

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 10TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.101257 OF 2022

C/W

CRIMINAL PETITION No.100903 OF 2022

CRIMINAL PETITION No.100904 OF 2022

CRIMINAL PETITION No.100918 OF 2022

CRIMINAL PETITION No.100924 OF 2022

CRIMINAL PETITION No.100926 OF 2022

CRIMINAL PETITION No.100927 OF 2022

CRIMINAL PETITION No.101232 OF 2022

CRIMINAL PETITION No.101234 OF 2022

CRIMINAL PETITION No.101236 OF 2022

CRIMINAL PETITION No.101240 OF 2022

CRIMINAL PETITION No.101266 OF 2022

CRIMINAL PETITION No.101442 OF 2022

CRIMINAL PETITION No.101443 OF 2022

CRIMINAL PETITION No.103647 OF 2022

CRIMINAL PETITION No.103649 OF 2022

IN CRIMINAL PETITION No.101257 OF 2022

BETWEEN:

M/S MSPL LIMITED.,
A COMPANY REGISTERED IN INDIA
UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 WITH ITS
CORPORATE OFFICE SITUATED AT
BALDOTA ENCLAVE, ABHERAJ BALDOTA ROAD
HOSAPETE- 583 203
DIST. VIJAYANAGAR

REP.BY ITS AUTHORISED SIGNATORY
MR. PRAVIN YESHWANT MANCHALWAR.

... PETITIONER

(BY SRI NIKHIL GOEL, SENIOR ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN
CHENNAI- 600 090
REPRESENTED BY INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIRST INFORMATION REPORT BEARING NO.RC.9/E/2013-CBI/EOW/CHENNAI DATED 24.10.2013 (ANNEXURE-A) AND THE CHARGE SHEET BEARING NO.02/2022 DATED 01.02.2022 (ANNEXURE-B) SUBSEQUENTLY ORDER DATED 09.02.2022 PASSED BY THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA (ANNEXURE-C) TAKING COGNIZANCE OF THE OFFENCES PUNISHABLE UNDER SEC.120(B) R/W 379, 411, 420 AND 447 OF IPC AND ALL FURTHER PROCEEDINGS IN CC NO.59/2022 PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA AS AGAINST THE PETITIONER / ACCUSED NO.1 IS CONCERNED.

IN CRIMINAL PETITION No.100903 OF 2022**BETWEEN:**

- 1 . NARENDRAKUMAR BALDOTA
S/O LATE SHRI. ABHIRAJ H. BALDOTA
AGED ABOUT 81 YEARS,
CHAIRMAN AND MD,
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.
- 2 . SRI RAHUL KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 54 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 3 . SRI SHRINIK KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 50 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 4 . SRI R.H.SAWKAR
S/O LATE SHRI HEMAPPA SAWKAR
AGED ABOUT 85 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE

DIST. VIJAYANAGAR – 583 203.

5 . SRI M.RAVEENDRA
S/O LATE K. MADHAV KRISHNA
AGED ABOUT 81 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN
CHENNAI- 600 090
REPRESENTED BY INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COGNIZANCE ORDER DATED 26.02.2022 (ANNEXURE-B) PASSED BY THE CIVIL JUDGE AND JMFC COURT ANKOLA UTTARA KANNADA DISTRICT IN CC NO.99/2022 FOR THE OFFENCES PUNISHABLE UNDER SECTION 4(1), 4(1A) R/W SEC. 21(5) OF MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 AND ALL FURTHER PROCEEDINGS IN CC NO.99/2022 PENDING BEFORE THE FILE OF

CIVIL JUDGE AND JMFC COURT ANKOLA UTTARA KANNADA DISTRICT, AS AGAINST THE PETITIONERS.

IN CRIMINAL PETITION No.100904 OF 2022

BETWEEN:

- 1 . SRI NARENDRAKUMAR BALDOTA
S/O LATE SHRI ABHIRAJ H. BALDOTA
AGED ABOUT 81 YEARS,
CHAIRMAN AND MD,
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.
- 2 . SRI RAHUL KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 54 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 3 . SRI SHRINIK KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 50 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 4 . SRI R.H.SAWKAR
S/O LATE SHRI HEMAPPA SAWKAR
AGED ABOUT 85 YEARS,

DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.

5 . SRI M.RAVEENDRA
S/O LATE K.MADHAV KRISHNA
AGED ABOUT 81 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN,
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO QUASHING THE FIRST INFORMATION REPORT
BEARING NO.RC.9/E/2013- CBI/EOW/CHENNAI DATED 24.10.2013
(ANNEXURE-A) AND THE CHARGE SHEET BEARING NO.04/2022
DATED 01.02.2022 (ANNEXURE-B) SUBSEQUENTLY ORDER DATED

09.02.2022 PASSED BY THE CIVIL JUDGE AND JMFC, AT ANKOLA, UTTARA KANNADA (ANNEXURE-C) TAKING COGNIZANCE OF THE OFFENCES PUNISHABLE U/S 120(B) R/W SECTION 379, 411, 420 AND 447 OF IPC AND ALL FURTHER PROCEEDINGS IN CC NO.63/2022 PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA, AS AGAINST THE PETITIONERS.

IN CRIMINAL PETITION No.100918 OF 2022

BETWEEN:

- 1 . SRI NARENDRAKUMAR BALDOTA
S/O LATE SHRI ABHIRAJ H. BALDOTA
AGED ABOUT 81 YEARS,
CHAIRMAN AND MD,
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.
- 2 . SRI RAHUL KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 54 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 3 . SRI SHRINIK KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 50 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.

- 4 . SRI R.H.SAWKAR
S/O LATE SHRI HEMAPPA SAWKAR
AGED ABOUT 85 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 5 . SRI M.RAVEENDRA
S/O LATE K.MADHAV KRISHNA
AGED ABOUT 81 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN,
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO QUASH THE COMPLAINT AND ORDER TAKING

COGNIZANCE DATED 26.02.2022 (ANNEXURE-A AND B) PASSED BY THE CIVIL JUDGE AND JMFC, AT ANKOLA, UTTARA KANNADA DISTRICT IN CC NO.97/2022 FOR THE OFFENCES PUNISHABLE U/S 4(1), 4(1A) R/W SECTION 21(5) OF MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 AND ALL FURTHER PROCEEDINGS IN CC NO.97/2022 PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA DISTRICT, AS AGAINST THE PETITIONERS.

IN CRIMINAL PETITION No.100924 OF 2022

BETWEEN:

- 1 . SRI NARENDRAKUMAR BALDOTA
S/O LATE SHRI ABHIRAJ H. BALDOTA
AGED ABOUT 81 YEARS,
CHAIRMAN AND MD,
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.
- 2 . SRI RAHUL KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 54 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 3 . SRI SHRINIK KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 50 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,

HOSAPETE
DIST. VIJAYANAGAR – 583 203.

4 . SRI R.H.SAWKAR
S/O LATE SHRI HEMAPPA SAWKAR
AGED ABOUT 85 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.

5 . SRI M.RAVEENDRA
S/O LATE K.MADHAV KRISHNA
AGED ABOUT 81 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN,
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIRST INFORMATION REPORT BEARING NO.RC.9/E/2013-CBI/EOW/CHENNAI DATED 24.10.2013 (ANNEXURE-A) AND THE CHARGE SHEET BEARING NO.02/2022 DATED 01.02.2022 (ANNEXURE-B) SUBSEQUENTLY ORDER DATED 09.02.2022 PASSED BY THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA (ANNEXURE-C) TAKING COGNIZANCE OF THE OFFENCES PUNISHABLE U/S 120(B) R/W SECTION 379, 411, 420 AND 447 OF IPC AND ALL FURTHER PROCEEDINGS IN CC NO.59/2022 PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA AS AGAINST THE PETITIONERS.

IN CRIMINAL PETITION No.100926 OF 2022

BETWEEN:

- 1 . SRI NARENDRAKUMAR BALDOTA
S/O LATE SHRI ABHIRAJ H. BALDOTA
AGED ABOUT 81 YEARS,
CHAIRMAN AND MD,
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.
- 2 . SRI RAHUL KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 54 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 3 . SRI SHRINIK KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 50 YEARS,

DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.

4 . SRI R.H.SAWKAR
S/O LATE SHRI HEMAPPA SAWKAR
AGED ABOUT 85 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.

5 . SRI M.RAVEENDRA
S/O LATE K.MADHAV KRISHNA
AGED ABOUT 81 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN,
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT AND ORDER TAKING COGNIZANCE DATED 18.02.2022 (ANNEXURE-A AND B) PASSED BY THE CIVIL JUDGE AND JMFC, AT ANKOLA, UTTARA KANNADA DISTRICT IN CC NO.78/2022 FOR THE OFFENCES PUNISHABLE U/S 4(1), 4(1A) R/W SECTION 21(5) OF MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 AND ALL FURTHER PROCEEDINGS IN CC NO.78/2022 PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA DISTRICT, AS AGAINST THE PETITIONERS.

IN CRIMINAL PETITION No.100927 OF 2022

BETWEEN:

- 1 . SRI NARENDRAKUMAR BALDOTA
S/O LATE SHRI ABHIRAJ H. BALDOTA
AGED ABOUT 81 YEARS,
CHAIRMAN AND MD,
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.
- 2 . SRI RAHUL KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 54 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.

- 3 . SRI SHRINIK KUMAR N. BALDOTA
S/O NARENDRAKUMAR BALDOTA
AGED ABOUT 50 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 4 . SRI R.H.SAWKAR
S/O LATE SHRI HEMAPPA SAWKAR
AGED ABOUT 85 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE
DIST. VIJAYANAGAR – 583 203.
- 5 . SRI M.RAVEENDRA
S/O LATE K.MADHAV KRISHNA
AGED ABOUT 81 YEARS,
DIRECTOR
M/S MSPL BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD,
HOSAPETE,
DIST. VIJAYANAGAR – 583 203.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN,
CHENNAI – 600 090
REPRESENTED BY

INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASHING THE FIRST INFORMATION REPORT BEARING NO.RC.9/E/2013- CBI/EOW/CHENNAI DATED 24.10.2013 (ANNEXURE-A) AND THE CHARGE SHEET BEARING NO.03/2022 DATED 01.02.2022 (ANNEXURE-B) SUBSEQUENTLY ORDER DATED 09.02.2022 PASSED BY THE CIVIL JUDGE AND JMFC, AT ANKOLA, UTTARA KANNADA (ANNEXURE-C) TAKING COGNIZANCE OF THE OFFENCES PUNISHABLE U/S 120(B) R/W SECTION 379, 411, 420 AND 447 OF IPC AND ALL FURTHER PROCEEDING IN CC NO.61/2022 PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA, AS AGAINST THE PETITIONERS.

IN CRIMINAL PETITION No.101232 OF 2022

BETWEEN:

M/S. MSPL LIMITED.,
A COMPANY REGISTERED IN INDIA
UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 WITH ITS
CORPORATE OFFICE SITUATED AT
BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD
HOSAPETE- 583 203
DIST. VIJAYANAGAR
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. PRAVIN YESHWANT MANCHALWAR

... PETITIONER

(BY SRI NIKHIL GOEL, SR.ADVOCATE A/W

SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN
CHENNAI- 600 090
THE STATE REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT AND ORDER TAKING COGNIZANCE DATED 18.02.2022 (ANNEXURE-A AND B) PASSED BY THE CIVIL JUDGE AND JMFC COURT ANKOLA UTTARA KANNADA DISTRICT IN CC NO. 78/2022 FOR THE OFENCES PUNISHABLE UNDER SECTION 4(1), 4(1A) R/W SECTION 21(5) OF MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 AND ALL FURTHER PROCEEDINGS IN CC NO.78/2022 PENDING BEFORE THE FILE OF CIVIL JUDGE AND JMFC COURT ANKOLA UTTARA KANNADA DISTRICT AS AGAINST THE PETITIONER IN SO FAR AS PETITIONER/ACCUSED NO.1 IS CONCERNED.

IN CRIMINAL PETITION No.101234 OF 2022

BETWEEN:

M/S MSPL LIMITED.,
A COMPANY REGISTERED IN INDIA
UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 WITH ITS
CORPORATE OFFICE SITUATED AT

BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD
HOSAPETE – 583 203
DIST. VIJAYANAGAR
REPRESENTED BY ITS
AUTHORISED SIGNATORY
SHRI. PRAVIN YESHWANT MANCHALWAR

... PETITIONER

(BY SRI NIKHIL GOEL, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN
CHENNAI - 600 090
REPRESENTED BY INSPECTOR OF POLICE

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT AND COGNIZANCE ORDER DATED 26.02.2022 (ANNEXURE-A AND B) PASSED BY THE CIVIL JUDGE AND JMFC COURT ANKOLA UTTARA KANNADA DISTRICT IN CC NO.99/2022 FOR THE OFFENCES PUNISHABLE U/S 4(1), 4(1A) R/W SECTION 21(5) OF MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 AND ALL FURTHER PROCEEDINGS IN CC NO.99/2022 PENDING BEFORE THE FILE OF CIVIL JUDGE AND JMFC COURT, ANKOLA UTTARA KANNADA DISTRICT, IN SO FAR AS PETITIONER/ACCUSED NO.1 IS CONCERNED.

IN CRIMINAL PETITION No.101236 OF 2022

BETWEEN:

M/S MSPL LIMITED.,
A COMPANY REGISTERED IN INDIA
UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 WITH ITS
CORPORATE OFFICE SITUATED AT
BALDOTA ENCLAVE, ABHERAJ BALDOTA ROAD
HOSAPETE - 583 203
DIST. VIJAYANAGAR
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. PRAVIN YESHWANT MANCHALWAR.

... PETITIONER

(BY SRI NIKHIL GOEL, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN
CHENNAI- 600 090
REPRESENTED BY INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIRST INFORMATION REPORT BEARING NO.RC.9/E/2013- CBI/EOW/CHENNAI DATED 24.10.2013 (ANNEXURE-A) AND THE CHARGE SHEET BEARING NO.03/2022 DATED 01.02.2022 (ANNEXURE-B) SUBSEQUENTLY ORDER DATED 09.02.2022 PASSED BY THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA, (ANNEXURE-C) TAKING COGNIZANCE OF THE

OFFENCES PUNISHABLE UNDER SECTION 120(B) R/W SECTION 379, 411, 420 AND 447 OF IPC AND SECTION 4(1), 4(1)A, R/W 21(5) OF MMDR ACT 1957, AND ALL FURTHER PROCEEDINGS IN CC NO.61/2022 PENDING ON THE FILE OF THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA AS AGAINST THE PETITIONER, IN SO FAR AS PETITIONER/ACCUSED NO.1 IS CONCERNED.

IN CRIMINAL PETITION No.101240 OF 2022

BETWEEN:

M/S MSPL LIMITED.,
A COMPANY REGISTERED IN INDIA
UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 WITH ITS
CORPORATE OFFICE SITUATED AT
BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD
HOSAPETE – 583 203
DIST. VIJAYANAGAR
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
SHRI. PRAVIN YESHWANT MANCHALWAR

... PETITIONER

(BY SRI NIKHIL GOEL, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN
CHENNAI - 600 090
THE STATE, REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT AND ORDER TAKING COGNIZANCE DATED 26.02.2022 (ANNEXUERE-A AND B) PASSED BY THE CIVIL JUDGE AND JMFC COURT, ANKOLA UTTARA KANNADA DISTRICT, IN CC NO.97/2022 FOR THE OFFENCES PUNISHABLE U/S 4(1), 4(1A) R/W SECTION 21(5) OF MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957 AND ALL FURTHER PROCEEDINGS IN CC NO.97/2022 PENDING BEFORE THE FILE OF CIVIL JUDGE AND JMFC COURT, ANKOLA, UTTARA KANNADA DISTRICT IN SO FAR AS PETITIONER/ACCUSED NO.1 IS CONCERNED.

IN CRIMINAL PETITION No.101266 OF 2022

BETWEEN:

M/S MSPL LIMITED.,
A COMPANY REGISTERED IN INDIA
UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 WITH ITS
CORPORATE OFFICE SITUATED AT
BALDOTA ENCLAVE,
ABHERAJ BALDOTA ROAD
HOSAPETE - 583 203
DIST. VIJAYANAGAR
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. PRAVIN YESHWANT MANCHALWAR.

... PETITIONER

(BY SRI NIKHIL GOEL, SR.ADVOCATE A/W
SRI ABHISHEK C.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING
RAJAJI BHAVAN
CHENNAI – 600 090.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIRST INFORMATION REPORT BEARING NO.RC.9/E/2013-CBI/EOB/CHENNAI DATED 24.10.2013 (ANNEXURE-A) AND THE CHARGE SHEET BEARING NO.04/2022 DATED 01.02.2022 (ANNEXURE-B) SUBSEQUENTLY ORDER DATED 09.02.2022 PASSED BY THE CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA (ANNEXURE-C) TAKING COGNIZANCE OF THE OFFENCES PUNISHABLE UNDER SECTION 120(B) R/W SECTION 379, 411, 420, AND 447 OF IPC AND ALL FURTHER PROCEEDINGS IN CC NO.63/2022 PENDING ON THE FILE OF CIVIL JUDGE AND JMFC AT ANKOLA, UTTARA KANNADA AS AGAINST THE PETITIONER, IN SO FAR AS PETITIONER/ ACCUSED NO.1 IS CONCERNED.

IN CRIMINAL PETITION No.101442 OF 2022

BETWEEN:

- 1 . N. VISHWANATH
S/O MALLIKARJUN
AGE. 42 YEARS,
OCC. BUSINESS,
PARTNER OF
M/S SHIVANI ASSOCIATES,

R/O. NEAR ESHWARI VIDYALAYA
MASKI,
DISTRICT RAICHURU – 584 124.

- 2 . K.B.VEDAMURTHY
S/O K.V. VASULINGAPPA
AGE. 44 YEARS,
OCC. BUSINESS,
PARTNER OF
M/S SHIVANI ASSOCIATES,
R/O. NEAR GRAM PANCHAYAT
HAMPI, HOSAPETE – 583 239
DISTRICT VIJAYANAGAR.
- 3 . M/S.SHIVANI ASSOCIATES
REPRESENTED BY ITS PARTNER,
SRI N. VISHWANATH,
DOOR NO. 1132/2, 4TH CROSS,
M.J. NAGAR – 583 239
DISTRICT VIJAYANAGAR.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI K.L.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING,
RAJAJI BHAVAN
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN CC NO.59/2022 ON THE FILE OF CIVIL JUDGE AND JMFC, ANKOLA FOR THE OFFENCES PUNISHABLE U/S 120-B, R/W SECTION 379, 411, 420, 447 OF IPC (RC NO.9/E/2013/CBI/EOB/ CHENNAI) IN SO FAR THE PRESENT THE PETITIONERS/ACCUSED NO.13 TO 15 ARE CONCERNED.

IN CRIMINAL PETITION No.101443 OF 2022

BETWEEN:

- 1 . N. VISHWANATH
S/O MALLIKARJUN
AGE. 42 YEARS,
OCC. BUSINESS,
PARTNER OF
M/S SHIVANI ASSOCIATES,
R/O. NEAR ESHWARI VIDYALAYA
MASKI,
DISTRICT RAICHURU – 584 124.
- 2 . K.B.VEDAMURTHY
S/O K.V. VASULINGAPPA
AGE. 44 YEARS,
OCC. BUSINESS,
PARTNER OF
M/S SHIVANI ASSOCIATES,
R/O. NEAR GRAM PANCHAYAT
HAMPI, HOSAPETE – 583 239
DISTRICT VIJAYANAGAR.
- 3 . M/S.SHIVANI ASSOCIATES
REPRESENTED BY ITS PARTNER,
SRI N. VISHWANATH,
DOOR NO. 1132/2, 4TH CROSS,

M.J. NAGAR – 583 239
DISTRICT VIJAYANAGAR.

... PETITIONERS

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI K.L.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING,
RAJAJI BHAVAN
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN CC NO.78/2022 ON THE FILE OF CIVIL JUDGE AND JMFC, ANKOLA FOR THE OFFENCES PUNISHABLE U/S 4(1), 4(1) (A) R/W SECTION 21(5) OF MMDR ACT, 1957 IN SO FAR THE PRESENT THE PETITIONERS/ACCUSED NO.13 TO 15 ARE CONCERNED.

IN5R CRIMINAL PETITION No.103647 OF 2022

BETWEEN:

V. YERRISWAMY
S/O SRINIVASALU
AGE. 43 YEARS,
OCC. BUSINESS
R/O. SRI HARI NILAYA

D.NO.17/28
28TH WARD, DAM ROAD
HOSAPETE
DISTRICT VIJAYANAGAR.

... PETITIONER

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI K.L.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING,
RAJAJI BHAVAN
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN CC NO.59/2022 ON THE FILE OF CIVIL JUDGE AND JMFC ANKOLA FOR THE OFFENCES PUNISHABLE U/S 120-B, R/W SECTION 379, 411, 420, 447 OF IPC (RC NO. 9/E/2013/CBI/EOB/ CHENNAI) IN SO FAR THE PRESENT THE PETITIONER/ACCUSED NO.16 IS CONCERNED.

IN CRIMINAL PETITION No.103649 OF 2022

BETWEEN:

V. YERRISWAMY

S/O SRINIVASALU
AGE. 43 YEARS,
OCC. BUSINESS
R/O. SRI HARI NILAYA
D.NO.17/28
28TH WARD, DAM ROAD
HOSAPETE
DISTRICT VIJAYANAGAR.

... PETITIONER

(BY SRI DAMA SESHADRI NAIDU, SR.ADVOCATE A/W
SRI K.L.PATIL, ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION
EOB, ECONOMIC OFFENCES WING,
RAJAJI BHAVAN
CHENNAI – 600 090
REPRESENTED BY
INSPECTOR OF POLICE.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP A/W
SRI RAHUL KRISHNA REDDY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN CC NO.78/2022 ON THE FILE OF CIVIL JUDGE AND JMFC ANKOLA FOR THE OFFENCES PUNISHABLE U/S 4(1), 4(1)(A), R/W SECTION 21(5) OF MMDR ACT 1957 IN SO FAR THE PRESENT THE PETITIONER/ACCUSED NO.16 IS CONCERNED.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners, in all these cases, call in question proceedings in C.C.Nos.59, 61, 63, 78, 97 and 99 of 2022, pending before the Civil Judge and JMFC, Ankola, Uttara Kannada arising out of FIR registered for offences punishable under Sections 120B r/w Sections 379, 411, 420 and 447 of the IPC and Sections 4(1), 4(1A) r/w 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957 ('MMDR Act' for short). The petitioners are either individual Directors or the Company, M/s MSPL Limited (hereinafter referred to as the 'the Company' for short). Since facts leading to registration of crime and the crime leading to charge sheet all the C.C. numbers are common in all these cases, they are taken up together and considered by this common order.

2. Facts, in brief, germane are as follows; -

2.1. On 03-11-2009 accused No.1/Company enters into an agreement with M/s Amalagiris, accused No.8 in respect of procurement of iron ore. The transaction goes on in terms of the said agreement. Certain developments take place where all the mining activities come under the supervision of the Apex Court in the case of **SAMAJ PARIVARTANA SAMUDAYA AND OTHERS v. STATE OF KARNATAKA AND OTHERS** in Writ Petition (Civil) No.562 of 2009 wherein the Apex Court appointed a Committee to secure a report with regard to illegal mining activities in Hospet, Bellary District. M/s MSPL Limited which is a Company registered under the Companies Act has been carrying out its business of mining, trading of iron ore and windmills for four decades. The Apex Court directed the CBI to conduct a preliminary investigation in respect of 32.27 lakh tonnes of iron ore exported from 01-01-2009 to 31-05-2010 from Belekeri Port by various companies.

2.2. Pursuant to the preliminary inquiry/investigation conducted, the Apex Court in terms of its order dated 16-09-2013

permitted the CBI to register criminal cases against only those exporters who were enquired into in the preliminary inquiry and who had exported iron ore of more than 50,000 MTs without valid permits. Pursuant to the said direction, the CBI then registers a crime against petitioners and others for the afore-quoted offences under the IPC and Sections 4(1), 4(1A) r/w Section 21(5) of the MMDR Act, 1957. The CBI investigates into the matter, but does not file a charge sheet immediately. However, after about 9 years of investigation it files a charge sheet on 01-02-2022. The concerned Court takes cognizance of the offence on 09-02-2022 and 18-02-2022 respectively and aggrieved by the taking of cognizance of offences, these petitions are preferred calling in question the entire proceedings in the criminal case. The order dated 20-12-2023 passed in Crl.P.No.101257 of 2022 quashing the proceedings reads as follows:

"....

7. The status of the Company is a matter of record. The agreement between accused No.8 and the petitioner/Company is also a matter of record. In the year 2012, the Apex Court while dealing with matters pertaining to mining in Karnataka, in a petition filed by Samaj Parivartana Samudaya and others in Writ Petition (Civil) No.562 of 2009 in terms of its order dated 07-09-2012 directed the CBI to conduct preliminary investigation in respect of 50.79 lakh metric tonnes of iron ore

which was said to have been exported between 01-01-2009 and 31-05-2010 particularly from Belekeri port by various Companies in the State of Karnataka. The CBI and the Anti Corruption Bureau conducted investigation and filed a preliminary enquiry report before the Apex Court in PE No.5(A)/2012 and an application in I.A.No.189 of 2013 was filed seeking permission to register criminal cases against various persons. The Apex Court in terms of its order dated 16-09-2013 permitted the CBI to register criminal cases on certain conditions. The order of the Apex Court reads as follows:

"UPON hearing counsel the Court made the following

O R D E R

We have heard learned counsel for the Central Bureau of Investigation on whose behalf of this interlocutory application has been filed and we issue the following directions:-

(a) The CBI is permitted to register criminal case against those exporters who were enquired into in the preliminary enquiry and who had exported iron ore of more than 50,000 MT without valid permits and as recommended by the Central Empowered Committee in its report dated 5th September, 2012.

(b) The CBI is permitted to refer the matter with respect to the exporters who had exported less than 50,000 MT and were not enquired into in the preliminary enquiry, to the Government of Karnataka for taking further necessary action under the relevant laws, as recommended by the Central Empowered Committee in its Report dated 5th September, 2012.

(c) We also permit the Central Bureau of Investigation to refer to the Government of Karnataka for taking further action under relevant laws with regard to those exporters who were enquired into in the preliminary enquiry and who had exported less than 50,000 MT of iron ore without valid permits as recommended by the Central Empowered Committee in its Report dated 5th September, 2012.

(d) We direct the State of Karnataka to take further necessary action under the relevant laws as recommended by the CEC in its Report dated 5th September, 2012 with regard to

those exporters who have exported less than 50,000 MT and report compliance within a period of four weeks from the date of receipt of communication of this order.

A copy of this order be furnished to the Chief Secretary, Government of Karnataka and to the Director, Central Bureau of Investigation for compliance.

We make it clear that the restrictions imposed by Section 6 of the Delhi Special Police Establishment Act, 1946 will not apply to the investigations directed by this Court in view of the judgment of this Court in State of West Bengal & Others v. Committee for Protection of Domestic Rights, West Bengal and Another.

When the matter comes up for hearing next, the learned Additional Solicitor General will apprise this Court as to whether direction No. 13 in the judgment dated 18th April, 2013 has been complied with by the Surveyor General of India."

The Apex Court divided the jurisdiction to register criminal cases by directing the CBI to register cases where iron ore exported was more than 50,000 metric tonnes without any valid permit in terms of preliminary inquiry report and the Central Empowered Committee's ('CEC' for short) report. Insofar as exports being less than 50,000 metric tonnes, the Apex Court directed that it was for the Government of Karnataka to take action as recommended in the report of the CEC dated 05-09-2012. The Apex Court further directed that the CBI should refer the matters to the Government of Karnataka for taking further action under the relevant laws with regard to those exporters who were enquired into in the preliminary inquiry and who had exported less than 50,000 metric tonnes of iron ore without valid permit and the Government of Karnataka was directed to take necessary action as per the recommendations of the CEC and the preliminary enquiry. This becomes the genesis of power to register criminal cases against Companies who have exported iron ore between 01-01-2009 and 31-05-2010 in the quantum as directed.

8. What would unmistakably emerge is, (i) in cases where exporters who have exported more than 50,000 metric tonnes

without valid permits the CBI would get jurisdiction to register crimes and (ii) in cases where export is less than 50,000 metric tonnes, Government of Karnataka has to take further action in accordance with law. In the case at hand, what is called in question is registration of crime and filing of charge sheet by the CBI. Whether it is in tune with the power conferred by the Apex Court as aforesaid is what is required to be noticed.

9. To consider the said issue, it is germane to notice the crime registered or the charge sheet filed against the petitioner. In the subject petition the export indicated against the petitioner is as follows:

"10	Total quantity of iron ore exported by M/s MSPL through shipment I to VI	3,00,135 Mts
11	Export of iron ore legal – M/s MSPL (from own mines) 94505 MTs	
12	Iron ore supplied by M/s Amalagiris M/s Priyanka/M/s Rajmahal (Legal) 1,07,550 MTs	202055 MTs"

The columns would indicate clearly that where charge sheet is already filed for illegal mining to the tune of 58,600 metric tonnes, the charge sheet that is the subject matter of the present crime is for the balance of illegal mining through the agreements noted hereinabove, which even in terms of the charge sheet is assessed at 39,480 metric tonnes. Therefore, it is less than 50,000 metric tonnes. The export of iron ore through M/s Amalagiris is 27,186 metric tonnes and through M/s Priyanka Agencies it is 12,295 metric tonnes. This quantity forms the proceedings impugned. If this is the quantity that forms the proceedings impugned, it straight away runs foul of the power conferred by the Apex Court *supra*. Therefore, the very registration of crime by filing charge sheet against the petitioner by the CBI is contrary to law.

10. Whether the entire proceedings should be quashed on that score is what is required to be noticed.

Though the CBI does not have jurisdiction to enquire into or register the charge sheet against the petitioner, it is not that the petitioner can be left scot free. The other clauses in the directions of the Apex Court would emerge. It is submitted at the bar that Special Investigating Team ('SIT') is constituted by the State through the Karnataka Lokayukta to enquire into cases of this nature which arise out of directions issued by the Apex Court. Therefore, the SIT is empowered to initiate proceedings against the petitioner but not the CBI. The proceedings initiated by the CBI by filing the charge sheet would become contrary to the power conferred on it by the Apex Court. The power conferred by the Apex Court would straight away empower the SIT to initiate proceedings. Therefore, SIT or any agency of Government of Karnataka as is directed by the Apex Court shall initiate such proceedings in accordance with law. The proceedings initiated by the CBI are thus without jurisdiction.

11. The other submission of the learned senior counsel is that the order of the concerned Court taking cognizance suffers from non-application of mind and, therefore, the order taking cognizance should be obliterated. This issue need not be gone into, as the very jurisdiction of the CBI to have filed the charge sheet itself is found fault with. If the CBI had no jurisdiction to file the charge sheet, all actions taken by the CBI would tumble down like a pack of cards. Therefore, that submission need not be answered.

ROLE OF DIRECTORS:

The other submission is with regard to role of the Directors. Though the complaint and the findings in the charge sheet are required to point at particular role of every Director in the alleged illegality as the Directors cannot be arrayed as accused in complete vacuum, they need to have their roles attributed in the complaint, in the investigation and even in the charge sheet so filed, failing which, it would run counter to plethora of judgments rendered by the Apex Court. Reference if made would only lead to the bulk of the judgment, as

they are all settled principles of law. But, on that score this Court at this juncture cannot get into those facts. The SIT which is now empowered to register proceedings shall also look into the role of the Directors and only if it is found that they have active role *qua* the illegality alleged, then they have to be brought into the web of crime, failing which, it would become an abuse of the process of law. Since these are issues to be considered by the SIT afresh, the SIT shall bear in mind the contents and averments made in these petitions *qua* the Directors and their role."

The said order passed by this Court was challenged before the Apex Court in SLP No.5653 of 2024 by the CBI. The Apex Court granted leave and converts it as civil appeal and disposed of the same by the following order:

"Leave granted.

In our opinion, the Record of Proceedings dated 16.09.2013 in I.A. Nos. 189 and 188 in Writ Petition (Civil) No. 562/2009, titled "Samaj Parivartan Samudaya & Ors. v. State of Karnataka & Ors.", in clause (a), postulated few conditions for the Central Bureau of Investigation to register criminal cases. The first condition was that the exporters in question should have been enquired into in the preliminary enquiry; secondly, they should have exported iron ore of more than 50,000 Metric Tons without a permit; and thirdly, their names should have been mentioned by the Central Empowered Committee in its report dated 05.09.2012.

It is pertinent to note that clause (a) in the RoP dated 16.09.2013 only related to the initiation of investigation and enquiry by the CBI. The First Information Report, which is placed on record, would show that the total quantum that was sought to be investigated in the case of M/s. MSPL Limited was 1,95,085 MT iron ore. This exercise would show that the condition of 50,000 MT was satisfied.

During the course of the hearing, our attention was drawn to the chargesheet and the language used therein. Our specific attention was drawn to paragraph 15.19 of the chargesheet. The said paragraph, in the beginning, stated that the investigation had revealed that MSPL Ltd. had exported 98,080 MTs of iron ore without valid permits. Out of the said quantity, transactions relating to 58,600 MTs of iron ore were found to have been investigated and were covered by other cases registered by law enforcing agencies against others, details of which were mentioned. Accordingly, the final chargesheet submitted by the CBI was in respect of 39,480 MT only. The details of the said exports are mentioned in the chargesheet.

In view of the aforesaid discussion, we are of the view that the impugned judgment of the High Court quashing the chargesheet and the investigation by the CBI, on account of violation of clause (a) in the RoP dated 16.09.2013, is unsustainable and contrary to the facts on record.

The impugned judgments/orders are set aside and the appeals are allowed in the aforesaid terms.

We are informed on behalf of M/s. MSPL Limited that a number of other grounds and issues were also raised in the criminal petition. Reference is specifically made to paragraph 11 of the impugned judgment dated 20.12.2023 passed in Criminal Petition No. 101257/2022. The effect of the present order would be that Criminal Petition No. 101257/2022 filed by M/s. MSPL Limited will stand restored to its original number and all other issues and contentions will be examined except the issue and contention that the investigation made by the CBI was contrary to clause (a) in the RoP dated 16.09.2013.

To cut short the delay, parties are permitted to appear before the High Court on 03.02.2025, when the next date of hearing will be fixed.

We clarify that we have not expressed any opinion on the merits of other issues arising in the case.

Pending application(s), if any, shall stand disposed of."
(Emphasis supplied)

It was the case of the CBI and other respondents that many other grounds that were urged were not considered and the petition was being allowed on a particular ground. Accordingly, the matter is placed before this Court again. The challenge is the same but, arguments are afresh.

3. Heard Sri **Dama Seshadri Naidu**, learned senior counsel and Sri **Nikhil Goel**, learned senior counsel appearing for the petitioners and Sri **P. Prasanna Kumar**, learned Special Public Prosecutor appearing for the respondent.

SUBMISSIONS:

PETITIONER'S:

4.1. The **learned senior counsel Sri Dama Seshadri Naidu** and Sri Nikhil Goel representing the petitioners would divide their submissions *qua* their Company and individuals. Insofar as individuals are concerned, the learned senior counsel Sri Dama Seshadri Naidu has taken this Court through the documents right from the stage of registration of crime, with particular emphasis that the petitioners are only exporters of iron ore and not

transporters. They are only exporters of iron ore. Iron ore that lay in the dockyard at Belekeri port in terms of an agreement with M/s Amalagiris was exported. Therefore, it was for the person who was holding the ore in the port to have looked into whether it has reached the port in a legal manner. It is not the responsibility of these petitioners to have looked into these things. Now the allegation is Section 379 of the IPC which is theft, which the petitioners cannot be alleged of. Insofar as Section 420 of the IPC is concerned, whom the petitioners have lured into the transaction or cheated is not forthcoming. The other allegations are concerning Sections 120B, 411 and 447 of the IPC and others under the MMDR Act. He would submit that these petitioners are exporting iron ore and there can be no allegation of thieving upon an exporter when they are exporting with all legal documents and agreements. It is the case of the prosecution that iron ore that was stored by Amalagiris was without permit and the further allegation against these petitioners is that they have not done due diligence about from where iron ore came. This again became crime for the offences as alleged.

4.2. The **learned senior counsel Sri Nikhil Goel** would adopt the above submissions to a large extent and only take this Court to the document appended to the petitions insofar as they concern the Company. He would take this Court through the statements of witnesses i.e., Port Conservator Officers who themselves say that the port operators are liable to obtain all required permissions, no objection certificate and all other nuances for storing iron ore. The learned senior counsel submits, if that be so, no blame can be laid on the petitioners. He would seek quashment of the proceedings.

THE CBI:

5. Per-contra, the **learned Special Public Prosecutor Sri P. Prasanna Kumar** representing the CBI would vehemently contend that the charge sheet so filed by the CBI is in great detail of these matters, whether the petitioners have transported or exported is a matter of evidence, which must be decided in a full blown trial. The learned counsel submits that it was for the petitioners to have seen as to whether they are transporting iron ore that is being stored contrary to law. Therefore, it is akin to a

property that is stolen being transported by these petitioners. Therefore, the stolen property being transported also becomes an offence under Sections 379 and 120B of the IPC. The CBI would thus seek dismissal of these petitions.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

CONSIDERATION:

7. The afore-narrated facts are a matter of record. The period in which CBI was not in picture need not elaborately be stated, but, divulging the periphery is imperative. The petitioners are a Company registered under the Companies Act and its Directors carrying on business in mining, trading of iron ore and also running windmills. It is the claim of the Company that it is carrying on business throughout, in accordance with law and has been continuously given 5 Star rating for the last four years. Illegal mining became subject matter of certain proceedings before the Apex Court in Writ Petition (Civil) No.562 of 2009. In the said writ

petition the Apex Court directed the CBI to conduct preliminary investigation in respect of 32.27 lakh tones of iron ore exported between 01-01-2009 and 31-05-2010 from a particular port i.e., Belekeri Port by various Companies. Pursuant thereto, investigation/ enquiry was conducted. The report was placed before the Apex Court. It is then the Apex Court in terms of its order dated 16-09-2013 permitted the CBI to register the crime in cases falling within the parameters of what the Apex Court held. It reads as follows:

“UPON hearing counsel the Court made the following:

O R D E R

We have heard learned counsel for the Central Bureau of Investigation on whose behalf of this interlocutory application has been filed and we issue the following directions:

- (a) The CBI is permitted to register criminal case against those exporters who were enquired into in the preliminary enquiry and who had exported iron ore of more than 50,000 MT without valid permits and as recommended by the Central Empowered Committee in its report dated 5th September, 2012.
- (b) **The CBI is permitted to refer the matter with respect to the exporters who had exported less than 50,000 MT and were not enquired into in the preliminary enquiry, to the Government of Karnataka for taking further necessary action under the relevant laws, as recommended by the Central Empowered Committee in its Report dated 5th September, 2012.**

- (c) **We also permit the Central Bureau of Investigation to refer to the Government of Karnataka for taking further action under relevant laws with regard to those exporters who were enquired into in the preliminary enquiry and who had exported less than 50,000 MT of iron ore without valid permits as recommended by the Central Empowered Committee in its Report dated 5th September, 2012.**
- (d) **We direct the State of Karnataka to take further necessary action under the relevant laws as recommended by the CEC in its Report dated 5th September, 2012 with regard to those exporters who have exported less than 50,000 MT and report compliance within a period of four weeks from the date of receipt of communication of this order.**

A copy of this order be furnished to the Chief Secretary, Government of Karnataka and to the Director, Central Bureau of Investigation for compliance.

We make it clear that the restrictions imposed by Section 6 of the Delhi Special Police Establishment Act, 1946 will not apply to the investigations directed by this Court in view of the judgment of this Court in *State of West Bengal & Others v. Committee for Protection of Domestic Rights, West Bengal and Another*.

When the matter comes up for hearing next, the learned Additional Solicitor General will apprise this Court as to whether direction No. 13 in the judgment dated 18th April, 2013 has been complied with by the Surveyor General of India."

(Emphasis supplied)

The CBI was directed to register criminal case against those exporters who were enquired into in the preliminary enquiry and who had exported iron ore more than 50,000 MTs. without valid

permit as recommended by the Central Empowered Committee in its report dated 5th September, 2012. The CBI was permitted to refer the matter with respect to those exporters who had exported less than 50,000 MTs to the Government of Karnataka for further action in accordance with law. The CBI was also permitted to register the crime. The CBI then registers the crime on 24-10-2013 in RC.9/E/2013-CBI/EOW for offences punishable under Sections 120-B r/w 420, 379, 411, 427, 447 of the IPC; Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 21 r/w 4(1), 4(1A) and 23 of Mines and Minerals (Development and Regulation) Act, 1957. The reason for registration of crime i.e., the contents of the crime are necessary to be noticed. They read as follows:

" "

The Hon'ble Supreme Court of India, on 07.09.2012, in Writ Petition (Civil) No.562/2009, ordered Central Bureau of Investigation (CBI) to conduct a preliminary enquiry in respect of 32.27 lakh tonnes of iron ore, exported from 01.01.2009 to 31.05.2010 from Belekeri Port, specified in sub-paragraph II and III, at pages 13 and 14 of the Supplementary Report dt. 05.09.2012, of Central Empowered Committee submitted and accepted by the Hon'ble Supreme Court. While passing the said order, Hon'ble Supreme Court, inter-alia, specified that Reports dated 27.04.2012 and 05.09.2012, of the Central Empowered Committee filed before the Hon'ble Supreme Court, may form

the basic material for CBI investigation. Copy of the order dated 07.09.2012 of the Hon'ble Supreme Court of India is enclosed.

In pursuance of the above said orders of the Hon'ble Supreme Court, a Preliminary Enquiry was registered vide PE.No.5/A/2012 by CBI, ACB, Bangaluru and enquiry was carried out. On completion of the enquiry, a report was submitted before the Hon'ble Supreme Court and IA 189/2013, in W.P.(C) 562/2009, was filed by CBI seeking permission to register criminal cases.

Hon'ble Supreme Court, on 16.09.2013, in Interlocutory Application No.189, in Writ Petition (Civil) No.562 of 2009, permitted CBI to register criminal cases against the exporters who were enquired into during Preliminary Enquiry, and who had exported iron ore more than 50000 MT, without valid permits. Copy of the order dt.16.09.2013 of the Hon'ble Supreme Court is enclosed.

Preliminary Enquiry disclosed that M/s. MSPL Limited (A-1) formerly known as Mineral Sales Private Limited represented by its directors A-2 to A-6 is a private limited company dealing with export of Iron Ore. The registered office of the company is at No.117, Maharishi Karve Road, Mumbai - 400 020 and office at Baldota Enclave, Abheraj Baldota Road, Hospet - 583 203, Karnataka.

M/s. MSPL Limited (A-1) represented by its directors A-2 to A-6 illegally excavated iron ore in excess from the mine leased to them and illegally procured from various suppliers and exported 300135 MT of Iron Ore through Belekeri Port. M/s. MSPL Limited (A-1) represented by its directors A-2 to A-6, obtained the excess ore by stealing the natural resources in the form of iron ore by excavation without valid authority by trespassing the forest area/Government land, procuring such illegally excavated iron ore and receiving the stolen property totalling to the tune of 195085 MT Iron Ore and illegally transported and exported the same through Belekeri port without payment of the required Royalty and Forest Development Tax. Thus this company and its

directors, in connivance and conspiracy with the public servants of the Department of Mines and Geology and Forest Department caused wrongful loss to the Government of Karnataka with corresponding wrongful gain to themselves.

The above acts on the part of M/s. MSPL Limited (A-1) and its directors A-2 to A-6, unknown public servants and unknown others disclose commission of offences punishable u/s. 120-B r/w. 420, 379, 411, 427, 447 IPC, section 21 r/w. 4(1), 4(1)(A) and 23 of Mines and Minerals (Development and Regulation) Act, 1957, section 24 of Karnataka Forest Act, 1963 and sec.13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988."

(Emphasis added)

It was alleged that the petitioners' Company and its Directors, individuals had exported or illegally excavated iron ore and received the stolen property totaling to 195085 MTs. The reason for registration of the crime was illegal mining and exporting. **The petitioners are not alleged of mining in the case at hand, but exporting of iron ore that was stored in the dockyard. The allegation was loss of royalty to the State Government.** The CBI conducts investigation and would file a charge sheet, not in a year or two, but after nine years on 01-02-2022. The facts narrated in the charge sheet and the charge is necessarily to be noticed. They read as follows:

"BRIEF FACTS OF THE CASE

15.1 The Hon'ble Supreme Court of India, vide order dated 07.09.2012, in Writ Petition (Civil) No.562/2009, directed the CBI to conduct a Preliminary Enquiry in respect of 32.27 lakh tonnes of iron ore, exported from 01.01.2009 to 31.05.2010 from Belekeri Port, specified in sub-paragraph II and III, at pages 13 and 14 of the Supplementary Report dated 05.09.2012, submitted by the Central Empowered Committee (CEC) which was accepted by the Hon'ble Supreme Court of India. In pursuance of the above said orders of the Hon'ble Supreme Court, a Preliminary Enquiry was registered vide PE No.05(A)/2012 by CBI, ACB, Bengaluru Branch and enquiry was carried out. On completion of the enquiry, a report was submitted before the Hon'ble Supreme Court and Interlocutory Application No. 189/2013 in WP (Civil) No.562/2009 was filed by the CBI seeking permission to register criminal case.

15.2 As requested, the Hon'ble Supreme Court of India, vide its order dated 16.09.2013 permitted the CBI to register criminal cases against the exporters who were enquired into during the said Preliminary Enquiry and who had exported iron ore of more than 50,000 MTs without valid permits. In the Enquiry Report M/s MSPL Limited has also figured as one of the exporters which exported 300135 MTs of Iron Ore, without valid permits and accordingly, a case has been registered against A-1 M/s MSPL Pvt Ltd represented by its Directors, A-2 Narendra Kumar N Baldota, A-3 Rahul Kumar N Baldota, Director, A-4 Shrenik Kumar N Baldota, Director, A-5 R H Sawkar, Director, A-6 M Ravindra, Director and unknown Public Servant and unknown others by SP, CBI, EOW, Chennai Branch vide RC.9(E)/2013 on 24.10.2013 U/s 120-B r/w 420, 379, 411, 427, 447 IPC & Sec 13(2) r/w 13(1) (d) of PC Act, 1988 & Sec 21 r/w 4(i), 4(i), 4(i) (A) & Sec 23 of Mines and Minerals (Development & Regulation) Act, 1957 and Sec 24 of Karnataka Forest Act, 1963 and substantive offences thereof and taken up for the investigation.

15.3 The brief allegation of the case in the FIR is that M/s MSPL Limited (A-1) was formerly known as Mineral Sales Private Limited, represented by its Directors, A-2 to A-6, is a private limited company dealing with export of Iron Ore and having its registered office at Hospet. It is further alleged in the FIR that during the period from 01.01.2009 to 31.05.2010, A-2 to A-6

Directors of A1 Company, had illegally excavated iron ore in excess from the mine leased to them and illegally procured from various suppliers and exported 3,00,135 Mts of Iron Ore through Belekeri Port, out of which 195085 Mts was without permit. M/s MSPL Ltd obtained the excess ore by stealing the natural resources in the form of iron ore by excavation without valid authority by tress passing the forest area / Government land, procuring such illegally excavated iron ore and receiving stolen property totaling to the tune of 195085 Mts Iron Ore and illegally transported and exported the same through Belekeri Port, without payment of the required Royalty and Forest Development Tax in connivance and conspiracy with the Public Servants of the Dept. of Mines and Geology and Forest Department and caused wrongful loss to the Govt. of Karnataka with corresponding wrongful gain to themselves.

....

15.9 Investigation revealed that based on the application submitted by M/s MSPL, the Dy. Director, Departments of Mines & Geology, Hospet issued Mineral Dispatch Permit (MDP) No.6019 dated 30.01.2009, MDP No.6236 dated 10.02.2009 and MDP No.6419 dated 21.02.2009 for transportation of 9000 MTs, 20,000 MTs and 17000 MTs of lumps respectively from Mining Lease No.2416 of Vyasanakere Mines to Belekeri Port on payment of Royalty and Forest Development Tax as applicable.

....

15.14 Investigation revealed that M/s MSPL (A-1) placed purchase order to M/s Amalagiris (A-8) represented by its Managing Partner Shri Philip Jacob (A-7) vide letter No.MSPL/AMALAGIRIS/Belekeri FINES-1/09-10 dated 03.11.2009 and No. MSPL/AMALAGIRIS/Belekeri FINES-2/09-10 dated 24.12.2009 for supply of 1,00,000 MTs and 50,000 MTs of medium grade iron ore fines respectively with specifications, physical size, payment terms, sampling and analysis and other terms and conditions. In clause 7 of purchase order, M/s MSPL (A-1) had mentioned that valid DMG & Forest permits to be furnished to the quantity of iron ore supplied. It was also mentioned in the purchase order that for operational convenience, port charges, stevedoring, cess, sampling and any other charges will be paid by M/s MSPL (A-1)

directly to port and necessary adjustment will made in the final payment."

(Emphasis added)

In the chart, the allegations against these petitioners are shown in detail. The chart reads as follows:

Sl.No.	Name of the Source	MDP and Date	MDP Quantity MTs	Quantity MTs Moved	Quantity Exported to China (in MTs)
1	Opening Balance of M/s MSPL as on 01.01.2009			9169 MTs	
2	Hand loan of iron ore received from M/s Deccan Mining Syndicate			1996 Mts	
3	Vyasankara Mines ML No.2416 (Own Mines)	6019 dt.30.01.09	9,000		
		6236 dt.10.02.09	20,000		
		6419 dt.21.02.09	17,600		
		Total	46,600	45606.31	
	Purchased and moved by M/s MSPL to Belekeri Port			Moved Qty	
4	M/s Sandur Manganese and Iron ore Company (SMIORE M.L.No. 2581)	5830 dt.20.01.09 (Fines)	10,000	7,397.53	
		6588 dt.12.03.09 (Fines)	20,000		
		81 dt.15.04.09 (Fines)	20,000	39,605.26	
				9995	9995
	M/s Raimahal Silks (10,000 Mts)		Supplied at Belekeri Port		
	a. supply order dated 14.03.2009 – 10000 MTs		9995 MTs (1 st Shipment)		
			Total	113769.10	
5	MSPL 1 st Shipment		45005 MTs		
6	MSPL 2 nd Shipment		49500 MTs		94,505 MTs
	MSPL placed supply orders and iron ore supplied by various parties at Belekeri Port				
7	M/s Amalagiris (1,50,000 MTs)	Supplied at Belekeri Port under 2 invoices a.53643 MTs (3 rd Shipment) b.55000 (5 th Shipment)	108643	108643	108643 MTs
8	M/s Priyanka Agencies (1,50,000 Mts)	Supplied at Belekeri Port under 5 invoices 50,600 MTs (4 th Shipment) 36392 MTs (6 th Shipment)	90111.76	90111.76	86992 MTs
	Total Qty procured			3,12,523.86 MTs	
10	Total quantity of iron ore exported by M/s MSPL through shipment I to VI				3,00,135 MTs
11	Export of iron ore legal – M/s MSPL (from own mines)			94505 MTs	
12	Iron ore supplied by M/s Amalagiris/M/s Priyanka/M/s Rajmahal (Legal)			1,07,550MTs	202055 MTs
13	Balance Illegal				98,080 MTs
14	Cases already charge sheeted for illegal				58600 MTs
15	Balance to be charged in RC 9/E/2013				
	Through M/s Amalagiris - 27186.15 MTs Through M/s Priyanka Agencies – 12295 MTs				39,480 MTs

What the investigation reveals is further narrated in the charge sheet. It reads as follows:

"

15.18 Investigation revealed that M/s Amalagiris (A-8) raised final invoice No.1127 dated 16.12.2009 for Rs. 16,08,69,783.47 in favour of M/s MSPL (A-1) against the contract number

MSPL/AMALAGIRIS/BELEKERI FINES-1/09-10 dated 03.11.2009 after the export of 53,643 MTs (51030.414 DMT) of iron ore through vessel MV Thai Honesty. M/s MSPL Ltd., made first instalment of advance payment for agreement quantity of 55000 MTs of Rs.19.20 crores i.e. (i) Rs.2 crores posted on 03.11.2009 (ii) Rs.3 crores posted on 04.11.2009 & (iii) Rs.14.2 crores posted on 10.11.2009 to the Bank account of M/s Amalagiris maintained with DCB Bank, Goa through their current account No.31019448168 maintained with SBI, College Road Branch, Hospet. The balance advance amount was adjusted in next shipments.

15.19 Investigation revealed that M/s Amalagiris (A-8) also raised final invoice No 1139 dated 17.03.2010 for Rs. 16,92,23,099.98 in favour of M/s MSPL (A-1) against the contract number MSPL/AMALAGIRIS/BELEKERI FINES-2-1/09-10 dated 29.12.2009 after the export of 55,000 MTs (51964 DMT) of iron ore through vessel MV Jin Zhou Hai. M/s MSPL Ltd., has made an advance payment of Rs. 14 crores i.e. (i) Rs.8,00,00,000/- posted on 30.12.2009; (ii) Rs.4,00,00,000/- posted on 09.01.2010 & (iii) Rs.2,00,00,000/- posted on 12.01.2010. The balance advance amount was adjusted in next shipments.

15.20 Investigation revealed that the another supplier M/s Priyanka Agencies raised invoice No.54 dated 18.03.2010 for Rs.11,39,11,100/- in favour of M/s MSPL Ltd (A-1) towards supply of 51196 MTs of iron ore against the purchase order No.MSPL/AGM/PA/10. M/s Priyanka Agencies also raised invoice No.64 dated 01.04.2010 for 25036.130 MTs for Rs.9,51,37,294/- and invoice No.65 dated 27.04.2010 for 11736.460 MTs for Rs.4,57,72,194/-.

15.21 Investigation revealed that M/s Rajmahal Silks, one more supplier has raised invoice No. RS21 dated 16.03.2009 for Rs.2,44,87,750/- in favour of M/s MSPL Ltd towards supply of 9995 MTs of iron ore.

15.22 Investigation revealed that M/s MSPL (A-1) procured 2,14,239 MTs of iron ore with valid DMG permits/trip sheets from various sources i.e. from his own mines including the opening balance of 9169 MTs of iron ore as on 01.01.2009, M/s SMIOR and through various suppliers viz M/s Rajmahal Silks,

M/s Deccan Mining Syndicates, M/s Amalagiris, M/s Zeenath Transport Company, M/s BMM Ispat Ltd, M/s Priyanka Agencies, M/s Suhana Minerals & Metals, M/s Gogga Gurushanthaiah Brothers, M/s Sri Sai Enterprises, M/s Sri Saibaba Logistics Company, M/s EMK Engineering, M/s Adi Associates, M/s Suhana Minerals & Metals, M/s Deepa Mines & Minerals/Global Associates/AR Logistic/EXIM and M/s RBSSN. Out of which, 2,02,055 MTs was exported by M/s MSPL (A-1) to China along with illegal iron ore of 98.080 MTs i.e. in total 3,00,135 MTs. The details of iron ore procured from the said suppliers with valid permits are as under:

....

15.23 Investigation revealed that M/s MSPL (A-1) has procured 98,080 MTs of iron ore from various parties/suppliers during 01.01.2009 to 31.05.2010 without valid DMG permits/trip sheets and exported the same through Belekeri Port along with the iron ore legally procured from various suppliers as discussed above. The details of iron ore illegally procured by M/s MSPL (A-1) without DMG permit/trip sheets are as under:

....

15.24 Investigation revealed that M/s MSPL (A-1) transported 98,080 MTs of iron ore without valid permit and out of this quantity the transactions related to 58,600 MTs was investigated and covered in other cases registered by Law Enforcing Agencies and the details are as follows

....

Hence, investigation in this case in RC 9/E/2013 was with respect to the remaining 39,480 MTs only. This 39,480 MTs of iron ore was exported in two shipments i.e. Shipment III & IV, out of six shipments and the details are as under:

....

15.25 Investigation revealed that under shipment III, M/s MSPL (A-1) represented by its Directors (A-2 to A-6) exported iron ore to China to the tune of 53,643 MTs and out of which 27,186.15 MTs was found to be illegal. There are six transactions wherein the illegal quantity of 27186.15 MTs was supplied by M/s

Amalagiris (A-8). a partnership firm represented by its Managing Partner Shri Philip Jacob (A-7) on port through six different suppliers. Out of 27186.15 MTs. Shri Philip Jacob (A-7), Managing Partner of M/s Amalagiris (A-8) procured 7945.25 MTs of iron ore illegally from three different channels without valid documents i.e. DMG permit and trip sheets. The details are as under:..."

Thus the allegation against the petitioners is for having exported iron ore after entering into contract with M/s Amalagiris, accused No.8. The further allegation against accused No.1-Company is specifically found at the following paragraphs:

"....

15.45 During investigation the role of Public Servant was not surfaced in the Criminal Act. The lapses on the part of Public Servants are of common in nature and used to be looked in to ground realities.

15.46 Investigation revealed that it is the responsibility of M/s MSPL (A-1), who purchased 7945.25 MTs of iron ore (without DMG permits) from various suppliers i.e. M/s Amalagiris (A-8) and others on board at Belekeri Port to verify the records and to ascertain the genuineness whether the suppliers/traders procured iron ore with valid documents from the genuine persons as per the conditions imposed by them in purchase order under clause-7 of contract agreement. But in this case, M/s MSPL (A-1) failed to verify the source of procurement by the suppliers/traders and also did not verify the valid documents of iron ore. They simply paid payment to the suppliers against the invoice raised by them. The mineral/iron ore are the national resources of the country. For any mining activity, license has to be obtained from the competent authority for excavation and transport. Failure to comply, this amounts to theft. In

this instance case, the suppliers A-7 to A-18 had excavated the iron ore illegally and sold to the exporter M/s MSPL (A-1) without valid documents and thus, they had not only benefited themselves without paying royalty to the Govt. and also benefited M/s MSPL (A-1), exporter by way of sale of illegal iron ore.

15.47 Investigation revealed that M/s MSPL (A-1) represented by its Directors A-2 Narendra Kumar N Baldota, A-3 Rahul Kumar N Baldota, Director, A-4 Shrenik Kumar N Baldota, Director, A-5 R H Sawkar Director, A-6 M Ravindra with the criminal intention to cheat Govt. of Karnataka hatched in Hospet and other places of Karnataka during the period from 2009 to 2010 and in furtherance of the criminal conspiracy, they illegally procured 7945.25 MTs of iron ore without valid documents viz. DMG permit and trip sheets from M/s Amalagiris (A-8) represented by its Managing Partner Shri Philip Jacob (A-7) through Shri Dattareya Shetty of Mis Samrudhi Enterprises (A-9), Shri Mahesh Vinayak Raikar (A-10); Shri Harish Nayak (A-11), Shri Vishal Hegde of M/s Adarsh Associates (A-12). Shri Vishwanathan (A-13); Shri Vedamurthy (A-14) Partners of M/s Shivani Associates; M/s Shivani Associates (A-15) represented by A- 13 & A-14; Shri V Yerriswamy of Y Minerals (A-16), Shri Shyamraj Singh of SB Minerals (A-17) and M/s SB Minerals (A-18) represented by A-17 and exported to China without paying royalty and caused wrongful loss to the tune of Rs. 1,11,51,952/-(sale price + royalty) to the exchequer of Govt. of Karnataka and corresponding gain to themselves. The suppliers A-9 to A-18 illegally excavated the iron ore, transported and supplied to M/s MSPL (A-1) through Shri Philip Jacob (A-7) without valid documents of DMG permit and trip sheets by stealing the natural resources and caused loss to the tune of Rs.1,11,51,952/-."

(Emphasis added)

The allegation is that it was the responsibility of the petitioner

Company who purchased 7945.25 MTs of iron ore from various

suppliers i.e., M/s Amalagiris and others at Belekeri Port to verify the records and to ascertain the genuineness whether the suppliers/traders procured iron ore with valid documents from genuine persons as per conditions imposed by them in the purchase order under Clause 7 of the contract agreement. Causing wrongful loss to Government is not the allegation against these petitioners, but against others. The concerned Court takes cognizance of the offence against the petitioners by the following order:

"The CBI, IOB, Chennai has filed charge sheet for the offence punishable under Section 120(b) R/w Section 379, 411, 420 and 447 IPC and for the offence punishable under Section 4(1), 4(1)(a) R/w Section 21(5) of Mines and Minerals (Development and Regulation) Act 1957. FIR has been registered against the accused on 24.10.2013. Said FIR has been transferred to this court by the order of XXXII Additional City Civil and Session Judge and Special Judge for CBI case, Bangalore, dated: 30.09.2021. After FIR and other documents received by this court, the CBI, Chennai has filed charge sheet against the accused No.1 to 18 for the offence punishable under IPC and also under Mines and Minerals Act.

So far as taking cognizance of offence punishable under Mines and Minerals Act on the basis of police report is concerned, the Hon'ble High Court of Karnataka in Sri. Vivek and another v/s State of Karnataka by Kunigal Police Station and another reported in ILR 2018 Karnataka 1497 in direction No.2 and 3 held as follows.

"2) The Police cannot file a final report under Section 173 of Cr.P.C. for the offences under the MMDR Act and KMMC Rules either to the jurisdictional JMFC Court or to the Special Court. However, they can file the report for the offences under the IPC or any other penal

law for the time being in force before the jurisdictional Magistrate.

3) The jurisdictional Magistrate has no jurisdiction or power to take cognizance for the offence punishable under the MMDR Act and KMMC Rules on the basis of any Police report u/s. 173 of Cr.P.C.. However, if any penal provisions under the IPC or any other penal laws are available in the final report of the police, if there is no other legal bar; the Magistrate can take cognizance of such offences under the IPC or other penal laws for which he is empowered, except the offences under MMDR Act and KMMC Rules.

According to direction No.2 charge sheet cannot be filed for the offence punishable under MMDR Act and KMMC Rules. Final report can be filed for the offence punishable under IPC or any other Penal Law."

According to direction No.3, the court is not supposed to take cognizance for the offence punishable under MMDR Act and KMMC Rules on the basis of police report filed under Section 173 of Cr.P.C.. Therefore, on the basis of the charge sheet the court can take cognizance only in respect of other offences excluding the offence under MMDR Act and KMMC Rules.

Perused the materials produced along with the charge sheet. On going through the charge sheet material it reveals case against accused No.1 to 18 as alleged. Therefore, cognizance is taken against accused No.1 to 18 for the offence punishable under Section 120(B) R/w Section 379, 411, 420 and 447 IPC.

Office to register Criminal case against the accused and issue summons to accused No.1 to 18.

Returnable by 05.04.2022.

Sd/-
J.M.F.C., Ankola."

Since charge speaks of Clause 7 of the Agreement, I deem it appropriate to notice the agreement between the petitioner and

accused No.8 insofar as it is germane. The agreement at every point in time is as follows:

"....

7. Permits: Valid DMG & Forest permits to be furnished equal to the quantity of iron ore Supplied."

(Emphasis added)

Clause-7 of the agreement quoted above deals with permits. Valid DMG and Forest permits to be furnished equal to the quantity of iron ore supplied is the responsibility of M/s Amalagiris, accused No.8. Every iron ore purchased contained this clause, but the seller will furnish valid DMG permits to the purchaser. An invoice dated 28-12-2009 becomes germane to be noticed. It is as follows:

"....

7) Weightment:

- a) The weight as per the weights recorded at Unloading weighbridge shall be final for all purposes including billing.

8) Sampling and Analysis:

- a) SGS India Pvt. Ltd. would be the neutral assayer who would draw samples and give analysis report. The report submitted by SGS would be final for all aspects relating to Quality.
- b) At the time of unloading the trucks samples will be drawn and analysis (for Fe, SiO₂, Al₂O₃ & P) will be

done. The quality of ore as certified by SGS India Pvt. Ltd., will be final for seller's Invoice.

9) Seller to furnish valid DMG permits to the quantity of Iron ore supplied along with the Invoice.”

(Emphasis added)

What would unmistakably emerge from the aforesaid is, that responsibility of DMG permits and the manner in which iron ore is stored is with the seller. The seller, in the case at hand, is accused
No.8. **The petitioners are only exporters.**

8. Certain witnesses who have deposed on behalf of Government Departments i.e., the Department of Mines and Geology are all necessary to be noticed. Statement of one S.Mallesha, Geologist in the office of the Deputy Director, Department of Mines and Geology is recorded as CW-1, wherein the said witness with regard to procedure of issuance of mineral dispatch permit and trip sheet deposes as follows:

“Procedure for Issue of Mineral dispatch and its Trip Sheets

The lessee generates iron ore by drilling, blasting and other means. After production, the lessee should apply with Department of Mines and Geology for issue of Mineral Dispatch Permit (MDP) for transportation of iron ore by paying advance royalty. The lessee submits an application for transportation of

iron ore to the Deputy Director, Department of Mines & Geology mentioning the quantity, Fe grade, loading place, destination etc. alongwith the details of the DD towards royalty, for issuance of Mineral Dispatch Permit with trip sheets. The prevailing royalty as fixed by IBM will be paid before issue of MDP.

The First / Second Divisional Assistant (Clerk) in DMG office checks the Royalty payable for the quantity of Iron Ore declared/available vis-a-vis credit balance of royalty and places a note along with the application, through Supdt. to the Deputy Director/Senior Geologist, Technical Officers i.e. Geologist/AE/JE to whom it is endorsed submit physical stock report. Field Officer assesses the quantity, collects sample to be sent for analysis to find the Fe content / Grade of iron ore. Permit is issued after obtaining the Stock Certificate in the mine head given by the Geologist and the file will be again submitted to the Deputy Director / SG through Superintendent for passing orders for issue of permit.

Mineral Dispatch Permit @ Bulk Permit indicating the total quantity of iron ore to be transported from the mine head to destination, as requested by the Lessee, with validity period of one month and required number of trip sheets @ 16 MTs was given to the lessee for transportation through lorry. The 16 MTs is the permissible load that can be carried as per transport department regulation. There was some change in the method of issue of MDP during October, 2009 (one vehicle one permit system) which was subsequently reverted back. From 2010 January onwards the Dept. of Mines & Geology issued computer generated permits, having bar code, embedded hologram in Special Security Paper etc. The application will be put up to the Deputy Director/SG, Mining & Geology and after his approval lessee will collect the mineral dispatch permit and the required trip sheets from the computer section with holograms, affix the same on the trip sheet and get the signature of Technical Officer/Geologist.

If the leased area falls under forest land, the lessee will produce copy of the MDPs issued by DMG to Forest authorities. Forest Department issues Office Memorandum (OM) and Forest Way Permit in Form 31. This Form 31 was changed to Form 27 from November, 2009. After complying with the formalities in the Forest Department such as payment of Forest Development

Tax (FDT), the lessee will collect the Form No.31/Form 27 and uses it along with MDPs and Trip Sheets issued by DMG, for transportation of iron ore from mine head to the stipulated destination. The Office Memorandum issued by Forest Department is similar to MDP and the Forest Way Permit is similar to Trip Sheets issued by DMG, both reflecting the payment of royalty and FDT. Every vehicle transporting Iron Ore from the Mine Head or Stock Yard, should carry copy of the MDP, original Trip Sheet and Forest Way Permit for that load, so as to show them at the check posts during transit to destination.

The lessee has to transport the minerals within the time limit of one month specified in the MDP. If not possible, extension of validity of the permit should be sought and further period up to 30 days can be issued. While seeking extension, the difference in royalty, if the rate is high than the rate at which it was issued earlier, has to be collected. During investigation, it came to light that some Lessee pays advance Royalty to the DMG, which is treated as credit balance and adjusted with the MDPs that were applied later.

The trip sheets provided by DMG is in printed form with the required details in three foils till 2008, in which one is for lessee, second for check post and another for destination. From 2008 the permit management system was implemented, in which permit is with two foils, one for lessee and another for destination. The present procedure after 2011 is that print out is taken online from Permit Management System (PMS) and when the destination is selected, the system will automatically generate the time schedule according to distance between mine head and destination.

Stock Yard for storing processing iron ore

As per Order No CI 31 MMM Bangalore dated 21.09.2005 Government of Karnataka made it mandatory for the traders of iron ore (not having mines of their own but engaged in buying iron ore from the lessee and trading) to get their stockyards registered for the purpose of storing, selling, trading processing and Benefaction of Ore/Mineral other than Mining/Quarrying sites. To get registration of stockyard, the trader has to furnish documents of non agricultural conversion of the

land (NA), Consent for operation from Karnataka State Pollution Control Board (KSPCB CFO), Registration Certificate from the Department of District Industries and Commerce (DIC), VAT registration certificate, IT returns and with a registration fee of Rs. 1,000/- through Demand Draft obtained in favour of the Deputy Director, DMG of the district concerned to be submitted to the office. After inspection by the Geologist/Deputy Director of the office the stockyard permission/ Licence was issued with the prior permission from the Director, DMG, Bangalore. The minerals mined from the lease area can be moved from the mine-head to the stockyards after obtaining valid permits issued by the DMG. If the material is to be further moved, the original source permit issued for movement from the mine-head to the stockyard has to be surrendered with the DMG office and a fresh permit to be obtained for further movement on payment of difference of the royalty prevailing at that time."

(Emphasis added)

Statement of one Yogish Ananda Shetty, Deputy Port Conservator, Belekeri Port, is germane to be noticed. He would depose as follows:

"....

The Belekeri Port is a seasonal Port, located 30 km south of Karwar in Uttara Kannada District. It is Fair weather lighterage Port. This port has a stacking area of around 100 acres of land and Konkan Railway Broad gauge line, NH 17 and NH 63 are running very close to the Port. Iron ore was permitted to be exported through Belekeri port from 2003. The Deputy Port Conservator is incharge for the day to day activities in the port and has to collect all revenue, due from the vessel and its agents on behalf of the Govt. of Karnataka and report the day to day happenings to the Port Officer. The Dy.Port conservator has to collect the documents from Steamer agents and stevedore regarding the arrival of vessel and ensure that all statutory

documents such as Sea Worthiness, ISPS Compliance, competence of crew pertaining to the vessel are in order, and allow the vessel to enter the port.

For handling the goods, Belekeri Port land was leased to Stevedores M/s Adani Export Pvt. Ltd., (1,09,611 Sq.Mts), M/s. Mallikarjun Shipping (80,720Sq.Mts) M/s Salgoankar Mining (32,000 Sq.mts) and M/s Rajmahal Silks (3,000 Sq.mts) on long lease basis by the Government of Karnataka. The stevedores have been registered as per the provisions of the rule 16(1) of the Karnataka Ports (Landing & Shipping Fees) Rules. They are responsible for receipt and stacking of iron ore and loading onto vessel for exports, after Let Export order is given by Supdt Customs. As per agreement, the stevedore has to create the required infrastructure for handling the cargo and loading of cargo. The said registered port operators have been allotted port land for the stacking of the iron ore and ground rent is collected, for them. The goods will be stored at owners risk and the port Authorities are not responsible for safe custody of the goods. **It is responsibility of the registered stevedores /Port operators to verify/ check all the documents. In Belakeri Port, the Port Authority is not the custodian of cargo, it is the registered port operators who are the custodian of cargo are legally bound to bound to verify and check all the required permits, transit pass of DMG, Forest pass etc as they render the handling services to the exporters. They are the first point of contact with the exporters, when ironore was brought inside the Port, contact. Further the said port operators are liable to obtain all the required possession, no objection certificates, clearance certificate, from the concerned competent authorities for all activities, as per applicable laws."**

(Emphasis added)

What would unmistakably emerge from the agreements and the statements is, in Belekeri port, the Port Authority is not the custodian of the cargo. It is the registered port operators who are the custodians of the cargo and are legally bound to verify and

check all the required permits, transit pass of DMG, Forest pass etc. as they render handling services to the exporters. They are the first point of contact with the exporters when iron ore was brought inside the Port. Further the said port operators are liable to obtain all the required permission, no objection certificates and clearance certificates from the concerned Competent Authorities for all activities as per the applicable laws. Therefore, it is the case of the Government itself that everything revolves round the person who is holding the port, accused No.8. Thus, it is the responsibility of accused No.8 till it was boarded on the vessel, to answer any liability with regard to DMG permits, and not on the person who is exporting iron ore - the petitioners.

9. In terms of the agreement it was the condition that iron ore would be boarded on the vessel by the supplier with all necessary permits. Therefore, whether the offences alleged against these petitioners can be driven home is the issue that is to be considered. The cognizance is taken by the learned Magistrate, as quoted hereinabove, for offences under Sections 379, 411, 420 and 447 r/w 120-B of the IPC. Therefore, I deem it appropriate to

consider the aforesaid offences to find out whether the ingredients of those offences are met in the case at hand.

10. Let me first consider Section 411 of the IPC. Section 411 deals with dishonestly receiving stolen property. A person who dishonestly receives or retains any stolen property knowing or having reason to believe it to be a stolen property is liable for punishment. What is stolen property is defined under Section 410. Any property in possession whereof has been transferred by theft, robbery or extortion or a property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed becomes a stolen property. Criminal breach of trust is dealt with under Section 405 of the IPC. It reads as follows:

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.—A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit

to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust."

Section 405 mandates that the property must be entrusted by the victim to the accused. Such entrustment must be made use of by the accused dishonestly resulting in misappropriation of the said property. If all the three offences are read and considered in tandem, none of these ingredients can be pointed against these petitioners.

11. The petitioners are exporters of ore. Dubbing it as a stolen property or otherwise is for the other accused to answer. The allegation against the petitioners *qua* Section 411 of the IPC is knowing or having reason to believe that the property is a stolen

property. The agreements are noted hereinabove. The statements recorded of the officials of the Department of Mining are noted hereinabove. Upon all of which, one singular voice that will emerge is, all those is of the responsibility of accused No.8. The petitioners being exporters cannot be seen to be alleged of going behind the transaction between the mine owners and the storage over the dockyard and see whether the petitioners are receiving the stolen property or illegal property or otherwise. In terms of the agreement what was being handed over to these petitioners for exportation is what they are responsible of.

12. The prosecution now seeks to rest its case against the petitioners upon the doctrine of *caveat emptor*, the maxim which proclaims "*let the buyer beware*". The principle, however, finds its place in the realm of contract and commercial dealings, where the law places upon the purchaser the burden of prudence to ascertain the quality, condition and suitability of goods prior to their acquisition. It is a shield for sellers and not a sword for the prosecution. To attempt to import this doctrine into the domain of

criminal jurisprudence is to commit a grave conceptual error. The principle of *caveat emptor* is founded upon contractual obligations between consenting parties, it governs matters of civil liability, not the attribution of criminal guilt. Penal provisions, by their very nature, demand proof of *mens rea* of knowledge or intent, before any person is branded with a stigma of crime.

13. Although the controversy in the present case, has its genesis in a commercial or a contractual transaction, **such a dispute, by no stretch of reasoning, can be transmuted into a criminal offence, least of all, an offence under Section 411 of the IPC, which contemplates the dishonest receipt of stolen property. To invoke this provision upon so tenuous a foundation is to stretch the bounds of criminal law beyond limits. It thus follows that the acquisition under Section 411 of the IPC stands upon infirm ground. The offence as laid against the petitioners appears to have been conceived without proper appreciation of its essential ingredients and**

rests more upon conjecture, than upon by any cogent material. The offence is thus rendered unsustainable.

14. The next is, Section 420 of the IPC. Section 420 has its ingredients in Section 415. Section 415 reads as follows:

"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and

thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats."

Section 415 mandates that the accused *qua* the victim should, right from the inception of the contract, with a dishonest intention seek execution of the contract which would result in cheating. The issue in the case at hand emerges out of an agreement between accused No.8 and the petitioners. Where is the question of the petitioners

luring accused No.8 to enter into a transaction with them or cheating accused No.8. In the case at hand, accused No.8 is not the complainant. Now the State is the complainant. If the State is the complainant for an offence of cheating, it should necessarily mean that the petitioners have cheated the State while luring the State into the contract. This is not the allegation against the petitioners at all. Therefore, the offence under Section 420 of the IPC is also loosely laid against the petitioners.

15. What remains is Section 379 of the IPC. Section 379 deals with thieving and theft. Section 379 punishes whoever commits theft. Theft is defined under Section 378. It reads as follows:

"378. Theft.—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by

separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A, asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft."

Section 378 mandates that whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent is said to be committing theft. Again, I fall back upon the contract, the evidence, the charge or the cognizance which nowhere indicate that allegation of theft can be driven home against these petitioners.

16. The Apex Court in the case of **DINESH KUMAR MATHUR v. STATE OF M.P.**¹, has held as follows:

"....

12. The ingredients of Section 420 IPC as described in *Vijay Kumar Ghai v. State of W.B* are:

¹ 2025 SCC Online SC 21

"34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

- (i) The representation made by the person was false.**
- (ii) The accused had prior knowledge that the representation he made was false.**
- (iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.**
- (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed."**

There is nothing on record to suggest, even *prima facie*, that any of the above-said ingredients are met in the case of the present appellant. No intent can be hinted to, where the appellant had wilfully, with the intent to defraud, acted upon the allegedly forged Power of Attorney. Neither has anything been brought in the chargesheet upon completion of the investigation to show that the requirements of Section 120-B have been met. Nor that the appellant had any information or knowledge about the subject Power of Attorney being forged. For the ingredients of this section to be established, *Bilal Hajar v. State*, records as follows:—

"31. The expression "criminal conspiracy" was aptly explained by this Court in *E.G. Barsay v. State of*

Bombay [E.G. Barsay v. State of Bombay, (1962) 2 SCR 195: AIR 1961 SC 1762: (1961) 2 Cri LJ 828]. The learned Judge Subba Rao, J. (as his Lordship then was and later became CJI) speaking for the Bench in his distinctive style of writing said: (AIR p. 1778, para 31)

"31. ... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts."

32. Therefore, in order to constitute a conspiracy, meeting of minds of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of conspiracy against the accused. However, it is not necessary that all the conspirators must know each and every detail of the conspiracy which is being hatched and nor is it necessary to prove their active part/role in such meeting."

Sections when put into a chargesheet, cannot be based on bald assertions of connivance, there must be a substance which is entirely lacking in the present case.

13. If the intent is on the face of it is absent *qua* one of the offences in the same transaction, it is absent in respect of the other offence as well, *viz.*, Section 467, 468."

(Emphasis supplied)

The Apex Court considers the entire spectrum of law *qua* the offence under Section 420 and holds that offence when put into a charge sheet cannot be based on bald assertions of connivance, but there must be substance in the allegation. Further the Apex Court

holds, if the intention on the face of it, *qua* one of the offences is absent in the same transaction, the other offences cannot be investigated into. The Apex Court was answering offences under Sections 420, 467 and 468 of the IPC. The Apex Court holds that when Section 420 cannot be driven home, Section 467 and 468 also cannot be driven home. Therefore, quashes the entire proceedings. That was a case arising out of a petition under Section 482 of the Cr.P.C.

17. A little earlier, the Apex Court in the case of **RAM SHARAN CHATURVEDI v. STATE OF M.P.**², has held as follows:

“....

27. The principal ingredient of the offence of criminal conspiracy under Section 120-BIPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. The court has to necessarily ascertain whether there was an agreement between the appellant and A-1 and A-2.

28. In the decision of *State of Kerala v. P. Sugathan* [*State of Kerala v. P. Sugathan*, (2000) 8 SCC 203; 2000 SCC (Cri) 1474], this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation: (SCC pp. 211-12, paras 12-13)

“12. ... As in all other criminal offences, the prosecution has to discharge its onus of proving the case

² 2022 SCC OnLine SC 1080

against the accused beyond reasonable doubt. ... *A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. ...*

13. ... *The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient."*

(emphasis supplied)"

(Emphasis supplied)

This is *qua* offence under Section 120-B of the IPC. The Apex Court holds the principal ingredient of offence under Section 120-B of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. If both are absent, the proceeding against them should not be permitted to continue. In the case at hand, though Section 120-B of the IPC is the allegation, there is nothing to demonstrate that it was meeting of minds to commit an offence or an agreement to commit an offence. In these circumstances, permitting further proceedings as

against the petitioners would become an abuse of the process of law.

18. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petitions are ***allowed.***
- (ii) The proceedings in C.C.Nos.59 of 2022, 61 of 2022, 63 of 2022, 78 of 2022, 97 of 2022 and 99 of 2022, pending before the Civil Judge and JMFC, Ankola, Uttara Kannada stand quashed *qua* the petitioners.
- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other *fora*.

Sd/-

(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ