the petitions are maintainable, needless to say the extent of the power in deciding the petitions on touchstone of the merits on face value of the material, apart from right of the accused to place any additional material even to consider if it is relevant and impeccable-vide., Rukmini Narvekar Vs. Vijay Satardekar .

15.n). It is laid down by the Apex Court in Chandran Ratnaswami V. K.C. Palanisamy that where it is an abuse of process to continue the proceedings, it is the duty of the Court to quash the proceedings

in such case by clarifying what is meant by abuse of process of court, that:

> 29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of Connelly vs. Director of Public Prosecutions, (1964) 2 All ER 401 (HL) observed: There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process. The power (which is inherent in a courts jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice. In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.
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> 30. In Hui Chi-Ming vs. The Queen [(1992) 1 AC 34 (PC)], the Privy Council defined the word abuse of process as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.
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> 31. In the leading case of Bennett vs. Horseferry Road Magistrates Court, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:
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> (i) where it would be impossible to give the accused a fair trial;

or (ii) where it would amount to misuse/manipulation of process because it offends the courts sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

15.0). It is laid down by the Apex Court way back in State of Karnataka vs. L. Munnniswamy , considering the scope of inherent power of quashing under Section 482 CrPC that in the exercise of this wholesome power, the High court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature.

16). From the above, before coming to other merits, it is necessary to consider the scope of law on the offences punishable under sections 420 and 409 r/w.34 IPC:

16)(A). On section 34 IPC:

16)(A)(a). The principle of Joint Liability defined in section 34 IPC is as follows: Section 34. Acts done by several persons in furtherance of common intentionWhen a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

16)(A)(b). Section 34 IPC deals with acts done by several persons in furtherance of common intention. It speaks that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. It deals with common intention. The intention made among several persons to do something wrong and act done in that manner in which it was formulated comes under sanction of section 34 of IPC. Section 34 deals with a situation, where an offence requires a particular criminal intention and is committed by several persons. The liability of individuals under this circumstance is called Joint Liability. Common intention implies a pre arranged plan and acting in concert pursuant to the plan. Common intention comes into being prior to the commission of the act. There must be clear and unimpeachable evidence to justify that inference. Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them. This section 34 is only a rule of evidence and does not create a substantive offence. This section only applies with other penal sections which deal with the punishment of the offence. Common intention requires prior meeting of mind and unity of intention and overt act has been done in furtherance of the common intention of all. The crucial factor of s.34 is participation. From the various interpretations of Apex Court and guideline given in different cases, referring to the expressions of the Privy Council, the earliest was Barendra Kumar Ghosh v. King Emperor, also known as the Post Master Case where Lord Sumner dismissed the appeal against the conviction and held that criminal acts means that unity of criminal behaviour which results in something for which an individual would be responsible, if it were all done by himself alone, that is, in criminal offence that was relied by the Supreme Court in Muthu Naicker and others v. State of Tamilnadu and Rangaswami v. State of Tamilnadu to impose Joint Liability under section 34, the requirements are

1. To establish common intention premeditation of minds is necessary. There should be prior meeting of minds which activated common intention and criminal act should have been done in furtherance of common intention.

2. There may be situation in which premeditation was not present, but intention developed at the spur of the time, but it should must been shared among one another.

3. To prove common intention is a very hard, because it is the mental thinking of the accused at that point of time. So it has to be culled out from the facts and circumstances of each case.

4. There is a difference between common intention and similar intention, and s.34 can be invoked only when the accused shares common intention and not one the similar intention.

5. Unless common intention is proved, individual will be liable for his own act and not otherwise. They will be deal as under s.38 of IPC. And if there is any doubt, the benefit of doubt should be given to the accused.

16)(A)(c). From the facts on hand with reference to the above principle of law practically there is nothing to apply joint liability against A1-4&7 with A5&6.

16)(B) On Section 420 IPC:

16)(B)(a). Coming to Section 420 IPC, the Apex Court in Anil Mahajan Vs. Bhor Industries Limited held that to attract the offence of cheating, fraudulent and dishonest intention must be shown to be existing from the inception of the transaction and failure to keep promise at a subsequent stage will attract no offence and mere use of expression cheating in the complaint is of no consequence for no basis to the averment of deciding cheating or fraudulent intention of accused at the time of entering into the transactions. See also Asoke Basak and Devendra supra of the accused committed the acts dishonestly and willfully from the inception to attract the offence of cheating.

16)(B)(b). The other expression of the Apex Court in Uma Shanker Gopalika Vs. State of Bihar , it was held that breach of contract would amount to cheating if only intention to cheat was existing from the inception and if such intention developed later that would not amount to cheating.

16)(B)(c). The other expression of the Apex Court in Ram Jas Vs. State of U.P. also it is laid down on the ingredients required for the offence of cheating that there should be fraudulent or dishonest inducement by deceiving from the inception.

16)(B)(d). In SVL.Murthy vs. State-CBI while holding the ingredients required for the offence of cheating should be fraudulent or dishonest inducement by deceiving from the inception by referring to catena of expressions, so far as criminal conspiracy, it is held the prosecution must show that there had been meeting of minds at the time of the facility applied for and granted.

16)(B)(e). The three Judge Bench of the Apex Court in Ajay Mitra v. State of M.P. held that mensrea of inducing the persons deceived to deliver property is essential to

constitute offence of cheating and in ultimately quashing the FIR therein by referring to the other expressions.

16)(B)(f). In A.L. Panian Shanmugam Vs. State of Andhra Pradesh it was held in the mercantile transactions, consignments which are delivered on credit and very often the payment cannot be made on due date, that does not attract penal consequences.

16)(B)(g). In Bishan Das v. State of Punjab it was held that mere issuing of false certificate does not constitute offence of cheating but for on showing it was issued with dishonest intention for wrongful gain.

16)(B)(h). In V.P.Srivastava V. Indian Explosives Limited referring to several expressions including Ram Jas supra, Medchal Chemicals & Pharma (P) Limited V. Biological E. Ltd and Hira Lal Hari Lal Bhagwati V. C.B.I particularly at paras 20 to 25 held that, it is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making representation or promise and such a culpable intention right at the time of entering into the agreement must be established by showing from facts and that cannot be even be presumed including from any failure to keep his promise subsequently or for mere dereliction of any duty or any omission or lapse.

16)(B)(i). In Vimala V. Delhi Administration and State of U.P V. Ranjit Singh it was held further that to constitute the offence of Section 420 I.P.C there should not only the cheating but as a consequence of such cheating the accused should have been dishonestly induced the person deceived and the complaint must be by the person deceived or on his behalf. The criminal culpability to attract for certain specified acts alleged to have been done fraudulently or dishonestly to constitute an offence it cannot be assumed that the person committed the offence merely by alleging or showing that he acted fraudulently unless such a fraudulent act is specifically made an offence under I.P.C or some other law. The expression defraud involves two elements of deceit and injury to the person deceived and such injury is something other than economic loss and it will include any harm caused to any person in body, mind or reputation or such others and it is a non-economic or non-pecuniary loss and the benefit or advantage to the deceiver will almost always cause loss of detriment to the deceived.

16)(B)(j).In Mohd. Ibrahim Vs. State of Bihar the Apex Court held referring to Section 415, 420, 463, 471 & 25 IPC in relation to the offence of cheating and on the allegations of forgery including for the purpose of cheating and using as genuine a forged document that the criminal culpability cannot be presumed merely by alleging that accused acted fraudulently, unless the fraudulent act is specifically made out from specific averments and as to what offence therefrom it constitutes either under IPC or some other law to sustain the accusation.

16)(C). On criminal breach of trust-406 & 409 IPC:

16)(C)(a). The Apex Court in S.W. Palanitkar Vs. State of Bihar , held that every breach of trust may not result in a penal consequence unless there is evidence of mental act of fraudulent misappropriation and if the breach of trust is coupled with mensrea. Further in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. The above view in Palanitkars case was referred to and followed in Rashmi Jain vs. State of Uttar Pradesh & Anr. .

16)(C)(b). Further by the three Judge Bench in Madhav Rao Jiwajirao Sindia Vs Sambhaji rao Chandrojirao it was held that a case of breach of trust may be both a civil wrong and a criminal offence. The Court must consider from facts and circumstances the intentions and actions and to see whether the uncontroverted allegations made by prosecution prima-facie establish the offence.

16)(D). From the above, coming to the attracting of the offence punishable under section 13(2) r/w 13(1)(d) of the PC Act against A1-4 & 7 concerned, apart from sanction refused by the competent authority and even then cognizance was taken and its sustainability as to whether the materials brought on record form sufficient basis for taking cognizance under Section 13(1)(d) r/w 13(2) of the PC Act concerned, section 13(1)(d) of the PC Act covers a public servant who obtains for himself or for ay other person, any valuable thing or pecuniary advantage, by corrupt or illegal means or by abusing his official position or while holding office - as a public servant. It covers if a public servant dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do. There can be no crime without a guilty mind from reading of the above. For more clarity it is needful to reproduce Section 13 of the PC Act.

16)(D)(a). Section 13 with title Criminal misconduct by a public servant reads that:

(1) A public servant is said to commit the offence of criminal misconduct,

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to

have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

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

(d) if he,

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

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

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

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

Explanation.For the purposes of this section, known sources of income means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(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.

16)(D)(b). In the case of State v. A. Parthiban , the Supreme Court held as under: Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1) (d) of the Act. Same is also the position from the expression of the Apex Court in State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede that demand of illegal gratification is a sine-quo-non for constituting the offence under Section 13(1)(d) of PC Act.

16)(D)(c). In S.P. Bhatnagar Vs State it was held that it is for the prosecution to prove affirmately that the accused acted dishonestly by corrupt or illegal means or by abusing his position and

obtained any pecuniary advantage for some other person and deliberately caused loss to the department as held in S.K.Kale Vs. State and M.N.Nambiar Vs State .

16)(D)(d). In State of M.P. Vs. Sheetla Sahai supra on the scope of section 13(2) r/w 13(1)(d) of the PC Act r/w 120B IPC to make out prima-facie case, it was observed referring to Bharat Petroleum Corp. Ltd. vs. T.K. Raju that: In Inspector Prem Chand v. Govt. of N.C.T. of Delhi & Ors. , that this Court observed: "In State of Punjab and Ors. Vs. Ram Singh Ex. Constable , it was stated:

> In Black's Law Dictionary, Sixth Edition at page 999, Misconduct has been defined thus: 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagment, but it is not negligence or carelessness.' Misconduct in office has been defined as: "Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."
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> In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:
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> "The term `misconduct' implies, a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word `misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

54. Even under the Act, an offence cannot be said to have been committed only because the public servant has obtained either for himself or for any other person any pecuniary advantage. He must do so by abusing his position as public servant or holding office as a public servant. In the latter category of cases, absence of any public interest is a sine qua non .

60. This leaves us with the question as to whether an order of sanction was required to be obtained. There exists a distinction between a sanction for prosecution under Section 19 of the Act and Section 197 of the Code of Criminal Procedure. Whereas in terms of Section 19, it would not be necessary to obtain sanction in respect of those who had ceased to be a public servant, Section 197 of the Code of Criminal Procedure requires sanction both for those who were or are public servants.

16)(E). Section 12 of the PC Act:

> 16)(E)(i). Section 12 of the PC Act with the title- Punishment for abetment of offences defined in section 7 or 11, reads that:

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine

16)(E)(ii). It was held in State of Maharashtra Vs. J.L. Wankhede supra also as regards the offence u/sec.12 of PC Act, that the learned Sessions Judge, has erred in not appreciating that there is no specific instance of any illegal gratification having been paid by the petitioners and demanded or accepted by any of the accused officers which is a sine qua non and foundational fact to constitute an offence under Section 12 of PC Act and that a vague allegation can hardly lay foundation of an offence under the Act.

16)(E)(iii). The Apex Courts in A.Subair V. State of Kerala at para 13 held of the essential ingredients required for attracting Section 7 of the P.C. Act are: (i) that the person accepting the gratification should be a public servant; (ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or dis-favour to any person.

16)(E)(iv). A perusal of Section 7 of the Act would clearly indicate that a person being a public servant accepts or agrees to accept as a motive or reward for doing or not doing any official act in the exercise of his official functions, therefore, there shall be an allegation that a public servant must have been induced by the accused to accept or to agree to accept gratification for doing an act or forbearing to do an act in the exercise of his official functions. It is only when the material collected shows that the accused abetted the offence either under Section 7 or Section 11 of the Prevention of Corruption Act, then only the prosecution could proceed under Section 12 of the Prevention of Corruption Act and for that there shall be an allegation that a public servant must have been induced by the accused to accept or to agree to accept gratification for doing an act or forbearing to do an act in the exercise of his official functions.

16)(E)(v). In this regard on the scope of Section 12 of the Prevention of Corruption Act, in State Vs. Mahadeo Dhunnappa Gunaki it was held referring to Section 161 IPC what requires of gratification should be given to a public servant as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show favour of dis-favour in the exercise of his official functions or for rendering or attempting to render any service or disservice to any person with any public servant. Case of a person who offers bribe to public servant, if the intention or object with which money is offered is to induce the public servant to perform an official act or show favour in the exercise of his official functions or render any service with any public servant the offence under Section 161 read with 116 IPC would be complete. In fact, it is not the mere offer but further it must be shown in furtherance of the

inducement to attract the alleged abetment even from the expression.

16)(E)(vi). In State through C.B.I. Vs. Parameswaran Subrahmani it dealt mainly on the question of so long as sanction required for punishment of principle offender under Section 7 and 11 of P.C.Act would equally be necessary in regard to punishment for abetment of the offence. Section 12 cannot be treated as being wholly distinct or independent from Section 7 or 11 because it speaks abetment of those offences punishable. Thus, sanction would equally necessary. Thereby, the law is clear that even mere offer does not constitute abetment without showing some act in furtherance including of the intention to abet.

17). Before coming to the other merits on facts with reference to the ingredients required to be made out prima-facie to sustain the accusation for the offences punishable under sections 34 r/w 420 and 409 of IPC and Sections 13 of PC Act, so far as the requirement of prior sanction from competent authority to take cognizance of the offences against A1-4 & 7, by the special judge for ACB cases, for the offences allegedly committed by them by abusing their official position, while working in the respective departments of the State Govt. concerned:

17).(i). The learned judge observed in the impugned cognizance order from para 27 onwards that:

27. The accused nos.1 to 4 and accused no.7-Sri L.V. Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC are the public servants and they are not now working in the same positions as noted in the complaint.

28. In a case between Balakrishnan Ravi Menon Vs. Union of India reported in 2007 (1) SCC 45, the Honble Supreme Court observed that Clauses (a) and (b) of sub-section(1) of Section 19 of Prevention of Corruption Act, 1988 specifically provide that in case of a person who is employed and is removable from his office by the Central Government or State Government, as the case may be, sanction to prosecute is required to be obtained either from the Central Government or the State Government. The emphasis is on the words "who is employed"

in connection with the affairs of the Union or the State Government. If he is not employed then Section 19 nowhere provides for obtaining such sanction, Further, under sub- section (2) the question of obtaining sanction is relatable to the time of holding the office when the offence was alleged to have been committed. In case where the person is not holding the said office as he might have been retired, superannuated, be discharged or dismissed then the question of removing would not arise. Admittedly, when the alleged offence was committed, the petitioner was appointed by the Central Government. He demitted his office after completion of five years' tenure. Therefore, at the relevant time when the charge-sheet was filed, the petitioner was not holding the office of the Chairman of Goa Shipyard Limited, Hence there is no question of obtaining any previous sanction of the Central Government.

29. In view of the above decision, it is clear that by the date of taking cognizance of the offence against the public servant if he is not serving the office in which he was at the time of committing the offence, no sanction is required for the acts committed by him in his formal office. So, as the accused officer nos.1 to 4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC (accused No.7) are not serving the same office which they were holding at the time of committing the offence in this case, no sanction under section 19 of Prevention of Corruption Act, 1988 is required in this case.

30. In this case, at the time of final report, the investigating officer has filed all the material including 161 of CrPC statements of LWs 1 to 13 noted in the final report. Therefore, I am of the view that there is no necessity for ordering for further investigation. Hence this point is hereby answered accordingly in favour of the petitioner/complainant.

31. In view of my findings on the above point, the protest petition filed by the petitioner/complainant is to be allowed.

32. In the result, the petition is hereby allowed and the final report filed by the Inspector of Police, ACB, CIU, Telangana State, Hyderabad dated 14.07.2014 is hereby rejected. The case is taken on file for the offences under Sections 13(1)(d) r/w Sec.13(2) of PC Act and under Sections 409 & 420 r/w Section 34 IPC against the accused officer Nos.1 to 4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC (accused No.7) and for the offence under Section 12 of PC Act and under Sections 409 & 420 r/w Section 34 IPC against the accused Nos.5 & 6. The office is directed to register this case in Cr.No.6/ACB.CIU-HYd/2011 as Calendar Case against the accused nos.1 to 6 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC as the accused no.7. The Inspector of Police, ACB, CIU, Hyderabad, is directed to file sufficient copies of the case records to furnish to the accused officer nos.1 to 7.

17(ii). In fact, in Balakrishnan Ravi Menon supra what was held referring to the Apex Courts expression in R.S. Nayak supra was that with reference to the expression as held by the High Court in the facts of the present case, sanction is not required to prosecute the public servant, who is no longer holding the post/office as Chairman and Managing Director of the Goa Shipyard Ltd., a Central Govt. undertaking, as retired on 07.11.1999, even he was so working by the date of the CBI raid on 12.02.1999 and the fact that later he was appointed on 08.03.2000 as Managing Director of T&E Ltd. by the State of Kerala and charge sheet filed against him on 20.11.2000 while he was functioning as such. It is thereby crystal clear that he was not working not only in the same post but also under same employer and his post as on the date of commission of offence under an entity is different to the post of other entity by the time the charge sheet filed and thereby held question of giving sanction order by the present employer for the acts under the previous employer does not arise. It was not stated in the expression of mere change of office under same employer does not require sanction. Even what the Apex Court Constitution Bench laid down in R.S. Nayak supra, which was quoted with approval in Balakrishnan Ravi Menon supra, is that:

> 3. Learned counsel for the petitioner vehemently submitted that the issue raised in this petition requires consideration because the finding given in Antulays case is

obiter.

In the said case, this Court specifically dealt with similar contention and observed thus:

> 24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used (sic misused) nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Sec. 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used (sic misused) or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned counsel that a minister who is indisputably a public servant greased his palms by abusing his office as minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Sec. 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Sec. 6 would render it as a shield to an unscrupulous public servant.

Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant u/s. 21 of the Indian Penal Code and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd end product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogues charter." (emphasis supplied);

4. The Court after considering the earlier decisions emphatically held that the decision which lays down that in case where a public servant has ceased to hold the office, sanction is required to be obtained, is not the correct interpretation of Section 6 (as it was). Relevant discussion is as under:

"25. We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an offence which he is alleged to have abused or misused and which he has ceased to hold, the decisions in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6.

17(iii). Here there are no different offices under different employers holding by any of the accused persons 1 to 4 & 7 as on the date of the private complaint filed as only there is a mere change of office under same employer at best. Thus, there is a misreading of the judgment by the learned Special Judge. The Judgment nowhere says that no sanction under Section 19 of the PC Act is even required for the PC Act offences from mere change in office by transfer and posting under same employer, for not a case like therein of demitted office and not in service under same employer. Even by the date of taking cognizance covered by the impugned order in the case on hand, but for at best for 3rd accused if at all retired on 31st August 2012; leave about sanction is required for the IPC offences to take cognizance, even against him from the material on record with reference to the facts detailed supra of the impugned actions are in the course of discharge of their official duties and that factum is even not in dispute by either side, the other accused 1, 2, 4 & 7 are working under same employer, but for at best for A.1 transferred to another State if any that is not even supported any observation or material in the impugned order either for A.3 or for A.1, much less with no proof particularly of A.1.

17(iv). In S.M.S. Pharmaceuticals supra, it was held that:

Section 203 of the Code empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far reaching. If a Magistrate had to issue process in every case, the burden of work before Magistrates as well as harassment caused to the respondents to whom process is issued would be

tremendous. Even Section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding" The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the chargesheet do not constitute an offence against a person, the complaint is liable to be dismissed.

17(v). Whether want of sanction if any is a ground to quash the criminal proceedings concerned, it is necessary to mention that there is distinction between the absence of sanction and invalidity of sanction on account of non application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial, as pointed out in Prakash Singh Badal Vs. State of Punjab .

17(vi). Even considering by keeping said principle in mind, there is a non-application of mind by the learned Special Judge as to the mandatory requirement of prior sanction under Section 197 CrPC, to take cognizance even for the offences punishable under sections 34 r/w 420 and 409 of IPC against A1-4&7 from the very protest petition allegations taken on its face value are that the petitioners-A1-4&7 while in discharge of their official duties in the respective departments of the State Govt., by abusing their official position, with dishonest intention by colluded with A5&6 committed the offences of criminal breach of trust and cheating with common intention and the PC Act offences in benefiting A5&6 to have wrongful gain and by causing loss to the public exchequer. The impugned order of the learned judge on 30.12.2015 in taking cognizance for the offences punishable under sections 34 r/w 420 & 409 IPC against the A1-4&7 is thus unsustainable and without jurisdiction.

17(vii). Even coming to the taking cognizance for the offence punishable under section 13(2) r/w 13(1)(d) of the PC Act against them despite prior sanction of the competent authority sought was refused in saying from their mere change in seat of office under the Government, no sanction is required is also unsustainable for want of prior sanction to take cognizance.

17)(viii). In this regard for more clarity to substantiate the conclusion it is needful to reproduce Section 197 CrPC and Section 197 CrPC Section 19 PC Act with relevant case law.

17)(ix). Section 197 CrPC with title Prosecution of Judges and public servants reads as follows:-

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: 1 Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

(3A) 1 Notwithstanding anything contained in sub- section(3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.] (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

17)(x). Section 19 of the PC Act with title Previous sanction necessary for prosecution reads as follows:

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section(3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

17)(xi). From the above, the difference between the two provisions is that sanction under Section 197 CrPC is mandatory even to take cognizance after retirement of the public servant for the acts done in discharge of official duties for the IPC offences. Whereas under Section 19 of the PC Act, the emphasis is on the words "who is employed" in connection with the affairs of the Union or the State Government. If he is not employed, then Section 19 nowhere provides for obtaining such sanction.

Further, under sub-section (2), the question of obtaining sanction is relatable to the time of holding the office, when the offence was alleged to have been committed. However it does not mean if he continues in office in same position though there is seat change from one department to another department of same Govt., there is nothing to say no sanction is required.

17)(xii). When and when not sanction is required for the PC Act offences concerned;

17)(xii)(a). In Habibulla Khan Vs. State of Orissa , it is a case in relation to sanction for prosecution of the accused persons stated not required for the acts committed during their tenure as Ministers, however, later ceased to be the Ministers and even continued as MLAs are assumed as public servants by referring to the above principle in R.S.Nayak supra. This decision has no application on the principle of no prior sanction is required to take cognizance by Court for prosecution of the accused officials of the case on hand.

17)(xii)(b). In C.K. Jaffer Sharief v. State , it was based on the allegation against the appellant-accused-Jaffer Sharief, former Union Railway Minister and ex-officio head of RITES (Rail India Technical and Economic Services Ltd.) and IRCON (Indian Railway Construction Co. Ltd.), public sector undertakings, at relevant time, that he had prevailed upon RITES and IRCON to take four employees on deputation, despite neither RITES nor IRCON had any pending business in London and that none of four persons had performed any duty pertaining to RITES or IRCON while they were in London, yet to and fro air fare of all four persons was paid by above two public sector undertakings, which deputation and sending them to London is for the sole purpose in connection with medical treatment of appellant and thereby the appellant had abused his office and caused pecuniary loss to the two public sector undertakings by arranging visits of four persons in question to London without any public interest, from the closure final report filed by CBI from refusal of sanction to prosecute, that was declined to accept by the Special Judge with a direction to further investigate and submit entire material afresh for sanction and as sanction again declined a supplemental closure final report again was filed by CBI. The Learned Special Judge, CBI again having declined to accept the closure report, took cognizance of the offences punishable under Sections 13(2) r/w 13(1)(d) of PC Act, vide order dated 26.07.2008 observing that sanction under section 19 of the PC Act is not required as the petitioner had ceased to be a public servant on

10.11.2000. Thereafter, an application dated 04.09.2008 was submitted by the petitioner in the trial Court seeking discharge on the ground of lack of sanction under section 197 CrPC to prosecute him. Same was dismissed on 27.01.2010 saying: ".Thus, the act of accused, being beyond the scope and range of his official duty, would not be covered under the purported discharge of his duty. The application dated 04.09.2008 for discharge is thus dismissed" The High Court also dismissed his application by affirming the order of trial court and thereby he moved the Apex Court. The Apex Court observed that, there is merit in the contention of the learned counsel for CBI that the sanction under section 197 CrPC is actually not required when the offences committed are under the PC Act. ..However, if the act complained of covered by the IPC offences is directly connected with his official duty, so that it could be claimed to have been done by virtue of his office, then the sanction would necessarily be required. In other words, if the offence is entirely unconnected with the official duty, there can be no protection but, if it is committed within the scope of the official duty or in excess of it, then the protection is certainly available. The Apex Court ultimately dismissed his appeal holding that on consideration of totality of materials on record, there is no reason to allow his appeal, for there is a prima facie accusation for the PC Act offences. Thus, it is held even after demitting office as Minister for taking cognizance for IPC offences committed holding the office as Minister, sanction is required however since demitted the office as Minister for taking PC Act offence cognizance, no sanction under the PC Act is required. Same is not an answer on sanction under Section 19 of the PC Act is required or not against the accused persons on hand apart from sanction under Section 197 CrPC is otherwise required including against A.3.

17)(xiii). As also held in Subramanium Swamy supra in case where the person is not holding the said office as he might have retired, superannuated, discharged or dismissed, then the question of removing would not arise and sanction is in such case not required for the PC Act offences. It is held in fact that where a public servant committed the offences under the PC Act and sanction is required, even a citizen can maintain a private complaint and apply for sanction under Section 19 of PC Act to accord and the modalities in this regard are clarified. What was held further is that sanction is not necessary where accused ceases to be public servant in one capacity as Minister, but continues to be so in another capacity as Member of Parliament, as the alleged corrupt acts relate to office as public servant which he has since been demitted, by relying on R.S.Nayak and Parkash Singh Badal supra among other.

17)(xiv). From above observation even unless it is shown that the accused officer is not holding the office as retired, superannuated, discharged or dismissed, the question of saying no sanction required does not arise from mere change of office from one department to another under same employer, from the question of removing arises even by date of taking cognizance from continuing in service under same employer.

17)(xv). Even in Parkash Singh Badal supra, by negating the argument of even though some of the accused persons had ceased to be Ministers, they continued to be the Members of the Legislative Assembly and one of them was a Member of Parliament and as such cognizance could not be taken against them without prior sanction, what was held is that the embargo contained in Section 19(1) of the PC Act operates only against the taking of cognizance by Court in respect of the offences punishable under Sections 7, 10, 11, 13 and 15 of the PC Act committed by a public servant. There,

from cessation as Ministers they were held as not public servants by the time of taking cognizance.

17)(xvi). In L.Narayana Swamy Vs. State of Karnataka it was held on the requirement of sanction under Section 19 of PC Act and the power to quash the proceedings under Section 482 CrPC for want of sanction, that once there are specific allegations the contention contra cannot be accepted to quash the proceedings on that count. Coming to the requirement of prior sanction for prosecution of public servant under Section 19 of PC Act, the office which accused held on the date of taking cognizance of the alleged offence is relevant and if on that day he ceased to hold the office which he had held at the time of commission of offence, prior sanction is not required under Section 19 of PC Act, even he continues as public servant in different capacity. For that conclusion the Apex Court referred earlier expressions in Parkash Singh Badal supra and Abhay Singh Chautala Vs. State of Haryana . In Abhay Singh Chautala supra at Para 34 it was observed that: Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in Prakash Singh Badal v. State of Punjab (cited supra) to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in K. Karunakaran v. State of Kerala (cited supra) and the later decision in Prakash Singh Badal v. State of Punjab (cited supra).

17)(xvii). Thus, sanction is required in the case of on hand for the offences punishable under Section 19 of the PC Act in so far as against A.1,2,4 & 7 though not required in so far as A.3 since retired by the time of taking cognizance covered by the impugned order. So far as IPC offences concerned, even for A.3 among A.1 to 4 & 7 sanction is required and there is not only no sanction but also the sanction applied was refused in the case on hand, the defacto complainant did not even apply for sanction and the learned trial Judge did not consider in wrongly saying no sanction is required including for IPC offences without even any discussion on the scope of Section 197 CrPC but for simply referring to the expression in Balakrishnan Ravi Menon supra without reading the facts therein in applying wrongly to the facts on hand from the settled law even a little change in facts tilt the result.

17)(xviii). Coming to the requirements for sanction on comparison of Section 19 of PC Act with Section 197 of the Code, in Kalicharan Mahapatra vs. State of Orissa , the Apex Court having compared Section 19 of PC Act with Section 197 of the Code and after considering several decisions on the point and also Section 6 of the old PC Act, 1947 which is almost identical to Section 19 of the PC Act, 1988 and also by taking note of the Law Commission's Report, at paragraph 13 of Kalicharan (supra) came to the following conclusions:

> "13. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988

without any change in spite of the change made in Section 197 of the Code."

17)(xix). The above passage in Kalicharan (supra) has been quoted with approval in Lalu Prasad vs. State of Bihar at paragraphs 9&10. In paragraph 10, (page 54), it was held in Lalu Prasad (supra) that "Section 197 of the Code and Section 19 of the Act operate in conceptually different fields".

17)(xx). Thus from the competent authorities concerned, either separate sanctions or common sanction for the PC Act offences and IPC/other penal law offences and by specifically referring to the section of law are required, though it is not required of its specific clauses.

17)(xxi). In Rakesh Kumar Mishra Vs. State of Bihar & Ors it was held in this regard and on the scope of Section 197 CrPC, referring to Bakhshish Singh Brar v. Smt. Gurmej Kaur that the policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties, without sanction. Further, the words "when any person who is or was a public servant" employed in 197 CrPC were based on the observation at paragraph 15.123 of the 41st Report of the Law Commission of "it appears to us that protection under the Section is needed as much after retirement of the public servant as before retirement. The protection afforded by the Section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant". It is the above position that was highlighted in R.Balakrishna Pillai Vs State of Kerala and reiterated in the later expressions in State of M.P. vs. M.P. Gupta , State of Orissa through Kumar Raghvendra Singh and Ors. vs. Ganesh Chandra Jew and Shri S.K. Lutshi and Anr. vs. Shri Primal Debnath .

17)(xxii). As per Section 197(1) supra the sanction is mandatory from the government concerned of the public servant, the accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of official duty and without such previous sanction, no Court shall take cognizance such alleging offences.

17)(xxiii). On the scope of sanction whether required or not to decide for prosecution on the acts alleged as offence committed by a public servant were in discharge of official duty to decide with reference to facts of each case and the stage when to raise and the way how to understand the expressions with reference to facts, the Apex Court in N.K. Ganguly Vs. CBI, New Delhi , while saying a decision is an authority for what it actually decides and reference to a particular sentence in the context of the factual scenario cannot be read out of context, held referring to the earlier expressions right from that of Federal Court in Hori Ram Singh , of Privy Council in H.H.B. Gill , of Calcutta High Court in Abani Kumar Benarji , of the Apex Court in R.R.Chari-I , also of the Apex Court in Sreekantaiah , also of the Apex Court (3JB) in Amrik Singh , also of the Apex Court (5JB) in Matajog Dobey , also of the Apex Court in K.Satwanth Singh , also of the Apex Court in R.R.Chari-II , also of the Apex Court in Bajnath , also of the Apex Court in B.Saha , also of the Apex Court in R.S.Nayak , also of the Apex Court in R.Balakrishna Pillai , also of the Apex Court in Abdul Wahab

Ansari , also of the Apex Court in Rakesh Kumar Mishra , also of the Apex Court in Sankaran Moitra , also of the Apex Court in Prakash Singh Badal supra and also of the Apex Court in Sheetla Sahai supra and by quoted with approval Hori Ram Singh supra among other including Amrik Singh supra and of the Constitution Bench in B.Saha supra that the issue of requirement of prior sanction under Section 197 of CrPC can be raised at any stage of the proceedings. It was also held referring to the above among other including H.H.B.Gill supra, three judge bench in Baijnath supra and another Constitution bench in Matajog Dobey supra, that Prior sanction for taking cognizance is required in the three situations of, a) the act complained of attached to the official character of the person doing it; b) cases in which the official character of the person gave him an opportunity for the commission of the crime; and c) the offence was committed while the accused was actually engaged in the performance of official duties. It can be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. No doubt, there must be a reasonable connection between the act and the discharge of official duty to have the protection. If the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

17)(xxiv). The three judge Bench expression of Apex Court in P.K.Pradhan Vs. State of Sikkam Rep. by the CBI held at paras-5 to 16 by referring to several of the earlier expressions right from Hori Ramsingh, HHB Gill, Amrik Singh, Sreekantiah Ramayya Munipalli, Matajog Dobey, Omprakash Gupta, B.Saha, Baijnath Gupta, Abdul Vahab Ansari, K.Satwant Singh (supra), that the legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the court itself. It is a prohibition imposed by the Statute from taking cognizance. It is well settled that the question of sanction u/sec. 197 of CrPC can be raised at any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well, any appeal.

17)(xxv). In Rajib Ranjan (supra) at paras 14 to 18, it is observed that sanction is necessary if the offence alleged against the public servant is committed by him while acting or purporting to act in discharge of his official duties as held in Buddi Kota Subba Rao Vs. K.Prakasham at para-6 of the act or omission on facts found a reasonable connection to the discharge of his duty by the accused, sanction is required.

17)(xxvi). In Om Prakash V. State of Jharkhandand & Kailashpathi Singh V. Rajiv Ranjan Singh (common order) in relation to the encounter killings from the attack against police, it was observed on the scope of Section 197 Cr.P.C that prior sanction is a pre-condition for taking cognizance of offences against the police officials and there is no requirement for such accused officials to wait till

framing of charges to raise the plea

17)(xxvii). In Punjab State Warehousing Corp. Vs. Bhushan Chander referring to earlier expressions including of Sreekantiah Ramayya Munipalli supra, it was held that it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. On facts it was held that the accused is or was not a public servant to get protection of Section 197 CrPC.

17)(xxviii). In Anil Kumar vs M.K. Aiyappa supra, it was observed referring to Subramanium Swamy supra that the expression cognizance which appears in Section 197 CrPC came up for consideration before a three-Judge Bench in State of Uttar Pradesh v. Paras Nath Singh , and this Court expressed the following view:

> 6.....So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, no court shall take cognizance of such offence except with the previous sanction. Use of the words no and shall makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Blacks Law Dictionary the word cognizance means jurisdiction or the exercise of jurisdiction or power to try and determine causes. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

17)(xxix). In the case of General Officer, Commanding v. CBI , the Apex Court held that- if the law requires sanction and the court proceeds against a public servant without sanction; the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.

17)(xxx). It was also quoted with approval in N.K. Ganguly supra, of the Constitution Bench expression in R.S.Nayak supra that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts, before according sanction and grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. By referring to or relying upon the other expressions supra, including in R.Balakrishna Pillai, Abdul Wahab Ansari, Shankaran Moitra and Sheetla Sahai supra it was held

that when the acts constituting the offence were alleged to have been committed in discharge of his official duty, it was not open to the Special Judge court to take cognizance of the offences without obtaining the previous sanction of the Government by the respondent-CBI. It was held therefrom that it is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused.

17)(xxxi). In State of Punjab Vs. Labh Singh it was held that, though by the time cognizance of the offence under PC Act was taken, the public servant was retired and thereby no sanction under Section 19 of the PC Act is required. However, cognizance taken for the IPC offences is bad without sanction. Unlike section 19 of the PC Act, the protection under Section 197 of CrPC is available to the concerned public servant even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13.09.2000 and secondly on 24.09.2003, the court could not have taken cognizance insofar as the offences punishable under the Indian Penal Code are concerned. As laid down by this Court in State of Himachal Pradesh v. Nishant Sareen , the recourse in such cases is either to challenge the order of the Sanctioning Authority or to approach it again if there is any fresh material.

17)(xxxii). It was held in State of Karnataka through CBI Vs. C.Nagarajaswamy , in dealing with the offence punishable under Section 7 of the PC Act, that once it is mandatory for taking cognizance sanction as required under law by a statutory provision, ordinarily, the question has to be dealt with at the stage of taking cognizance. It is the well settled proposition of law that Court cannot ignore while taking cognizance any non-compliance with mandatory requirements. Even cognizance was taken in ignorance of it or erroneously, once the same comes to the Courts notice at any later stage, a finding to that effect has to be given by the Court and the accused is also entitled to take such plea at any point of time including, even in hearing the appeal before the appellate Court once sanction from competent authority is required under law. When all the mandatory requirements of the statutory formalities not complied with, the cognizance cannot be taken by the Court practically and as such for the non-compliance the entire proceedings vitiate to revert the clock back to pre cognizance stage, if at all to proceed therefrom further. Same is the conclusion from State of Goa Vs. Babu Thomas holding that when sanction is required from the act connected with the duty of the public servant, taking cognizance by a Court without sanction is incompetent and the error was so fundamental that invalidates the proceedings right from the stage of cognizance.

17)(xxxiii). Coming to facts of the case on hand, the allegations made against A1-4 & 7 even in the protest filed by the complainant are that the alleged offences were committed by them in discharge of their official duty. Thus previous sanction from the Govt., under Section 197 of CrPC was required to be taken by the complainant, before taking cognizance and passing an order issuing summons to them for their presence, by the learned Special Judge. The proceedings therefore are to be quashed for want of previous sanction under Section 197 of CrPC for the IPC offences and equally as held supra for the PC Act offence, against A1, 2, 4 & 7, but for against A3 who retired from service in August,2012 and the cognizance taken against them for the respective offences is thus not legal, that too even sanction sought was dismissed and the remedy as laid down in Labh Singh & Nishant

Sareen supra is at best to seek for fresh sanction with any additional and sufficient material and not to take cognizance despite it and said issue can be raised by the accused at any stage, from the above expressions.

18). Even coming to the other merits of the allegations and sustainability of the cognizance order against A.1-7 respectively, before coming to analyze the facts attributing criminal acts individually against them, coming to the common aspects:

> 18)(a). As observed in para 8(b) supra, besides the very proceedings of the learned Special Judge on 28.12.2015 in suo-

motto reopened the matter, despite the same Court has no power to reopen the matter by review of the earlier order in view of the specific bar under Section 362 CrPC, for not a mere correction of any clerical or arithmetical or typographic mistake in the order so to do leave about if at all only on an application and without which and despite the legal bar for the learned Special Judge of the trial Court, has no inherent powers saved under Section 482 CrPC as held in C. Subrahmanyam and in Adalat Prasad supra, the restoration and taking cognizance is unsustainable.

18)(b). Further, there is nothing even for the learned Special Judge to differ with the referred report observations covered by investigation material so far as allegation 1 concerned against any of the accused, that too while accepting the final report on allegation 2 concerned, also for the reason for the protest petition and the sworn statement of the complainant are with no improvement to the investigation material, that too besides the complainant so asked, the learned Special Judge also observed to consider the referred report investigation material in deciding to take cognizance or not.

18)(b)(i). In fact the impugned cognizance order reads from its reproduction of the contention of the complainant that:

> The material on record collected by the investigating officer is sufficient to file the charge sheet against concerned accused persons and in spite it, the investigating officer without application of mind recommended for closing of the FIR. The evidence collected by the investigating officer clearly shows that there is under valuation of the land coupled with non-calling for tenders or auctions is clear of contrary to the concept of trustee principal and in violation of breach of trust and said decision is taken to benefit the private party in violation of the public trust principle. It is also the further contention of the complainant that the investigating officer contrary to the plain language of the notings in the letter gave his own interpretation to the letter dated 15/12/2005 of Government of Andhra Pradesh and ignored the note file, in order to give clean chit to the accused persons.
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> 18)(b)(ii). In the impugned cognizance order, the learned Special Judge concluded that:

As per the final report dated 14/7/2014 filed by the investigating officer, even though the Government of Andhra Pradesh has entrusted the IT & ITES project to M/s. K.Raheja Corporation by entering into a MOU dated 10.06.2002 without calling for the tenders, the said action/proposal was approved by the council of Ministers vide council resolution no. 8(b)(l) dated 11/5/2003. In the final report it was stated on this allegation that no evidence has come forth against the accused officer nos.1& 2 to prove the allegations since Council of Ministers itself has approved the proposal. The said conclusion of the Investigating officer is not correct. Since the approval by the Counsel of the Ministers will be basing on the note file put up by concern Secretaries and Head of the Departments. Therefore it cannot be said that there is no evidence come forth against accused officers nos.l-4 to prove the allegation no.1.

With regard to the allegation no.2 the investigating officer in his final report dated 14/7/2014 has submitted that the investigation revealed that the Government of Andhra Pradesh has announced an industry friendly incentives policy for the IT sector in May, 1999 to promote the growth of IT industries within the State and as the IT industry has grown significantly during the last 3 years, the Government felt that it was necessary to continue the thrust being given to the ICT sector and give it a new direction. Accordingly, in continuation and modification of all the orders issued earlier on the subject of JCT policy, the Government approved the JCT policy for the ICT industries with incentives and accordingly issued G.O.Ms.No.27 on 27.06.2002. G.O.Ms.No.27 department of IT & C dated 27.06.2006 Annexure VII speaks as under: (1) A special land pricing policy for the sale of land in and around Hi-tech City fir Mega IT projects is provided as per the following terms and conditions (a) An IT project with an investment of Rs.50 crores or more is treated as a Mega project

(b) The land shall be offered at a cost of Rs.50 lakhs (Rs.5 Millon) per acre at the Hi-tech city layout prospectively for Mega IT projects. As per above G.0.Ms.No.27, an IT project with an investment of Rs.50 crores or more is treated as a Mega project and the land shall be offered at a cost of Rs.50 lakhs per acre at the Hi-tech city layout. Accordingly, the Government of Andhra Pradesh has allotted an extent of 109.36 acres in Sy.No.64(P) at Madhapur, Serlingampally Mandal of Ranga Reddy District to JVC following with the conditions of MOU and MOA during the year 2003 @ Rs.50 lakhs per acre treating the Mindspace project as Mega project since the investment of the project was estimated over Rs.100 crores. Since the decision was taken by the Govt. of A.P. for allotment of an extent of 109.36 acres of land @ Rs,.50 lakhs per acre as it is a mega project as part of ICT policy vide G.O.Ms.No.27 dated 27.06.2002, the accused Nos.1 to 4 have no role in allotment of land to JVC @ Rs.50 lakhs per acre.

Therefore, they are not liable for prosecution and no evidence has come forth against the accused Nos.5 and 6 to prove collusion and conspiracy on their part. As such the A.1 to A.6 are not liable. The reasons given by the Investigating officer with regard to this allegation no.2 cannot be said as baseless. Hence we can accept the said reasoning so far as it relates to the allegation No.2.

18)(b)(iii). In respect of allegation Nos.1&2, the final report speaks from the investigation that:

> During the year, 2002 the Govt. has appointed McKinsey Consultant for identification of (3) top reputed companies for development of IT Sector proposed at Madhapur, Hyderabad. Accordingly, Govt. basing on ICT policy and recommendation of Mckinsey Report, without going for any auction or tender the development of IT project was entrusted to L&T company and as the L&T company declined to take up the Project and submitted its no objection letter to Govt. to allot the project to some other reputed company, subsequently the Govt. allotted the land of 109.36 acres in S.No.64(P) of Madhapur, to Raheja for development of Mindspace project under a joint venture between Raheja and APIIC limited. Thus, the Govt. without calling for any tenders or open auction, has entrusted the Project to Raheja as per Rule 37(1)(e) and there is approval of the Council of Ministers by resolution No.8(b)(1) dt.01.05.2003 for the 109 acres of the allotted land @ Rs.50 lakhs since the investment of project was estimated over Rs.100 crores as part of the ICT Policy. Thus, there is no evidence forthcoming against A.1 & A.2 to prove the allegation or to make them liable for prosecution since it is the approval by the Council of Ministers. As per the Govt. Industrial Friendly Incentive Policy for IT sector in May, 1999, and to continue the trust being given to the IT sector, the IT policy approved by G.O.Ms.No.27 dated 27.06.2002 and Annexure VII of it speaks that a special land policy for sale of land in and around Hi-tech City for Mega IT projects is provided with terms and conditions that (a) an IT project with an investment of Rs.50 crores or more is to be treated as a Mega Project and for such mega projects land shall be offered at a cost of Rs.50 lakhs per acre at the Hi-tech City layout. Thus, as per said G.O. Govt. allotted the land at such rate to the JVC, whose project cost estimated about 100 crores, which was during the year 2003 and as per the terms and conditions of MOU and MOA. Since the decision was taken by the Govt. (covered by the resolution of Council of Ministers) as per said G.O. dt.27.06.2002, there is nothing to say any role of the official accused persons in said allotment of the land at said rate to the JVC and thereby they are not liable for prosecution and there is nothing even to say there is any collusion or conspiracy on any of their part with A.5 & A.6. It is observed the accused Nos.1 to 6 cannot be prosecuted on the above.

18)(b)(iv). Despite the above, which is supported by material on record with documents of referred report and statements of witnesses and accused, that reflects from para 7b) supra of what is contained in the referred report as its gist, said conclusion of the learned Special Judge is baseless and unsustainable and without application of mind to said material and practically without referring to the final report conclusions to answer to differ as to how those are incorrect, even supported by documentary proof in relation to the Govt. policy and in relation to rate fixed by standardization conferring some concession as part of the Govt. policy for mega projects and the project on hand is one such covered by the IT policy approved by G.O.Ms.No.27 dated 27.06.2002 and Annexure VII of it speaks that a special land policy for sale of land in and around Hi-tech City for Mega IT projects is provided with terms and conditions that (a) an IT project with an investment of Rs.50 crores or more is to be treated as a Mega Project and for such mega projects land shall be offered at a cost of

Rs.50 lakhs per acre at the Hi-tech City layout. Thus, as per said G.O. Govt. allotted the land at such rate to the JVC, whose project cost estimated about 100 crores, which was during the year 2003 and as per the terms and conditions of MOU and MOA. Since the decision was taken by the Govt. (covered by the resolution of Council of Ministers) as per said G.O. dt.27.06.2002, there is nothing to say any role of the official accused persons in said allotment of the land at said rate to the JVC and thereby they are not liable for prosecution and there is nothing even to say there is any collusion or conspiracy on the part of A1-4&7 with A5&6. Further, it was when basing on said ICT policy and from recommendation of the Mckinsey Report, without going for any auction or tender the development of IT project was entrusted to L&T company and as the L&T company declined even to take up the Project and submitted its no objection letter to the Govt. to allot the project to some other reputed company and therefrom only the Govt. allotted the land of 109.36 acres in S.No.64(P) of Madhapur, to Raheja for development of Mindspace project under a joint venture between Raheja and APIIC limited. Thus, it is the Govt. that has taken the decision, without calling for any tenders or open auction, and entrusted the Project to Raheja as per Rule 37(1)(e) and there is approval of the Council of Ministers by resolution No.8(b)(1) dt.01.05.2003 for the 109 acres of the allotted land @ Rs.50 lakhs since the investment of project was estimated over Rs.100 crores as mega project as part of the ICT Policy and it was not done by any of the accused officers on their own much less to make the council of ministers to approve and thereby said conclusion of the learned Special Judge even on allegation 1 is baseless and without understanding the material on record and its purport and of no role of any of the accused therein.

18)(b)(v).It is in fact the Constitution Bench of the Apex Court (5JB) in Natural Resources Allocation, In re, Special Reference No. 1 of 2012 observed at para 199 that:.

The policy of allocation of natural resources for public good can be defined by the legislature, as has been discussed in the foregoing paragraphs. Likewise, policy for allocation of natural resources may also be determined by the executive. The parameters for determining the legality and constitutionality of the two are exactly the same. In the aforesaid view of the matter, there can be no doubt about the conclusion recorded in the main opinion that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognized method for alienation of natural resources. That should not be understood to mean, that it can never be a valid method for disposal of natural resources (refer to paragraphs 186 to 188 of my instant opinion).

In para 186, the earlier expression in Common cause supra was referred and relied. At para 188 observed that auction is not a constitutional mandate, in the nature of an absolute principle which has to be applied in all situations. The policy for allocation of natural resources may also be determined by the executive.

18)(b)(vi).Thus once it is the policy decision of the Govt. and same is part of ICT policy, there is nothing to find fault with any of the accused officers. Further it was for non-viability the L&T Co. even went back to the allotment as per the ICT policy and it was subsequently allotted to Raheja. It is also difficult by then and also in said circumstances of what progress and growth they could achieve and as such comparing to the growth in 2011 in the complaint with surmises in alleging loss

to the Govt., from that allotment is unsustainable and the policy decision of Govt. in that allotment as stated supra for that matter, there is nothing to find fault with any of the accused to make them liable for any penal consequences. Future is always in the realm on uncertainty and the brave who take opportunity risks sometimes suffer heavy losses and at other times make high profits. The learned Special Judge has failed to appreciate the fact that decisions were taken in different circumstances cannot be alleged to be dishonest only because in hindsight it proved to be more or less profitable for one or the other party.

18)(c). Before discussing further on the above, even in respect of allegation No.3 concerned:

> 18)(c)(i). The impugned cognizance order reads from its reproduction of the contention of the complainant that:
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> It is also the further contention of the complainant that as per Clauses 2.3; 2.4 and 2.5 of the Memorandum of Agreement dated 19/5/2002 (document no.54) there is a lock in period of 5 years to the share holding of APIIC in joint venture company and during said period the share holding of the APIIC in the joint venture company cannot be diluted or reduced. Contrary to the said provisions, the APIIC share holding is reduced from 11% to 0.55% in the year 2006 and said reduction was on account of the collusion between accused nos.1 to 4 on one side and accused nos.5 and 6 on the other side. In this regard the complaint allegations speak that: The Govt. has allotted an extent of 110 acres at S.No.64(P) at Madhapur, Serlingampally Mandal of Ranga Reddy District to M/s. K. Raheja Corporation Private Limited(for short Raheja), for development of Mind Space Hyderabad Project under a joint venture between Raheja and the APIIC. An MOU dated 19.05.2003 was entered by and between the Govt. through Information, Technology and Communications Department (for short ITCD) and Raheja. As per the MOU19.05.2003, a joint venture company(for short JVC), was to be formed between the two parties in which the Govt., through the APIIC shall hold an equity share of 11% and Raheja shall hold the balance 89%. As per the joint venture agreement dated 23.08.2003, the authorized capital of the JVC shall be Rs.1 crore, out of which both the parties contributed their respective shares. The APIIC transferred land admeasuring 890.31 square meters to the JVC towards its share contribution of 11%. The Govt. through the APIIC transferred land to an extent of 109 acres at rate of Rs.50 lakhs per acre in favour of JVC without paying single paisa to the Govt. As per MOU, the JVC is entitled for rebate of Rs.20,000/-per every job created in the Mindspace Cyberabad Project either by the company directly or any of its occupants or its tenants and the duration of the project is for 10 years and at the end of 10 years, if the rebate amount to be paid is equal or more of the land cost, in that case the JVC is not required to pay any amount towards the cost of the land.

In May 2005, Raheja proposed to increase its equity capital of the JVC from Rs.1 crore to Rs.20 crores in order to avail finance from the Banks etc. and the APIIC was requested further to contribute an amount of Rs.2.09 crores towards its share of 11%. The APIIC in turn addressed a

letter dated 12.05.2005 to the Principal Secretary to the Govt., ITCD informing their proposal to transfer land at Nanakramguda to the JVC towards the APIICs contribution of Rs.2.09 crores. As on that date, though Rs.31,09,42,568.60(Thirty one crores nine lakhs forty two thousands and five hundred and sixty eight rupees and sixty paisa only) in liquid cash was available in the account of the APIIC, it was in pursuance of conspiracy hatched by all the accused and to cheat the Govt. a letter was addressed to the Govt. seeking their permission to transfer the land at Nanakramguda in favour of M/s K.Raheja IT Parks Ltd., towards the APIICs share contribution of Rs.2.09 crores for the proposed hike in the share capital of the JVC instead of transferring the amount. In view of the deal struck with Sri Neil Raheja(A.5), Managing Director of K.Raheja Corp., and Sri Rabindranath(A.6), Head, Mindspace Project, with the officials of the APIIC and the ITCD, the accused officials of ITCD i.e. A.1 to A3, instead of placing the file before the Chief Secretary, concerned Minister and the Chief Minister, directed the APIIC to restrict their share to 0.55% only from the existing 11%. By this the Govt. suffered massive loss of Rs.500 Crores and an equal gain of Rs.500 Crores to Sri Neil Raheja and his company by the not investing of the Rs.2.09Crores. On said land, the JVC has constructed, as on today, 11 buildings for the IT purpose, one five star hotel by name and style Westin and one Maal by name and style Inorbit Maal with a built up space of 60 lakh square feet and another four IT buildings with a built-up space of 17 lakh square feet also nearing completion and besides this, the JVC also developed an IT Special Economic Zone of 15 lakh square feet. The total assets, including the land and built up area as on today is over Rs.6,000/-Crores. The JVC is getting a rent of Rs.30 Crores per month as rental income which is totaling to Rs.360/-Crores per year. The Inorbit Maal with a proposed eight cinema theatres is run by the JVC only and separate income is received through said activity. If the APIICs share maintained at 11%, the value of the share would have been more than Rs.500 Crores.

When letter dated 12.05.2005 of the APIIC is pending with the Govt., A.6 addressed a letter Dt.14.12.2005 to A.1 the then Secretary of the IT & C Dept, informing the Govt. that despite the reduction of APIICs share percentage in the equity share capital of the company, they are willing to appoint one Director from the APIICs on the Board of the company till such time as APIICs shareholding does not reduce below 0.55% of the equity capital of the company. In the said letter, there is a reference to the discussion and APIICs letter dated 12.05.2005. The copy of the APIICs letter is a correspondence between APIIC and the Govt. only. Further, the note sheet was put up in the ITCD concerning the issue only on 15.12.2005 by (A3)-Sri P.S.Murthy, J.D.(FAC) and before that no note file was put up. The above sequence of the events clearly indicate that the accused with a common intention hatched a conspiracy to reduce the Govt.s share in order to cause loss to the Govt. exchequer by Rs.500Crores and to make illegal gain to Sri Neil Raheja and his company.

A.4-Sri B.P.Acharya, V.C.&M.D. of APIIC, even though surplus liquid cash was available with the APIIC as on that day, addressed letter to the JVC not to allot further land for the Mindspace Cyberabad Project towards equity contribution in the project by the APIIC, however stating that a nominee of the APIIC to be continued on the Board of the company irrespective of the equity percentage is nothing but causing loss in crores to the Govt. and illegal gain to Sri Neil Raheja and his company, being fully aware of the things and this act of A.4-Sri B.P.Acharya, without intimating and seeking approval by the Industries Department (the administrative control) as per the Govt. Business Rules and allowing reduction of APIICs share is deliberate and intentional on his part.

A.1 to A.4 supra who are duty bound to protect the Govt.s interest and safe guard public money, deliberately and intentionally allowed enrichment of private persons at the cost of public money by reducing the APIICs share in the JVC resulting in huge loss to Govt. as a result of a deal struck with them as a quid pro quo are punishable for the offences alleged against them as per law. The decision taken not to maintain the APIICs stake in the JVC at 11% by allotting land or transfer of money by A.1 to A.4 are motivated by illegal considerations and as quid pro quo received huge amounts from A.5 and unduly favoured A5 and therefrom A.1 to A.4 as public servants, committed criminal breach of trust by deliberately causing loss to public exchequer.

18)(c)(ii). In the impugned cognizance order, With regard to the allegation no.3, the learned Special Judge observed from para 18 on wards that:

> 18 With regard to the allegation no.3, the investigating officer in his final report dated 14/7/2014 has submitted that when the Joint Venture company in order to secure financial assistance from banks by enhancing the net worth, JVC issued rights shares in the year 2005 to increase the share capital from Rs.1 crore to Rs.20 crores. Then the share capital of the APIIC should have been Rs.2.2 crores.

The APIIC addressed a letter to the Government of Andhra Pradesh to allot land in Nanakramguda since there was no land at Madhapur) towards difference of share capital extent to Rs.2.09 crores. It is also submitted in the final report that however the APIIC has wrongly interpreted the essence of letter dated 15/12/2005 of Government of Andhra Pradesh and has informed to the Joint Venture company on 22.12.2005 that the Govt. of A.P. has instructed not to subscribe to the rights issue but insisted for the board seat.

19. It is the contention of the learned counsel for the petitioner/complainant that as on that date an amount of Rs.31 crores 9 lakhs and odd liquid cash that was available in the account of APIIC Limited. Therefore there was no necessity to address a letter to the Government of Andhra Pradesh on the said subject. It is also the further contention of the complainant that the said letter was addressed on account of conspiracy but the investigating officer has interpreted the same as if the APIIC has wrongly interpreted the essence of letter dated 15/ 12/ 2005.

20. In this case, along with the final report, the Investigating officer has filed 81 documents which the investigating officer referred during the investigation. The petitioner/defacto-complainant filed present complainant before this court on 31/1/2011 and this court has passed orders referring the complaint under section 156(3) of CrPC to the ACB officials on 19/2/2011. The document no.63 filed along with the final report is the photo copy of the letter dated 23/2/2011 addressed by the ViceChairman and Managing Director of APIIC (accused no.4) to M/s. Raheja Corporation Private Limited and K.Raheja IT park (accused no.5) given that letter to the accused No.4 after filing of the private complaint by the petitioner/defacto complainant herein has called up the accused No.5 to cancel the sale deeds pertaining to the lands which were transferred by the APIIC to Joint Venture company towards its share, which prima facie shows that prior to filing of the present complaint by the petitioner/defacto complainant the accused no.4 has allowed the accused no.5 to sell the lands which was taken up by APIIC towards its share in the joint venture or to utilise the said lands as they

like by the accused no.6. The copy of the statement of the account dated 9/6/2011 given by the Vice-Chairman and Managing Director of APIIC which came into existence subsequent to filing of present complaint which also clearly shows the irregular acts committed by accused nos.5 & 6 on account of collusion among accused nos.1 to 6.

21. Document no.47 is the photo copy of the letter addressed by the then Vice-chairman and Managing Director of APIIC by name Sri L.V.Subrahmanyam, IAS shows that he addressed a letter to the Principal Secretary to the Government. IT & C Department dated 12/5/2005 proposing to allot and transfer the land in Nanakramguda instead of the land in Madhapur being the contribution of APIIC towards the increased authorized paid up capital in Joint Venture Company.

22. The document no.48 is the photo copy of the statement of account of the APIIC limited with ING Vysya Bank, Basheerbagh branch, Hyderabad shows that there was liquid cash balance of Rs.40,07,42,609.90 Ps. (Forty cores seven lakh s forth two thousand six hundred and nine and ninety paise only) as on 12/5/2005 i.e. as on the date of the letter under document no.47 addressed by the then Vice chairman and Managing Director of APIIC by name Sri L.V.Subrahmanyam, IAS. The amount payable by APIIC was Rs.2,09,00,000/- (Two crores and nine lakhs only) When there was liquid cash available in the bank account of the APIIC, why the then Vice chairman and Managing Director of APIIC suggested to the Government to allot lands which worth more than the amount equivalent to the balance of the share amount payable is not explained, which clearly show that there is prima facie case to conclude that the then Vice-Chairman and Managing director by name Sri L.V. Subramanian, IAS want to do favour to the said accused nos.5 and 6 at the cost of the interest of the Government. The said act of the said officers create doubt about his integrity and we also have to suspect that he has obtained some pecuniary advantage for himself doing that act in favour of the accused nos.5 and 6.

23. When we peruse the document No.57 filed along with the final report which is a copy of the letter dated 16.08.2005, the accused No.4 Sri B.P.Acharya., IA.S, the then Vice-chairman and Managing Director of APIIC shows that the accused no.4 has recommended to the Government to increase the paid up share capital by way of allotting additional extent of land or to allow dilution of share capital with possible consequences such as reducing 11% share held by APIIC to nominal level. He has not stated whether there was liquid cash available in the account of APIIC as on the date or not, it also prima facie shows that the accused officer no.4 has addressed the said letter with a view to help to the accused nos. 5 and 6.

24. The document no.65 is filed along with the final report shows that after the registration of the FIR only the steps were taken by the Vice chairman and Managing Director of APIIC to enhance the equity of APIIC to 11% which shows that on account of the acts of the accused nos.1 to 4 and Sri L.V.Subrahmanyam, IA.S, the then Managing Director and Vice Chairman of AAPIIC, there was a reduction of the equity in Joint Venture Company from 11% to 0.55% which clearly creates doubt about the acts of the accused nos.1-4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC.

25. In a case between Kujana Venu Vs. State of Andhra Pradesh reported in 2014 (2) ALD (Crl.) 638 the Honble High Court of A.P. held that: For framing of charge the Court is required to look into the final report and the documents filed along with it including the statements of the witnesses recorded under section 161 of CrPC. The court is not expected to weigh the evidence on record if a prima facie case is made out; the Court is obliged to frame a charge. The concern of the Court is only to see whether there are reasonable grounds for presuming commission of offence by the accused. Even a strong suspicion can be basis for framing of the charge. The accused is entitled to be discharged only where no prima facie case is made out or the accusation itself is groundless.

26. In view of the above decision it is clear that even a strong suspicion is sufficient to frame charge against the accused. The observations in the above said decision is also applicable at the stage of taking cognizance of the offences. Therefore, we have to conclude that there is prima facie case against the accused nos.1 to 4 and Sri L.V.Subrahmanyam, IAS, the then Managing Director and Vice chairman of APIIC for criminal misconduct by public servant punishable under section 13(l)(d) r/w Sec.13(2) of PC Act and also for the offences of criminal breach of trust by a public servant punishable under section 409 IPC and also cheating punishable under section 420 r/w Sec 34 of IPC. In view of my above discussions, I am also of the view that there is prima facie to proceed against the accused Nos.5 & 6 for abetting the offence punishable under Section 12 of PC Act and also for the offences punishable under sections 420, 409 r/w sec.34 IPC. Sri L.V.Subrahmanyam, IAS, the then Managing director and Vice Chairman of APIIC has not been named in the complaint as well as in the protest petition filed by the petitioner/complainant as the accused person, but in the protest petition, overt acts committed by Sri L.V. Subrahmanyam, IAS, the then Managing Director and Vice Chairman of APIIC have been clearly stated. Therefore it is just and necessary to prosecute the said Sri L.V.Subrahmanyam, IAS, the then Vice chairman and Managing Director of APIIC also as accused no.7.

18)(c)(iii). In respect of said third allegation, the final report speaks from the investigation as stated in para 7c)(iii) supra that:

> As per the MOU dt.10.06.2002 and MOA dt.19.05.2003 and as per clause 2.3 of MOA, the share capital shall be 11:89 for APIIC and Raheja and accordingly, for the initial subscribed capital of JVC Rs.1 crore, APIIC contributed Rs.11 lakhs (by adjustment out of the land cost of Rs.54.68 crores) and Raheja contributed Rs.89 lakhs respectively. In order to secure financial assistance from Banks by enhancing the net worth and decision was taken in the board meeting held on 03.12.2004 to increase the share capital from Rs.1 crore to Rs.20 crores. In said board meeting of JVC, it was recorded that APIICs nominee suggested to execute deed of rectification for land already transferred under development agreement to treat part of land given towards the APIICs additional share capital of Rs.2.09 crore (11% of Rs.20 crores=Rs.2.20 crores-11 lakhs). Said proposal was however differed and not even taken up in the EOGM held on 10.05.2005 in which APIIC representative was present and to meet the increase, the APIIC by letter dated 12.05.2005 requested the Govt.-ITCD to allot land at Nanakramguda if at all for no land at Madhapur. In fact, APIIC got Rs.37 crores in its account.

The then MD & VC Sri L.V. Subrahmanyam at the Board meetings of APIIC held on 03.12.2004 not discussed the issue and not intimated the Govt. which is an omission. Due to wrong interpretation by APIIC, essence of the letter dt.15.12.2005 of Govt., APIIC intimated to the JVC on 22.12.2005, that Govt. instructed of no need to subscribe to the rights issued but must insist to continue participation in the board and thus, the share capital of APIIC remains to be Rs.11 lakhs only out of the increased share capital of Rs.17.91 crores in the JVC and therefrom the equity participation of APIIC has fallen from 11% to 0.55%, w.e.f. 20.05.2006. However, subsequently, APIIC has paid Rs.2.09 crore to JVC on 18.09.2012, by cheque Nos.011364, 011365 & 011368 (Rs.90 lakhs, Rs.20 lakhs and Rs.90 lakhs respectively) towards its balance contribution and thus, the equity of APIIC was restored to 11% in the year 2012. Not only that, regarding dividends payable to APIIC, from the total dividend declared of Rs.158.17 lakhs during 2006-07 to 2010-11, in addition to what was paid to APIIC of Rs.9.75 lakhs as per original contribution and received Rs.1548.60 lakhs by Raheja of its contribution, from contribution of balance Rs.2.09 crore to JVC on 18.09.2012 by APIIC, the equity share was restored to 11% and difference dividend amount of Rs.181.83 lakhs paid by Raheja to APIIC as exgretia. Raheja agreed to offer preferential shares to APIIC to represent 11% equity share in JVC with increased corporate benefits of dividends etc., retrospectively and APIIC was paid total Rs.2,07,88,410/-. In this regard, the question of violation of business rules does not arise, A.1 to A.4 not liable for prosecution. A.5 agreed to have a nominee of APIIC in JVC board of Directors relaxing the provision in the MOA etc., from which APIICs nominee continued in the Board and thus, there is no material against A.5 and A.6 of acts of cheating or conspiracy etc. No doubt A.4 and Sri L.V. Subrahmanyam did not inform about availability of bank balance of APIICs account to contribute in cash and it requires departmental action and the FIR thus to close.

19. No doubt the court in a quash petition has to evaluate the entire material on its face value and not to go into truth or otherwise by conducting mini trial on the allegations as referred supra from Umesh Kumar supra that the High Court in exercise of the inherent powers under Section 482 CrPC can only evaluate the material on record to the prima facie satisfaction of existence of ground for framing charges and proceeding with trial or not. Further for quashing the proceedings, the guidelines are well laid down in State of Haryana Vs. Bhajan Lal and State of M.P. Vs. S.B. Joshi of considering existence of prima-facie case from averments and accusation as to sufficient ground to take cognizance, frame charges and proceed with trial or not and not to weigh the material of the prosecution by its appreciation as if it is a mini trial. In fact in Bhajan Lal supra one of the guidelines for quashing of the proceedings speaks (No. 6 of the 7 guidelines) from any legal bar engrafted by any provision of the Code or other Act concerned to the institution or cognizance or continuation of the proceedings. From said principles kept in mind to analyze the facts, coming to factual analysis;

19(i). The G.O.Ms.No.114 of Finance and Planning (plg.IT&C) Dept., dt.25.05.1999 and the G.O.Ms.No.133 of the General Administration Department (AR & TI) Govt., of Andhra Pradesh dated 10.04.2000 created the department of ITCD. The subsequent G.O.s are G.O.Ms.Nos.3(IT&C) Dept., dt.25.05.2000, 41(IT&C) Dept., dt.21.08.2001, 5(IT&C) Dept., dt.28.01.2002 & 27(IT&C) Dept., dt.27.06.2002, as part of the Govt.s ICT policy for ITCD to function as an officer oriented department(with which A1-3 later concerned) intending to discharge the responsibilities of allocation of lands of the State to other departments of like nature of APIIC(with which A4&7 concerned). The APIIC was made as the nodal agency for undertaking the activity of implementing

the policy of the Govt. to create the IT parks developed either by itself or by entering into a joint venture with some developers in the State and the ITCD in particular has no role of administrative control over the decisions of the APIIC and vice versa. G.O.Ms.No.27(IT&C) Dept., dt.27.06.2002, supra, clause.7(g) speaks for Mega Projects with investment of above Rs.50 crores, special land price scheme envisaged thereunder by the Govt., as per Annexure-VII is applicable to allot at Rs.50 lakhs per acre. Raheja is admittedly a Mega Project. Annexure-V of it speaks rebate for land allotted with prospective effect at Rs.20,000/-per job to be created, with its eligibility criteria. It was pursuant to the Vision of e-Governance of the State Govt., and from the consultancy agency M/s.McKinsey report and from L&T went back and then considered Raheja and the COG report of 2013 for year end of 2005 also reflected all these. Thus at Rs.50 lakhs per acre land allotted by Govt., there is noting to find fault any of the petitioners to accuse in any criminal offences, that too, the State that has when taken the decision for execution of MOU, for the implementation of the policy decisions of the State by the officers, that was missed consideration of the learned Special Judge. Said MOU dt.10.06.2002 was signed before 2003 to 2009 (which is the period of offence alleged by the Complainant) and the APIIC was not a party to the MOU and in any event, the MOU was terminated by the Memorandum of Agreement dated 19.05.2003.

19(ii). The fact that the project in question was earlier offered to L& T, and it was only after its refusal for non-viability, that the proposal was made to M/s K.Raheja Corporation Pvt. Ltd., and the decision to give the land was in accordance with the Govt.s ICT Policy, when cannot be disputed and find fault from the material on record covered by the above. Same also referred by the lower court with reference to the documents to substantiate the investigating officers conclusion in this regard. Public auction is not the only way of allotment and it is for the Government to take a policy decision in larger public interest and once it is the policy decision that is also permissible as held in Natural Resources Allocation, In Re, Special Reference supra, there is nothing to find fault the officers in implementation of the same and the conclusion of the trial Court of the Ministers act on the note file of the officers is wrong as it is based on the policy decision taken by the Govt. only in the note file was put up and approved. The learned Special Judge on one hand accepted transfer of land to the JVC @ Rs.50 lakhs per acre as proper as per the ICT policy to the mega project covered by the policy guidelines and the A.1 to A.4 and A.7 are thus not liable for prosecution and in this regard there is no evidence even against the A.5 and A.6 to prove any dishonest intention on their part, however on the other hand grossly erred to holding that the allotment of the project to the KRCPL without conducting public auction is contrary to the procedure, without showing on what basis to so hold and for no reason to ignore the above factual background and Govt. policy decisions and guidelines. Thus there is no material to show that the allotment of the project to KRCPL was contrary to any law or procedure contemplated and any officers from Govt. had any role in that regard much less with any dishonest intention to benefit Raheja.

19(iii). The APIICs share was restored to 11% pursuant to the mutual discussions and deliberations between the JVC and APIIC retrospectively with all corporal benefits being paid to APIIC and to said extent the APIIC has subscribed to 20,90,000/-, closing the disputes in relation to restoration of equity claim of APIIC. On verification of entire accounts the Govt. requested to pay an amount of Rs.181.3 lakhs as total dividends receivable as corporate benefits receivable by the APIIC on its restoration of stake to 11% retrospectively, which was paid as ex-gratia. Leave about above facts born

by record of after registration of the case, the major stake holder Raheja of the JVC on the request of APIIC agreed to make good by increase of the 11% equity stake in the JVC, the raising of further capital was done in meeting the norms of the financing bank is clear from the record and there is nothing even to find fault in this regard, but for the grievance if at all is not contributing the increased 11% share by cash by the APIIC and ITCD, rather than proposal of allotment of land for that value at Nanakramguda and its non consideration from future requirements of the land and in not increasing the investment since participation of Director from APIIC in the JVC considered. The percentage of share in the capital has gone down only due to its not subscribing to the Rights Issue pursuant to the offer made by the JVC as the issue of investing further capital/contribute further capital was pending with the Government for more than one year and after due deliberations and considerations only it was informed to the JVC that the Government is not willing to contribute any capital further in the form of cash and despite the same, the JVC agreed to nominate representative of the APIIC as a Director to its Board and by it there was no damage caused due to the dilution of the stake of APIIC in the JVC. The development of the project was in terms of MOA and the JV agreement; therefore, there is no ground for any mischief with malice to be attributable to any of the accused officers.

19(iv). Leave about nothing to find fault A.1 to A.3 in this regard, coming to A7, his name is neither referred in private complaint nor in final report to take cognizance, not even in protest petition, but for a stray sentence and from that with out going into other merits, there is no basis to take cognizance for any offences against him and the entire cognizance order against him goes for unsustainability on this count also. Further, even coming to the attributions in the impugned order against him to array as (A.7) for his role as the then MD & VC, APIIC, the predecessor in Office to A.4 concerned, A.7 was transferred from APIIC on 13.05.2005 and consequently, A.7 was also seized and A.4 became Director of Raheja Mindspace of M/s. Raheja. The A.1s letter dt.21.09.2013 in reply to the notice of the investigating officer which is part of final report record speaks that before their addressing letter shown dated 15.12.2005 to the APIIC for not to increase share capital contribution, APIIC did not ask ITCD to take a decision and there is no need to circulate the file to cabinet Secretary. APIICs letter dated 12.05.2005 (by the A7 was its VC&MD) addressed to the ITCD in informing the proposal to allot land at Nanakramguda and ITCD intimated views of the land is scarce and thereby APIIC to consider not to increase its stake in JVC and to inform the decision in this regard and there is no further communication to them from APIIC. Said letter of ITCD dated 15.12.2015 to the APIIC even concerned, as per clarification given by A3 (since retired on 30.08.2012), to the investigating officer on 21.09.2013, there is a typographical mistake in the date wrongly mentioned as 15th, but the note file put up was on that date and the note approval was only on 17.12.2015 and letter addressed was only subsequent to 17.12.2015. The same as part of investigation seized record discloses the note file and it is also substantiating said explanation of A3. As pointed out by A1 supra, ITCDs (by then A1-3 concerned with it) reply only subsequent to 17.12.2015 (sic.15.12.2005, as explained supra by A3) of not to allot land at Nanakramguda in view of the land is scarce and thereby APIIC to consider not to increase its stake in JVC and to inform the decision in this regard to mean not a final decision of ITCD, though the letter could have been reflected in a better way of any cash contribution if all to be made as an exceptional case, though land allotment is the normal course and not cash contribution as also stated the practice in vogue by A.4 at page No.2 middle Para of his letter dt. 16.08.2005. Thus none of A1 to 3 or A7 or A4 can be

find fault with it and there is no basis to say any of them did so to accommodate A5 & 6, much less for any extraneous considerations to benefit A5&6 or there is any instigation from them much less for any illegal gratification and thus, none of the offences under the PC Act apply against any of A1-7, including under Section 12 of the PC Act against A5&6 or under Section 13(1)(d) r/w.13(2) the PC Act against A1-4 & 7 and even from said letter reference no.2 is letter of Raheja dt.14.12.2005 (which in fact is from A.4s query in the letter dt.16.08.2005) that they can permit participation of director of APIIC in JVC as usual even without their increase in contribution and that even reducing percentage out of total share capital for that no way reduced original contribution. So far as 11% contribution in original share capital concerned that was the policy decision of Govt. and not the decision of A1-4 & 7. 19(v). When said reply of ITCD was subsequent to 17.12.2015 (sic.15.12.2005, as explained supra by A3), though its 1st referred letter of APIIC dated 12.05.2005 (by the A7 was its VC&MD), once A.7 was transferred from APIIC on 13.05.2005 itself and consequently, he resigned as a Director of Raheja Mindspace M/s K.Raheja I.T. Park, Hyderabad Pvt. Ltd. and he has nothing to do with further correspondence, there is nothing to find fault of him even of he was not diligent. Even coming to his diligence during his tenure, till he relieved from the office on transfer in the administrative exigency on 13.05.2005 to another office under control of same Govt., the record clearly shows that as per MOA Cl.2.3, APIIC should hold 11% in the JVC and land of 890.31 sq.mts.=Rs.11 lakhs out of total capital of one crore, out of the allotted land of 110 acres to the mega project at the Govt. fixed policy price of Rs.50 lakhs per acre mainly for provision of employment under IT policy and rest by executing development agreements as per Cl.6.14 of MOA as JVC furnished bank guarantees to APIIC for Rs.54.57 crores remaining value of the land as per MOA to return once condition of employment as envisaged in MOA is adhered in phases. Now Raheja of JVC proposes to increase the capital from one crore to 20 crores to avail finance from banks for the project and JVC addressed letter dt.04.04.2005 to APIIC to increase proportionally for the 11% balance amount to meet by cash or allotment of further land. The normal practice of APIIC contribution is by allotment of land and hence a decision by Govt., be taken to meet the value of Rs.2.09 crores. However, no land is available at Madhapur, but for at different nearby locations. If decision not to increase is taken, present 11% of one crore from Raheja`s increase of their 89% to increased capital from one crores to 20 crores, the APIIC capital out of said increased value of 20 crores comes to 0.55% and there may not be allowing of APIIC representative in Board of JVC and a decision needs to take to increase or not. The factual background justifies A7`s letter dt.12.05.2005, for a decision if alternative land at Nanakramguda to allot. Once such is the background, where is dereliction of duty even of A7, that was totally ignored by the learned Special Judge, but for influencing by the misconception of the defacto-complainant in this regard against A7. Further, A7`s due diligence to duty to protect the Govt. interest was reflecting from the facts that, the JVC proposal to increase share capital was in June and September,2004, when A7 was the VC&MD of APIIC. On 03.12.2004 Board meeting, A7, suggested for APIICs share in case of any increase in share capital sought by Raheja to meet the bank finance norms, only to cover out of the value of the allotted land by execution of a deed of rectification for the land transferred under the development agreement to JVC, however Raheja did not agree saying many legal complications creep in for such recourse, including to his said demand on 04.05.2005 meeting, while considering the increase of share capital to Rs.20 crores. It was thereby and from Dy. AGs letter(response/opinion) and Govt. letter dt.19.04.2005, it was from the APIIC discussed with legal, finance, project Directors, he addressed the letter to allot if at all land at Nanakramguda, that too, as per the then prevailing

market rate only and not for earlier concession rate and the CAG report, at para. III(5) also reflect his bonafides in said letter dt.12.05.2005 for said proposal inevitably. He was transferred on 13.05.2005 and there was no role of him as his successor in office came i.e., A4. There was later a Board resolution of JVC dt.10.08.2005, where also the issue came and 19000000 equity shares allotted to Raheja for its total investment and for only to original contribution of APIIC and even the for no decision taken finally to contribute any cash or to allot any land by APIIC, A4 as VC&MD of APIIC, addressed another letter dt.16.08.2005, referring to earlier letter dt.12.05.2005, to the ITCD Secretary-A1, referring to all the facts in nutshell and with consequences and by stating the general policy not to pay cash but to allot any land at market value and to take any early decision. Thus, there is nothing even to find fault with A4 in his addressing letter further for early further action in this matter. This also reflected in CAG report. It was later Raheja also addressed letter dt.14.12.2005 to ITCD for the response by ITCD Secretary after dt.17(sic.15).12.2005, of in Nanakramguda land is scarce and thereby to reduce. Though it is now stated by Complainant of cash should have been contributed by APIIC instead suggesting land at Nanakramguda, it may be easy to say from the project is fetching profits, had it been in losses that could have been find fault and that is not the basis for the trial judge to sway away by such version, but for to objective analysis to determine in the factual scenario as to what could be prudent conduct of an officer. Thus, there is nothing to find fault the officials A1-4&7 including in not taking a decision to contribute cash to meet proportionate increase in share capital, that too irrespective of any commercial mind of Raheja in not accepting the suggestion of A7 for adjusting the increased share capital proportionate share amount of APIIC out of originally allotted land value, when there is nothing privy with any of the official accused. The intention made among several persons to do something wrong and if any act done in that manner in which it was formulated, the only such acts come under sanction of section 34 of IPC and otherwise not and suffice to say in the case on hand there is no common intention sharing in any acts between any of A1-4&7 with A5 or A6. Thus there is no basis at all for the complainant to say or the lower court to rely on it for any say of any quid pro quo or any extraneous considerations much less for any gratification or kickbacks as and for such a wild allegation of the complainant, there is besides no basis, there is even nothing for the trial judge to influence for that had it been appreciated the facts objectively. Thus there is nothing to differ for the trial judge with final referred report or to take cognizance for any offence against any of them, leave about the referred report observation of any negligence of A4&7 or to recommend for any departmental action also baseless for the above. It was as observed by the Apex Court in Common Cause Case supra at Para 86 that the officers of the Government would at best be liable in damages for their wrongful acts if any, that too only when the acts of them do not fall within the purview of act of State. It is to say for acts not falling with in the purview of act of state, the liability of the officials for their wrongful acts is only damages, rather criminal liability, unless malice and mensrea shown to make them liable for the actions and in the present facts there is nothing even to presume against any of A1-4&7.

20). Even coming to the other merits of the allegations and sustainability of the cognizance order, so far as against A5&6; the entity Raheja was not shown as accused, but for its officials as A5&6. There are no specific overt acts against them of any offence to say for their liability, but for general allegations on Raheja to say suffice of their non-liability. Further, even taken from any of the officials of Raheja, if all for arguments sake taken even those are A5&6 of their any commercial mind in not accepting the proposal and persistence of A7 since 2004 June/September to adjust out of

value of total land allotted for increased share capital proportionate contribution, which they could have been bonafide considered and accepted as had it been originally said capital investment of Rs.20 crores decided, APIIV & ITCD could have been adjusted out of originally allotted land value, that by itself cannot be called offence of cheating, but for at best a sort of dishonesty, for what is the prerequisite for offence of cheating or criminal breach of trust to make out is discussed in the expressions supra under a separate head, including from the three Judge Bench of the Apex Court in Ajay Mitra v. State of M.P. of mensrea of inducing the persons deceived to deliver property is essential to constitute offence of cheating and in ultimately quashing the FIR therein by referring to the other expressions and as held in Bishan Das v. State of Punjab of mere issuing of a false certificate even does not constitute offence of cheating or breach of trust but for on showing it was issued with dishonest intention for wrongful gain and in V.P.Srivastava V. Indian Explosives Limited referring to several expressions including Ram Jas supra, Medchal Chemicals & Pharma (P) Limited V. Biological E. Ltd and Hira Lal Hari Lal Bhagwati V. C.B.I particularly at paras 20 to 25 that, it is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making representation or promise and such a culpable intention right at the time of entering into the agreement must be established by showing from facts and that cannot be even be presumed including from any failure to keep his promise subsequently or for mere dereliction of any duty or any omission or lapse. Further in Vimala V. Delhi Administration and State of U.P V. Ranjit Singh it was held that to constitute the offence of Section 420 I.P.C there should not only the cheating but as a consequence of such cheating the accused should have been dishonestly induced the person deceived and the complaint must be by the person deceived or on his behalf. Thus, criminal culpability to attract for certain specified acts alleged to have been done fraudulently or dishonestly to constitute an offence and it cannot be assumed that the person committed the offence merely by alleging or showing that he acted fraudulently, unless such a fraudulent act is specifically made an offence under I.P.C or some other law. The expression defraud involves two elements of deceit and injury to the person deceived and such injury is something other than economic loss and it will include any harm caused to any person in body, mind or reputation or such others and it is a non-economic or non-pecuniary loss and the benefit or advantage to the deceiver will almost always cause loss of detriment to the deceived. Even in Mohd. Ibrahim Vs. State of Bihar the Apex Court held referring to Section 415, 420, 463, 471 & 25 IPC in relation to the offence of cheating and on the allegations of forgery including for the purpose of cheating and using as genuine a forged document that the criminal culpability cannot be presumed merely by alleging that accused acted fraudulently, unless the fraudulent act is specifically made out from specific averments and as to what offence therefrom it constitutes either under IPC or some other law to sustain the accusation. As also held by the Apex Court in S.W. Palanitkar Vs. State of Bihar , every breach of trust may not result in a penal consequence unless there is evidence of mental act of fraudulent misappropriation and if the breach of trust is coupled with mensrea. Further in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. The above view in Palanitkars case was referred to and followed in Rashmi Jain vs. State of Uttar Pradesh & Anr. . Further the three Judge Bench in Madhav Rao Jiwajirao Sindia Vs Sambhaji rao Chandrojirao held that a case of breach of trust may be both a civil

wrong and a criminal offence. The Court must consider from facts and circumstances the intentions and actions and to see whether the uncontroverted allegations made by prosecution prima-facie establish the offence. In A. Jaya Ram Vs. State of A.P. by CBI also it was held on the offence of cheating that the dealers of fertilizers not transported in the manner alleged liable for conviction while giving benefit of doubt to the officials on the alleged fraud and conspiracy with fertilizers dealers in not delivering at the destination with reference to actual position of stock on relevant date from evidence of lorry owners of non-delivery for suspicion cannot take the place of proof in the absence of proof, as also held by the recent expressions of the Apex Court against a public servant in Dr. Ramegouda Vs. State of Karnataka . Thus the petitions are liable to allowed by quashing the impugned cognizance orders in toto.

21). Accordingly and in the result, the petitions are allowed by quashing the impugned cognizance orders for the following:

> (a). the trial judge has no power to review the previous dismissal or closed order in view of specific bar under Section 362 CrPC and thereby the order of the learned Special Judge on 28.12.2015 in suo-motto reopening the matter, for not a mere correction of any clerical or arithmetical or typographic mistake so to do even if at all only on an application, for it has no inherent powers saved under Section 482 CrPC as held by the Division Bench of this court in a maintenance case restored of dismissed in C. Subrahmanyam Vs. C. Sumathi and in a case of process issued under Section 204 CrPC was recalled in the expression of the Apex Court in Adalat Prasad Vs. Rooplal Jinfdal , for not having the powers of High Court either under Section 482 CrPC or under Section 483 CrPC, much less with any plenary powers under Articles 226 and 227 of the Constitution of India, even to overcome the bar under Section 362 CrPC for reopen by review of the matter;
>
> (b). the taking cognizance of all the offences against the A.1,2,4 & 7 and for IPC offences against A3 even, for the very protest petition allegations taken on its face value are that they were in discharge of their official duties committed the alleged acts, from the mandatory requirement of prior sanction under Section 19 of the PC Act and 197 of CrPC that are respectively lacking, the proceedings are unsustainable and are liable to be quashed, without necessity of going into other merits of how far the accusation against them, that too even sanction sought was dismissed by the Govt. by its memo dated 24.02.2014 and the remedy as laid down in Labh Singh & Nishant Sareen supra is at best to seek for fresh sanction with any additional and sufficient material and not to take cognizance despite it and said issue can be raised by the accused at any stage, from the above expressions and further none of the offences punishable under sections 34 r/w 420 and 409 of IPC and Section 13(1)(d) r/w.13(2) of the PC Act are made out against A1-

4&7 and nothing to show they were privy or with common concert or with common intention and premeditation with A5 & 6 committed any of the alleged offences, leave about their contention of there is no any entrustment to hold commission of criminal breach of trust and there is no element

of cheating the government and no criminal misconduct unbecoming of a public servant in any manner on their part in any of their acts as officers of the Govt.;

(c). further from what is discussed supra-

(i) there is nothing to attribute any criminal common intention, breach of trust and cheating against the A1-4 & 7 and there is no criminal misconduct as public servants and there is no willful acts on their part to cause any loss to Govt., or to benefit Raheja or its officials including A5&6 and nothing shown of they involved by any agreement with A5&6 to cheat the Govt. or to commit criminal breach of trust against Govt., and thereby none of the offences made out against them either under sections 420 & 409 R/W.34 or even under section 13(1)(d) r/w.13(2) of the PC Act; and

(ii). even so far as against A5&6 for none of the offences made out against them either under sections 420 & 409 R/W.34 or even under section 12 of the PC Act for there is nothing to show any abetment by A.5 or A.6 inducing the defacto-complainant to commit any of the offences under the P.C.Act, and there is nothing on record even of they induced any of the A1-4&7 much less to accept any bribe etc., by instigation or aiding etc., and

(d). thereby the impugned cognizance orders passed by the learned Special Judge in toto are since otherwise also unsustainable, to sub serve the ends of justice and to prevent abuse of process of law, same are quashed.

22. Consequently, miscellaneous petitions, if any shall stand closed. No costs.

_____ JUSTICE Dr. B.SIVA SANKARA RAO Date: 20.06.2017