

State Represented By Vs. N Vishwanathan

State Represented By Vs. N Vishwanathan

SooperKanoon Citation : sooperkanoon.com/1234188

Court : Karnataka

Decided On : Sep-23-2022

Judge : K.Somashekar

Appeal No. : CRL.RP 1476/2016

Appellant : State Represented By

Respondent : N Vishwanathan

Judgement :

R :

1. : IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE23D DAY OF SEPTEMBER, 2022 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL REVISION PETITION No.1475 OF 2016 CONNECTED WITH CRIMINAL REVISION PETITION No.1476 OF 2016 CRIMINAL REVISION PETITION No.1477 OF 2016 CRIMINAL REVISION PETITION No.1478 OF 2016 CRIMINAL REVISION PETITION No.1479 OF 2016 CRIMINAL REVISION PETITION No.1486 OF 2016 IN CRL.RP.NO.1475/2016: BETWEEN State Represented by Central Bureau of Investigation (Anti-Corruption Branch) No.36, Bellary Road Ganganagar Bangalore - 560 032. ... Petitioner (By Sri. Prasanna Kumar P, Advocate) AND Ritesh Milapchand Jain S/o Milapchand Jain Aged about 34 years Chief Executive Officer M/s. Deccan Mining Syndicate Private Limited, Bellary :

2. : Resident of Bakshu Sadan Martin Road, Bellary - 583101. ... Respondent (By Sri Hashmath Pasha - Sr. Counsel for Sri Kariyappa N.A.-. Advocate) This Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 thereby allowing IA No.14 filed by the accused No.3/respondent under Section 239 of Cr.P.C., and discharging the accused /respondent of the offence under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently reject the said I.A.No.14. IN CRL.RP.NO.1476/2016: BETWEEN State Represented by Central Bureau of Investigation (Anti-Corruption Branch) No.36, Bellary Road Ganganagar Bangalore - 560 032. ... Petitioner (By Sri. Prasanna Kumar P, Advocate) :

3. : AND N. Vishwanathan S/o. N.P.R. Nalgamu Chettiar Aged 71 years Retired Addl. Chief Secretary & Development Commissioner Of Karnataka Government of Karnataka Bengaluru R/at No.135, 1st Cross 5th Block, Koramangala Bengaluru-560 095. ... Respondent (By Sri S. Kalyan Basavaraj - Advocate) This Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 thereby allowing application filed by the accused No.5/respondent under Section 227 of Cr.P.C., and discharging the accused No.5/respondent of the offence under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently reject the said application. IN CRL.RP.NO.1477/2016: BETWEEN State Represented by Central Bureau of Investigation :

4. : (Anti-Corruption Branch) No.36, Bellary Road Ganganagar Bangalore - 560 032. ... Petitioner (By Sri. Prasanna Kumar P, Advocate) AND S.P. Raju S/o Sasiahatti Papaiah Aged 62 years Retired Deputy director Mines & Geology, Hospet R/o. Sasalahatti, Belagatta Post Chitradurga Taluk & District - 577501. ... Respondent (By Sri Chandan B - Advocate for Sri. Nitin R - Advocate and Sri. B. Siddeshwara - Advocate) This Criminal Revision Petition is filed under Section 397

r/w 401 of the Code of Criminal Procedure, praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 thereby allowing I.A.24 filed by the accused No.6/respondent under Section 239 of Cr.P.C., and discharging the accused No.6/respondent of the offence under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently reject the said I.A.24. :

5. : IN CRL.RP.NO.1478/2016: BETWEEN State Represented by Central Bureau of Investigation Anti-Corruption Branch No.36, Bellary Road Ganganagar Bangalore - 560 032. ... Petitioner (By Sri. Prasanna Kumar P, Advocate) AND1 Rajendra Kumar Jain S/o. Late Sumermal Manmal Jain Aged about 48 years Managing Director M/s Deccan Mining Syndicate Private Limited, Bellary R/at Flat No.31, Kalpataru Apartments Madhavnagar, Race Course Road Bengaluru - 560 001.

2. M/s. Deccan Mining Syndicate Private Limited Rep. by its Managing Director Shri Rajendra Kumar Jain S-7, 2nd Floor, Esteem Arcade No.26, Race Course Road Bengaluru - 560 001. ... Respondents (By Sri Hashmatha Pasha - Sr. Counsel for Sri. Kariyappa N.A - Advocate for R-1 & R-2) This Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the order dated 30.01.2016 passed by the :

6. : learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 thereby allowing I.A.No.13 filed by the accused Nos.1 & 2/respondents under Section 239 of Cr.P.C., and discharging the accused Nos.1 & 2 / respondents of the offence under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently reject the said I.A.No.13. IN CRL.RP.NO.1479/2016: BETWEEN State Represented by Central Bureau of Investigation (Anti-Corruption Branch) No.36, Bellary Road Ganganagar Bangalore - 560 032. ... Petitioner (By Sri. Prasanna Kumar P, Advocate) AND Smt. Shameem Bhanu Aged 62 years Retired Addl. Chief Secretary Department of Commerce and Industry Government of Karnataka, Bengaluru R/at. No.81, 5th

Cross, 16th Main MCHS Layout, BTM2d Stage Bengaluru - 560076. ... Respondent (By Sri Udaya Holla - Sr. Counsel for Sri. Vivek Holla - Advocate and Sri. Rajendra M.S - Advocate) :

7. : This Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 thereby allowing I.A.No.7 filed by the accused No.4/respondent under Section 239 of Cr.P.C., and discharging the accused No.4/respondent of the offence under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently reject the said I.A.No.7. IN CRL.RP.NO.1486/2016: BETWEEN State Represented by Central Bureau of Investigation (Anti-Corruption Branch) No.36, Bellary Road, Ganganagar Bangalore - 560 032. ... Petitioner (By Sri. Prasanna Kumar P, Advocate) AND Ramakant Y Hullar S/o Yallappa Hullar Aged 43 years Circle Inspector of Police Government of Karnataka 109/8, SBI Colony PHQ Road, Dharwad - 580 001. ... Respondent (By Sri Sagar B.B - Advocate) :

8. : This Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 thereby allowing I.A.No.25 filed by the accused No.7/respondent under Section 239 of Cr.P.C., and discharging the accused No.7/respondent of the offence under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently reject the said I.A.No.25. These Criminal Revision Petitions having heard and reserved for judgment on 26.08.2022 coming on for pronouncement this day, the court made the following:

ORDER

All these Criminal Revision Petitions have been filed by the State, represented by the Central Bureau of Investigation seeking to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013. Since

all these petitions arise out of the same C.C.No.165/2013, :

9. : they are heard together and are disposed of by this common order.

2. The petition in CrI.R.P.No.1475/2016 pertains to respondent / Accused No.3 / Rithesh Milapchand Jain, Chief Executive Officer, Deccan Mining Syndicate Pvt. Ltd. (DMSPL). This Criminal Revision Petition is filed by the State praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 allowing IA No.14 filed by the accused No.3/respondent under Section 239 of Cr.P.C., and discharging the accused No.3 /respondent of the offences under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently praying to reject the said I.A.No.14.

3. The petition in CrI.R.P.No.1476/2016 pertains to respondent / Accused No.5 / N. Vishwanatha, Retd. Addl. :

10. : Chief Secretary & Development Commissioner of Karnataka, Government of Karnataka. This Criminal Revision Petition is filed by the State praying to set aside the order dated 30.01.2016 passed by the learned XLVI- Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 allowing the application filed by the accused No.5/respondent under Section 227 of Cr.P.C., and discharging the accused No.5 /respondent of the offences under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently praying to reject the said application.

4. The petition in CrI.R.P.No.1477/2016 pertains to Accused No.6 / S.P. Raju, Retired Deputy Director, Mines & Geology, Hospet. This Criminal Revision Petition is filed by the State praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 allowing I.A.24 filed by the accused No.6/respondent under :

11. : Section 239 of Cr.P.C., and discharging the accused No.6 /respondent of the offences under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently praying to reject the said I.A.24.

5. The petition in CrI.R.P.No.1478/2016 pertains to Accused No.1 / Rajendra Kumar Jain, Managing Director of M/s. Deccan Mining Syndicate Pvt. Ltd. (DMSPL). This Criminal Revision Petition is filed by the State praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 allowing I.A.No.13 filed by the accused No.1/respondent under Section 239 of Cr.P.C., and discharging the accused /respondent of the offences under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently praying to reject the said I.A.No.13. :

12. :

6. The petition in CrI.R.P.No.1479/2016 pertains to Accused No.4 / Shameem Bhanu, Retired Addl. Chief Secretary, Department of Commerce & Industry, Government of Karnataka. This Criminal Revision Petition is filed by the State praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bengaluru city in Special C.C.No.165/2013 allowing I.A.No.7 filed by the accused No.4/respondent under Section 239 of Cr.P.C., and discharging the accused /respondent of the offences under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently praying to reject the said I.A.No.7.

7. The petition in CrI.R.P.No.1486/2016 pertains to Accused No.7 / Ramakanth Y. Hullar, Circle Inspector, Sandur Police Station. This Criminal Revision Petition is filed by the State praying to set aside the order dated 30.01.2016 passed by the learned XLVI-Addl. City Civil and Sessions Judge and Special Judge for CBI cases at :

13. : Bengaluru city in Special C.C.No.165/2013 allowing I.A.No.25 filed by the accused No.7/respondent under Section 239 of Cr.P.C., and discharging the accused /respondent of the offences under Sections 120B, 379, 420, 427 & 447 of IPC and under Section 13(2) r/w Sec. 13(1)(d) of P.C. Act, 1988 and consequently reject the said I.A.No.25.

8. The factual matrix of the petitions are as under: It transpires that pursuant to the order dated 23rd September 2011 passed by the Honble Apex Court in Special Leave to Appeal (Civil) No.7366-7367/2010, the petitioner/CBI (ACB), Bengaluru registered a criminal case in R.C.No.19(A)/2011 on 01.10.2011 against the Director of M/s. Deccan Mining Syndicate Pvt. Ltd., (A-2), unknown officials of M/s. National Mineral Development Corporation Limited (hereinafter referred to as NMDC for Short) and unknown public servants & others for the offences under Sections 120B, 379, 411, 420, 427, 444, 468, 447 of IPC, Sec. 13(1)(d) r/w Sec. 13(2) of Prevention of Corruption Act, 1988, Sec. 26 of Indian Forest Act, :

14. :

1927. Sec. 21 r/w Sec. 4(1), 4(1)(A) & Sec. 23 of Mines and Minerals (Development & Regulation) Act, 1957 in respect of illegal mining for the period from 1994 till the date of filing of the FIR.

9. Further, the Honble Apex Court in the aforesaid order dated 23.09.2011 in page No.8 had observed as under, Vide the said report of CEC, it is further pointed out to this court that massive illegal mining by a third party was being done in mining lease No.1111 of M/s NMDC. That, despite various complaints to the numerous authorities in the State of Karnataka by M/s. NMDC no steps were taken to prevent that third party from resorting to massive illegal mining in mining lease No.1111 of M/s. NMDC till this court banned mining. These complaints were made against the third party, namely, M/s Deccan Mining Syndicate (DMS for short) for encroaching into M/s. NMDCs mining lease area. Even the complaint lodged by M/s. NMDC against M/S DMS to the Police Circle Inspector, Sandur on 10.07.2009 was interpolated. We also want CBI to investigate the above illegalities including encroachment by M/s Deccan Mining Syndicate in the area leased out to M/s NMDC. :

15. :

10. The Central Empowered Committee in its report dated 21st September 2011 filed before the Honble Supreme Court of India, in the above said matter has stated the following in matters of mining lease of M/s. NMDC. The same are as under:- The joint team has, with regard to the mining lease No.1111 of M/s. NMDC, observed that massive illegal mining by third party has taken place within its lease area and that in September 2009 M/s. NMDC voluntarily suspended the undertaking of the mining operations. M/s NMDC in its letter dated 15.09.2011 has tried to justify the background in which the mining operations were suspended.

11. The Joint Team constituted by the Honble Supreme Court of India vide their order dated 06.05.2011, in its proceedings dated 08.09.2011 has stated the following serious irregularities and illegalities pertaining to the mining leases of M/s NMDC. (i) Massive illegal mining of iron ore, having market value at more than :

16. : Rs. 100 Crores, has taken place (details shown in the sketch of M/s Deccan Mining Syndicate (P) Ltd., ML No.2525 prepared by the joint team) within the sanctioned lease area of ML No.1111 lease of M/s National Mineral Development Corporation Ltd. The Massive illegal mining, construction of road for the same and the movement of a large number of trucks for the transportation of the iron ore was facilitated by the inexplicable decision voluntarily taken by M/s NMDC to close its mining operations in the adjoining pits No.1 & 2 of its lease. It has filed an undertaking dated 23.09.2009 to this effect before the Honble High Court of Karnataka in Writ Appeal No.1134/2009 and Writ Appeal No.1135/2009. Consequently, the production of iron ore by M/s NMDC from this mine during 2009-10 was reduced to nil even though it has environment clearance and IBM clearance for annual production of 7 million tons of iron ore. :

17. : (ii) M/s. NMDC vide letter-dated 10.07.2009 of Assistant Management (Mech) requested the Sandur Police Station to lodge an FIR against M/s Deccan Mining Syndicate for carrying out illegal mining in the lease area of M/s. NMDC. However, in the letter which was actually delivered to the Police Station, the words lodge a FIR has been scored out by the Assistant Manager (Mech) and replaced with the words taken an action. (iii) The location & details of the mining leases of M/s

Deccan Mining Syndicate Private Ltd., (ML No.2526) are shown in the sanctioned lease sketch of mining lease No.1111 of M/s NMDC. However, in the proposal submitted by M/s NMDC for seeking approval under the FC Act for additional forest area, the location of the mining lease of M/s Deccan Mining Syndicate Private Ltd., is shown in another location and which happens to be the same area where illegal mining was going on. :

18. : (iv) It is also seen that M/s NMDC had between 1994 to November 2009 written a number of letters to the various authorities regarding the illegal mining being done in its lease area by M/s Deccan Mining Syndicate Pvt Ltd. Surprisingly, thereafter M/s NMDC did not pursue the matter, even though the level of illegal mining had increased substantially. (v) The joint team is of the view that a thorough enquiry and follow up action is required to be taken regarding the massive illegal mining which has taken place within ML No.111 of M/s. NMDC. It is also to be investigated as to who are the actual beneficiaries of the illegal mining.

12. Since the aforesaid order dated 06.05.2011 of the Joint Team constituted by the Honble Apex Court, the report dated 21.09.2011 of the Central Empowered Committee constituted a case against the accused persons, the petitioner/ CBI registered the aforesaid case :

19. : in RC No.19(A)/2011 and took up the case for investigation.

13. During the course of investigation the involvement of Shri. Rajendra Kumar Jain (A-1), M/s. Deccan Mining Syndicate Pvt. Ltd., (M/s DMSPL)(A-2), represented by its MD Shri Rajendra Kumar Jain, Shri Rithesh Milapchand Jain (A-3), CEO of M/s. Deccan Mining Syndicate Pvt. Ltd., Bellary, Smt. Shamim Bhanu (A-4) the then Secretary of Commerce & Industries, Govt. of Karnataka, Bangalore, Shri N. Vishwanatha (A-5), Retd. Addl. Chief Secretary & Development Commissioner of Karnataka, Government of Karnataka Shri S.P. Raju (A-6), the then Deputy Director, Mines & Geology, Hospet, Govt. of Karnataka and Shri Ramakant Y. Hullur (A-7) the then Circle Inspector of Police, Sandur Police Station came to light and they were arraigned as accused in the instant case.

14. On completion of the investigation, the petitioner/CBI filed charge-sheet against the petitioners herein before the learned XLVI-Addl. City Civil & Sessions :

20. : Judge & Special Judge for CBI cases at Bengaluru City (CCH-47). The learned Special Judge being satisfied with the material placed on record, took cognizance against accused Nos.1-7 and issues summons against them for the offences under Sections 120B, 379, 420, 427 & 447 of IPC as against accused Nos. 1 - 3 for the additional offence under Sec. 13(1)(d) r/w Sec. 13(2) of Prevention of Corruption Act, 1988 as against accused Nos.4 - 7.

15. In the charge sheet, the role of each one of the accused has been specifically narrated by the Investigating Agency. Accused Nos.1 & 2 / Respondents, represented by its Managing Director / Accused No.1, Accused No.3/Shri Rithesh Milapchand Jain, CEO of Accused No.2/Company, Bellary, Smt. Shamim Bhanu / Accused No.4, the then Secretary of Commerce & Industries, Govt. of Karnataka, Bengaluru, Shri Viswanathan/Accused No.5, the then Principal Secretary, Department of Commerce & Industries, Govt. of Karnataka, Bengaluru, Shri S.P. Raju / Accused No.6, the then Deputy Director, Mines & Geology, Hospet, :

21. : Government of Karnataka and Shri. Ramakant Y Hullur / Accused No.7, the then Circle Inspector of Police, Sandur Police Station were parties to a criminal conspiracy hatched at Bengaluru, Bellary, Hospet & other places in Karnataka during the period 1980-2010 to commit the offences of criminal conspiracy, cheating, theft of iron ore, criminal trespass, changing the boundaries and criminal misconduct by abuse of their official position. In pursuance of the said conspiracy, Accused No.2/company represented by Accused No.1 & Accused No.3 has done illegal mining outside its lease area, and the accused public servants namely Accused No.4/Smt Shameem Bhanu, Accused No.5/Shri Viswanathan, Accused No.6/Shri S.P. Raju and Accused No.7/ Shri Ramakant Y Hullur, are said to have fraudulently and dishonestly facilitated this illegal mining by way of illegally renewing the mining lease by changing the original sketch, issuing mineral dispatch permits without verifying the stocks and by not taking any action on the complaints preferred by M/s. NMDC, by abusing their official position by corrupt or illegal means. In view of the alleged illegal iron ore :

22. : mining, the State exchequer had suffered a wrongful loss to the tune of Rs.1232.395 crores and corresponding wrongful gain to the accused persons.

16. The material placed by the prosecution in terms of the charge-sheet laid by the I.O. clearly indicates the role of each one of the accused and it is established that Accused No.3 was in actual control of the business of Accused No.2 and the Trial Court had come to the conclusion at the stage of framing of charges itself by considering the application filed under Section 239 of the Cr.P.C. In that view of the matter, it is contended that the impugned order passed by the learned Sessions Judge is unsustainable and the same is liable to be set aside by considering the grounds urged in these petitions respectively. Viewed from any angle, the impugned order passed by the learned Special Judge for CBI Cases in discharging the accused Nos.1 to 7 / respondents herein, is not justified. The impugned order suffers from illegalities and impropriety. The findings are contrary to the material on record, that is the charge-sheeted :

23. : materials laid by the I.O / CBI. As such, it is contended that the impugned order is liable to be set aside in order to secure the ends of justice.

17. The factual matrix narrated in all these petitions by the petitioner / CBI in a nutshell relates to the criminal conspiracy of Accused Nos.1, 2 and 3 and role of the remaining Accused Nos.4 to 7 in respect of the indulgence in criminal misconduct being Government servants, has been narrated in detail. Therefore, the same has been narrated in a nutshell in the factual matrix of these petitions for intervention by this Court by urging various grounds independently relating to the impugned order passed by the Trial Court in Spl. CC No.165/2013 dated 30.01.2016 relating to discharging the accused by considering their application filed under Section 239 of the Cr.P.C.

18. Learned Spl. PP Shri P. Prasanna Kumar in all these petitions respectively has taken me through the initiation of criminal prosecution against accused Nos.1 to 7 by registering the case in R.C.No.19(A)/2011 wherein it :

24. : is contented, that in the year 1962, initially Mining Lease No.636 in Kammatervu Village, Sandur Taluk, Bellary District was granted in favour of Shri.

Motilal J Boal in 1972. The said lease was granted for exploration of iron ore in an area of 22.23 Ha (50 acres) which was for a period of 20 years w.e.f., 1966. Out of the said 50 acres, 3 acres in the north east corner fell within the boundaries of Sandur Reserve Forest. From 1966 to 1976 not much of mining activities were carried out and after 1976, the mining activities in ML No.636 gathered momentum.

19. Further, M/s. National Mineral Development Corporation Limited (NMDC), a Public Sector Undertaking under the Ministry of Steel, Govt. of India was sanctioned mining lease No.1111 by the Department of Mines and Geology, Government of Karnataka, Bengaluru on 18.10.1972. The said lease was granted for an area of 647.57 hectares (1600 acres) in Kumaraswamy and Subbarayana Halli Villages in Sandur Taluk for exploration and mining of iron ore for a period of 30 years i.e., till 17.10.2002. The mining sketch of ML No.1111 of :

25. : M/s. NMDC issued by the Department of Mines and Geology, Government of Karnataka, Bengaluru showed that ML No.1111 of M/s. NMDC had surrounded the ML area of 636 of M/s. Motilal J Boal from all four sides.

20. Vide Govt order No.C1-71 MMI-1980 dated 30.06.1980, the mining lease No.636 granted in favour of M/s MJ Boal was transferred in the name of M/s Deccan Mining Syndicate (M/s DMS), a partnership firm and the said firm took over the mining operations in ML No.636. On 05.01.1985, M/s DMS submitted an application for renewal of the mining lease No.636 for a further period of 20 years. These are all the materials which find place in the record for laying of the charge-sheet by the I.O. against accused Nos.1 to 7. The Trial Court did not consider the role of each one of the accused but allowed the application and discharged them from the case relating to the offences lugged against them. On these count also, it requires intervention by setting aside the impugned order passed :

26. : by the Trial Court in Spl. CC.No.165/2013 dated 30.01.2016.

21. The second limb of arguments advanced by the learned Spl. PP for the CBI / ACB is that M/s NMDC was holding 105 acres extra against the initial allotment of 1600 acres and vide letter dated 13.04.1988, M/s NMDC expressed their

willingness to surrender the excess area and accordingly on 08.07.1992, the Director, Mines and Geology accepted the surrender of the excess area of 105 acres. Thereafter, a revised sketch was issued to M/s NMDC by deleting 105 acres surrendered by them on the Western side. In the meanwhile, on 25.09.1991, a Private Limited Company in the name & style of M/s Deccan Mining Syndicate Private Limited (M/s DMSPL / Accused No.2) came into existence and this company took over the partnership firm M/s DMS w.e.f., 25.09.1991. Accused No.3/Shri. Ritesh Milapchand Jain is the CEO of M/s DMSPL/Accused No.2. Since the year 1980, M/s DMSPL (Accused No.2) was doing mining from the lease area of M/s NMDC in two pits i.e., Pit Nos.1 & 2. Many :

27. : complaints given by M/s NMDC to Police, Director, Mines & Geology, Tahsildar could not yield any result and M/s DMSPL (Accused No.2) continued the illegal extraction of iron ore from the ML area of M/s NMDC.

22. Further, the Honble High Court of Karnataka vide order in W.P.No.2564/96 had instructed M/s DMSPL / Accused No.2 to confine their mining activities within the ML area but M/s DMSPL / Accused No.2 continued the illegal extraction of iron ore from the area of M/s NMDC. Therefore, M/s NMDC has preferred many complaints to Director, Mines & Geology, Department of Commerce & Industries and police in this regard but the illegal mining has continued unabatedly. This contention is made in these petitions relating to the role of Accused Nos.1 to 7.

23. It is further contended that Shri. N. Viswanathan/Accused No.5 secured the file. According to the conventions of the Department of Commerce and Industry, the Secretary, Mines is competent to process and take a decision in this matter and put up the file to :

28. : the concerned ministry. The Accused No.5 directed the Director, Mines and Geology, to conduct the survey of the mining lease area granted to M/s DMSPL/Accused No.2, in view of the large scale illegal mining carried out by M/s. DMSPL/Accused No.2 and to resubmit the proposal. The Accused No.5 the then Principal Secretary, deputed Shri Ravikumar and Smt. Shamim Banu/Accused No.4, Secretary-II to the disputed mining area at KIOM for inspection to study the extent of illegal mining done by M/s DMSPL/Accused No.2. As evident from the

notings made vide para 46/n dated 05.02.1998 of file 246 AML9523-6-95, wherein Shri. P. Ravikumar, being an I.A.S., remarked that Discussed with Principal Secretary, C&I, Secretary - II, C & I. Based on the spot inspection conducted on 15.11.1997 along with Secretary-II, C&I, it is felt that it would be feasible to change the sketch so as to include the worked area and keeping the extent sanctioned 47 acres. A detailed proposal sent to Govt. copies of the revised sketch also to be enclosed to the letter dictated. Accordingly, on 17.12.1997, Shri. B N Inamdar, Asst. Engineer & Shri. Basavaraj, JC were :

29. : deputed to carry out survey of the ML2080 area of M/s DMSPL / Accused No.2. In the survey carried out by them the area of 47 acres sanctioned as per the lease deed ML2080 and the area worked outside the lease area were clearly identified and readings of both the boundaries were recorded in the survey report submitted to the Director, Mines & Geology.

24. It is further contended that Shri. P. Ravikumar, Director, Mines & Geology, in his letter addressed to the Government had suggested three viable options as under:- (a) That the application of Accused No.2 for second renewal of 2080 may be rejected for the violation committed by the lessee. (b) That the State Government may impose a penalty as per Sec. 21(5) of MM(R&D) Act, 1957 for the amount mentioned and consider grant of second renewal as per leased sketch. (c) That to consider grant of second renewal to the Accused No.2 by changing the sketch to include the worked area. :

30. :

25. The Director, Mines and Geology recommended option - III in which the lessee would be restricted to the area worked, keeping the overall existing 47 acres. When the proposal for renewal of the mining lease was received by the Dept. of Commerce and Industries, they sought for a clarification from the Director, Mines and Geology vide letter dated 07.04.1998 to the effect that whether the proposal for renewal of ML2080 for the second time sent to the Govt. was for the revised location / sketch i.e., including the mined area outside the leased area and deleting an equivalent extent, maintaining the total acres of 47 acres or for renewal. In response to the Govt. letter dated 16.04.1998, Shri. P. Ravikumar,

Director, Mines & Geology, Bengaluru replied stating that the renewal is for the modified sketch.

26. Accused No.5 / N. Viswanathan had put up the file after dispatch of the letter to the Government of India for perusal. For that note, the Accused No.5 had endorsed that I have seen it. The Accused No.5, has not commented regarding the letter written by the Govt. of :

31. : Karnataka to the Govt. of India that it is without the facts of illegal mining and their intention to change the sketch which shows that he was in agreement with the letter written. The Govt. of India did not reply to this proposal. Meanwhile, the Accused No.4 put up a note stating that there is no need to take permission of the Govt. of India since this is a second installment of first renewal and recommended withdrawing the proposal and taking decision at their level, which was approved by Accused No.5.

27. It is further contended that the accused officials of the Department of Commerce and Industries, Government of Karnataka had violated all the laid down norms in order to favour M/s DMSPL/Accused No.2. The letter sent by the Govt. of Karnataka seeking permission of Government of India for the renewal contained checklist along with topo sketch 2080 dated 23.06.1995, which was an altered sketch (modified from the original mining lease), which was not mentioned anywhere in the application. Later, Govt. of Karnataka had requested :

32. : Ministry of Mines for withdrawal of the proposal dated 22.04.1998 on the ground that the State Government was itself competent to renew the mining lease. It is revealed that the State Government had no power to renew a mining lease based on a modified sketch. When the mining lease boundaries were already determined with the prior approval of the Central Government, as was done while issuing the first mining lease ML636(which was later renewed as ML2080with the same boundaries), any further modification of the mining lease boundaries carried out by the State Government is an illegal act. There is no provision under the Mines and Minerals (Development & Regulation) Act, 1957 to renew a mining lease based on a modified sketch. In the case of the Accused No.2 the modified sketch consisted of mining lease area granted to M/s NMDC under ML1111

Therefore, any mining carried out in a modified mining lease area constituted an offence of illegal mining.

28. It is further contended that Accused No.4 had initially recommended the change of sketch and sent the :

33. : file to Accused No.5. When the letter was sent to the Government of India without the details of illegalities and their intention to change the sketch, the file was not moved through Accused No.4 and Accused No.5 directly dealt the file by bypassing Accused No.4. It is stated that Accused No.5 instructed his subordinates not to mention anything about the illegalities committed by Accused No.2 in the proposal and also ensured that the letter which was sent to the Government of India was put up to him for his perusal and he has not made any remarks in the file. However, Accused No.4 had recommended withdrawal of the proposal sent to the Government of India and to take a decision at the level of Government of Karnataka in spite of knowing the fact that for changing the sketch, permission of the Government of India is mandatory.

29. Insofar as Accused No.6/Shri S.P. Raju who was posted as Deputy Director, Mines and Geology, Bellary, it is stated that during the period 2007-08, he conspired with other accused in the matter of transportation of iron ore to Goa & Belekeri ports and in pursuance of the said :

34. : conspiracy, Accused No.2 had transported 1,47,095 MTs of iron ore to Goa and 11,070 MTs to Belekeri respectively, without obtaining any transport permits from the office of Department of Mines & Geology, Hospet. In pursuance of the conspiracy, Shri. Ritesh Jain, CEO, M/s DMSPL/Accused No.2 had applied for the dispatch permits with Director, Mines and Geology, Hospet after the dispatch of iron ore. The Accused No.6 had issued permits for transportation of 1,59,250 MTs iron ore to Goa and Belekeri on 07.09.2007 without verifying with regard to the availability of iron ore stocks at the mines. This quantity was already dispatched by the applicant and the said fraudulent permits issued by Accused No.6 facilitated the transportation of illegally extracted iron ore as contended by the Spl. Public Prosecutor.

30. Insofar as Accused No.7/Shri. Ramakant Y. Hullur, who was serving as the Circle Inspector of Sandur, it is stated that he has not taken any action on the complaints preferred by M/s NMDC to stop the illegal iron ore extraction by Accused No.2 from the area of M/s NMDC. Further, he had also instructed his subordinates :

35. : not to take any action and thereby facilitated the illegal extraction of iron ore by acting in conspiracy with the other accused persons as contended by the Spl. Public Prosecutor.

31. Further, the survey conducted at mining lease areas of ML No.2525 of the Accused No.2 and surrounding areas falling under ML No.1111 of NMDC by an independent team headed by the Chief Surveyor, M/s Singareni Collieries, Kothagudem, AP using latest gadgets and GPS readings and other data were collected from the field which revealed that massive illegal mining had taken place at the areas falling under ML No.1111 of M/s NMDC by Accused No.2. The said data was assessed by the experts to arrive at the total quantity of iron ore illegally extracted by Accused No.2 from the date of commencement of their mining operation till date to be around 62 lakhs MT as against 81 lakh MT of iron ore extracted from within its mining lease area ML6362080/2080A/2525. Therefore the total quantity of iron ore extracted during the said period is 1.43 crore MT as calculated by the expert team based on the data :

36. : collected from the mining pits and its surroundings. This figure of 1.43 Cr MTs roughly corresponds to 1,13,33,228 MT (1.13 Crore MTs) of iron ore declared by the Accused No.2 as their production for the period 1975 to April 2011 before the Dept of Mines and Geology & other statutory agencies. It is clear from the said figures that the Accused No.2 had been mining outside their ML area and such illegal mining amounts to an offence of theft. As per the survey, it is revealed that the total iron ore extracted by Accused No.2 from the ML area of M/s NMDC was 62,73,657.738 MT and the total cost of iron ore extracted by Accused No.2 from the ML area of M/s NMDC was Rs.1,232,39,51,089 (Rs. 1,232,395 Crores approximately) as contended by the Spl. Public Prosecutor.

32. It is further stated that there were legal disputes between M/s NMDC & the Accused No.2. Both parties challenged various issues, by filing petitions in the Karnataka High Court. M/s NMDC had filed a Writ Petition No.10335/1998 against Accused No.2 & others. The Accused No.2 had filed a W.P.No.19766/2005 against M/s NMDC & Ors. The Karnataka High Court during :

37. :

2008. disposed of both petitions by passing a common order asking for the survey in terms of MC Rules. The judgment was challenged by M/s NMDC by way of filing Writ Appeals before the Division Bench of Karnataka High Court, which stayed the survey vide its order-dated 23.09.2009. The Honble Supreme Court of India, on 06.05.2011 in W.P.(Civil) No.562/2009 has passed orders for survey and demarcation of all the mining leases in Bellary District by the joint team. The joint team appointed by the Supreme Court has carried out survey of M/s NMDC and filed its report before the Honble Supreme Court on 13.03.2012, which was accepted by the Honble Supreme Court on 13.04.2012.

33. In the concluding submission made by the learned zSpl. Public Prosecutor for the CBI / ACB insofar as the investigation conducted by the I.O. reveals that the accused persons had entered into a criminal conspiracy and in furtherance of the said conspiracy, Accused No.2 had encroached the mining area of M/s. NMDC and illegally extracted iron ore from the mining lease areas of :

38. : NMDC to the tune of 62,73,657.738 MT and total cost of iron ore extracted is Rs.1232.395 crores, which is a wrongful loss to the Government and wrongful gain to the accused persons.

34. Hence, it is contended that the impugned order passed by the Trial Court by discharging Accused Nos.1 to 7 respectively by considering their application filed under Section 239 Cr.P.C. is contrary to law, facts and material available on record, that is the materials secured by the I.O. during the course of investigation in order to lay the charge-sheet. The material on record by the prosecution / CBI in the form of statement of witnesses stated and the documentary evidence which is investigated in the charge- sheet clearly makes out a case against accused

persons and also role of each one of the accused. On all these counts, it requires intervention in respect of the impugned order passed by the Special Judge / Trial Court, which order passed by the Trial Court is unsustainable and the same is liable to be set aside. :

39. :

35. It is contended that the learned Special Judge while passing the impugned order discharging Accused Nos.1 and 2, has erroneously held that Accused No.2 / Company has not at all encroached upon the area of M/s. NMDC. In this regard, it is submitted that CW-2 speaks about the boundaries of Mining Lease Nos.1111, 2080 and 2525 of the accused No.2 / Company. The witness CW-3 speaks about the complaints of illegal mining activities conducted by accused No.2 / Company and the action taken. The witness CW-4 speaks about the encroachment by Accused No.2 / Company. The statement of witnesses CW5 to CW10 would indicate the role of the Accused Nos.1 to 3 in the encroachment. Further, the statement of CW-15 would indicate the illegal mining activities carried out by the accused No.2 / Company. The statement of CW-17 would indicate the role of Accused Nos.1 to 3, about the Directors, about the Annual Report of the Company and non-intimation of 2.2 lakh MT removed by Accused No.2 / Company. Similar is the statement of CW-36. Statements of CW-37 and 44 would indicate that several complaints were filed against Accused No.2 / :

40. : company in the illegal mining activities being carried out by the accused Nos.1 to 3. Further, the documents in the form of complaints by the officials of M/s. NMDC, investigation report of the Central Excise Department, charge-sheet filed by the Forest Department against Accused No.2 / Company, data relating to production submitted by Accused No.2 / Company and several other documents would clearly indicate that the accused No.2 / company had in fact encroached upon the mining area of M/s. NMDC.

36. It is further contended that the Karnataka State Remote Sensing Application Centre has conducted survey both physically as well as with the help of satellite imaging. A copy of the said report of the Karnataka State Remote Sensing Application Centre is part of the charge- sheet. It is contended that both the said

reports and the satellite imaging produced in the charge-sheet clinchingly establishes that Accused No.2 / Company, in active participation of Accused Nos.1 to 3, have in fact encroached upon the area of M/s. NMDC. This part of the charge-sheet has not been considered by the learned :

41. : Special Judge, resulting in passing of the impugned order, which has resulted in a miscarriage of justice.

37. It is further contended that the documentary evidence in the form of data relating to production submitted by the accused No.2 / company and data relating to transportation and exportation of iron ore through various ports for the period between 2004-2011 clearly indicates that the data submitted by Accused No.2 / Company in respect of its lease-hold area do not tally with the data relating to transportation and export of iron ore. It is contended that these documentary evidences have been simply given a go-by by the learned Special Judge while passing the impugned order thereby discharging Accused Nos.1 to 3, which is unsustainable.

38. It is further contended that the prosecution has also placed on record the illegal modification of sketch carried out by the Accused No.2 / Company in active participation of Accused Nos.1 to 3, its Managing Director and Chief Executive Officer, the actual sketch issued by the Department and the sketch fabricated by Accused :

42. : Nos.1 to 3 in connivance with other accused persons. It is contended that this part of the charge-sheet has also not been considered by the learned Special Judge while passing the impugned order.

39. It is the further contention of the learned Spl PP for CBI / ACB that the learned Special Judge has proceeded to discharge Accused No.1 holding that there is no allegation that accused No.1 has committed the offence in his individual capacity and that he has been shown as the Managing Director of Accused No.2 and that his role pertains only to the period from 2005. In this regard, it is submitted that the investigation material covers the period upto 2011. As such, the role of Accused Nos.1 and 3 being the Managing Director and Chief Executive Officer, is clearly

covered in the charge-sheet. It is contended that Accused No.1 / Managing Director and Accused No.3 / CEO of Accused No.2 / Company, have actively participated in all the illegal activities of the accused No.2 / company. It is contended that the learned Special Judge has committed a grave error in holding that :

43. : Accused No.1 has not committed the offence in his individual capacity. Even though the material on record would clearly indicate that Accused No.1 has committed the offence in his individual capacity as Managing Director of Accused No.2 / company, the learned Special Judge committed an error in discharging Accused No.1 holding that there is no allegation that Accused No.1 has committed the offence in his individual capacity.

40. It is further contended that the learned Special Judge has failed to appreciate the fact that the prosecution had placed on record about 100 complaints against M/s. DMSPL by M/s. NMDC with regard to illegal mining, preferred to M/s. DMG, Police and Revenue authorities from 1980, which indicates that M/s. DMSPL was indulging in illegal extraction of mining beyond their leased area. This part of the evidence has not been considered by the learned Special Judge, which has resulted in a miscarriage of justice.

41. Further, the statement of Shri Venugopal, Senior Geologist, who carried out inspection and submitted a :

44. : report as on 20.07.1996 clearly mentions that DMSPL had encroached the ML area of NMDC and as on April 1996, 3.04 lacs MTs valued at Rs.5.95 crores was illegally extracted. Though the said inspection report was placed on record, the learned Special Judge has failed to consider the same.

42. The material on record clearly indicated that on 17.12.1997, Basavaraj, J.E and Inamdar, A.E. had conducted survey and submitted their report that the quantity of illegal mining of M/s. DMSPL is about 96,000 MTs. The cost was arrived at Rs.21.17 lacs and the same is found to be not correct. This would further fortify the case of the prosecution against the accused.

43. The charge-sheet material clearly establishes that M/s. DMSPL had got issued the renewal of mining lease from the Government of Karnataka in 1999 with a modified sketch where the Government of Karnataka was not having the power to renew the mining lease without the approval of the Government of India and the same was :

45. : used for illegal mining. This part of the material has not been considered by the learned Special Judge.

44. The charge-sheet material would also further indicate that in the month of December 2012, M/s. Singareni Collieries Company Ltd., A.P., after a detailed survey, arrived at a figure of 62 lakh MT as the quantity of iron ore extracted from outside the leased area of M/s DMSPL. The value was arrived at Rs.1232 crores. The said survey report is also part of the charge-sheet. The learned Special Judge is not justified in passing the impugned order without considering the said material on record. Further, though M/s. Singareni Collieries Company Ltd., A.P. arrived at a figure for total quantity of iron ore extracted during the said period as 1.43 MT as calculated by the expert team based on the data collected from the mining pits and surroundings, however, permits were taken only for 1.13 crore MT. Thereby, it is implied that 30 lakh MT. of iron ore has been removed and transported without taking any permits, thereby cheating the Government of Karnataka, of the royalty amount to :

46. : that extent, which has also not been considered by the learned Special Judge.

45. It is further contended that investigation reveals that the stocks which were dispatched to Goa and Belikeri Ports by M/s. DMSPL in the year 2007, were not backed by the requisite permits. A quantity of nearly 1,58,165 MTs was dispatched by the company to Goa Port and Belikeri Port without the requisite permits. Subsequent to transportation of iron ore of 1,58,165 MTs, M/s. DMSPL had made an application for issue of fresh permits. Shri S.P. Raju who was functioning as Deputy Director, MDG, Bellary, had issued permits on 07.09.2007 after the transportation of iron ore i.e., February to August 2007. Shri Rajendra Kumar Jain (Accused No.1) was the beneficiary to these fraudulent permits.

46. It is the further contention of the learned Spl. PP that the Honble Supreme Court had accepted the survey conducted by the CEC wherein it had mentioned that M/s. DMSPL has encroached beyond its area and that the sketch of the CEC was coinciding with the original lease :

47. : sketch issued in 1966. This indicates that the State Government renewal in 1999 was an illegal act.

47. Further, the statement of the witnesses namely Shri Panduranga and Shri Borra Vidya Sagar proves the active involvement of Rajendra Kumar Jain (Accused No.1) in illegal mining and that the same was carried out in their presence only. Other witnesses namely Shri Karthik and others also had confirmed the illegal mining from the area of NMDC and manhandling done by the representatives of M/s. DMSPL.

48. It is further contended that though the material placed on record by the prosecution / CBI clearly establishes the active role made by accused No.3 / Chief Executive Officer of the accused No.2 / Company in each and every aspect of illegality committed in the name of Accused No.2 / Company, the learned Special Judge has discharged the accused No.3 holding that the prosecution must show that Accused No.3 was in actual business and control of the Accused No.2 / Company. It is further contended that the material placed by the prosecution :

48. : clearly establishes the fact that Accused No.3 was in actual control of the business of accused No.2, and it is too much for the learned Special Judge to come to the conclusion at the stage of framing of charge itself. In that view of the matter, the impugned order passed by the learned Special Judge is unsustainable and the same is liable to be set aside. Further, the learned Spl. PP Shri P. Prasanna Kumar has placed reliance on the following citations which have also been previously relied upon before the Trial Court, in support of his submissions: i) (2014) 11 SCC709ii) AIR 2010 SC663iii) (2005) 1 SCC568iv) 1997 (5) SCC326v) 2012 (3) SCC64vi) 2007 (1) SCC1vii) 2014 (9) SCC772viii) 2012 (1) MWN (Cr.) 238 ix) AIR 2015 SC2403:

49. :

49. On all these premise, learned Spl.PP Shri P.Prasanna Kumar emphatically submits and contends that the reasons assigned in each of the petitions respectively relating to the case in Spl. CC No.165/2013 insofar as allowing the I.As. filed by respective Accused Nos.1 to 7 by order dated 30.01.2016 in C.C.No.165/2013 be set aside and thereby prays to convict the accused / respondents in respect of the offences reflected in the charge-sheet laid by the Investigating Agency, that is CBI / ACB and consequently pass suitable orders as deemed fit in the circumstances of the case to proceed with the case against the accused persons.

50. Whereas learned Senior counsel Sri Hasmath Pasha in Crl.R.P.No.1475/2016 relating to I.A.14 in respect of Accused No.3 and Crl.R.P.No.1478/2016 relating to I.A.13 in respect of Accused Nos.1 and 2 has produced survey sketch report as per the order passed by this Court in W.P.No.10335/1998 and W.P.No.19766/2005 and so also, copy of notification dated 04.04.2005 regarding the renewal of mining lease in :

50. : favour of M/s.NMDC. This document has been produced for the purpose of perusal.

51. In the spot inspection report carried out by the Court Commissioner and Joint Director of Land Records, Bangalore Division, Bangalore whereby in his report he has stated that he has inspected the spot along with the survey staff to measure the mining blocks in the presence of the representative of writ petitioner and respondent No.4 - DMSPL as per the orders of the High Court of Karnataka in W.P.No.10335/1998 (GM-MMS). In his spot inspection report requested the Director of Mines and Geology to supply the copies of the original sketch in respect of lease areas of M/s.NMDC and DMSPL at Kumaraswamy and Subrayanahalli area. Though the Director of Mines and Geology had supplied the sketch, later he requested in a letter that the sketch supplied is not an authenticated and hence that may be returned. In view of the letter and the contradictory claims made by the contending parties, undersigned measured the area independently to get the correct location of Block No.1. :

51. : During his spot inspection he noticed relatively old concrete pillars and recent fencing of NMDC but no ML stones were found pitched by the Director of Mines and Geology. Mahazar drawn at the time of survey is enclosed. The details were shown in the enclosed sketch. The measurement from point A to point A via A1 measures 1595 acres. This tallies with ground location and revenue points of village maps which is the leased area of NMDC. In Annexure-P of the notification issued by the under Secretary to Government (Mines) Commerce and Industries Department in pursuance of sub-section (2) of Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957, the Government of Karnataka accorded sanction for first renewal of mining lease No.1111 for a period of 20 years (Twenty years only) w.e.f. 18.10.2002 in favour of M/s.NMDC for Iron ore over an area of 674.50 hectares (Six hundred forty seven point fifty hectares only) in Kumaraswamy and Subbarayanahalli Village, Sandur Taluk, Bellary District as per the sketch furnished by the Director of Mines and Geology, Bangalore. The sketch report is also produced :

52. : by the learned Senior counsel for the purpose of reference. These are all the documents produced by the learned Senior counsel relating to accused Nos.1, 2 and 3 respectively in the aforesaid petitions who are arraigned as respondents. The impugned order dated 30.01.2016 in Spl.C.C.No.165/2013 relating to accused Nos.1 to 7 who have been discharged from the offences under the Indian Penal Code, 1860 and so also, for the offences under the Prevention of Corruption Act, 1988. But in pursuance of the order passed in SLP (Civil) No.7366-7367/2010 by Honble Supreme Court wherein a direction was given to CBI to investigate certain illegalities committed by various persons in the matter of mining lease No.1111 of M/s.NMDC. Accordingly, the CBI registered FIR in RC No.19(A)/2011 and took up the case for investigation. As already contended in the year 1966 the Government of Karnataka sanctioned mining lease in ML No.636 to an extent of 50 acres of Kammatervu Village of Sanduru Taluk, Bellary District in favour of Mr.Motilal.J.Boal for 20 years i.e., from 1966 to 1986. In the year 1972 the Government of Karnataka on 18.10.1972 sanctioned :

53. : another lease in favour of NMDC under ML.No.1111 for a period of 20 years to an extent of 1600 acres in the Forest Area of Subbarayana Halli and

Kumaraswamy range. But the NMDC had occupied excess area to an extent of 1705 acres, i.e., about 105 acres was more than the lease granted which was found by the DMG Department in the year 1991. Therefore, NMDC was asked to surrender the excess area occupied. Further, in the year 1980 Mr.Motilal.J.Boal had transferred the lease in favour of a partnership firm M/s.DMS and the same has been approved by Government of Karnataka by order dated 30.06.1980 under Ref.No.C.I-71-MML-1980. These are all the contentions made by learned senior counsel.

52. It is further contended that the Government of Karnataka issued a letter dated 4.6.1987 clarifying that the lease area of M/s.Deccan Mining Syndicate is outside the lease area of M/s.NMDC. M/s.Deccan Mining Syndicate which was a partnership firm converted into company by name M/s.Deccan Mining Syndicate Private Limited and its Managing Director was Mr.Sumermal :

54. : Manmal Jain, the father of accused No.1 and Accused-2 company continued the mining operation without any hindrance. Further, it is contended that accused No.2 Company had applied for second instalment of first renewal because the first instalment of first renewal was going to expire in the year 1996. Accordingly, second instalment of first renewal was sanctioned and it was extended for another ten years from 1996 to 2006 by modified sketch vide notification dated 29.1.1999 under ML No.2080A. These are all the contentions made by learned senior counsel relating to role of accused Nos.1, 2 and 3 relating to filing of application seeking discharge as no charges were made against them. Even the charge sheet has been laid by the CBI in pursuance of registration of crime by CBI. The trial Court has considered the entire material evidence secured by the investigating officer during the course of investigation and also recorded the statement of witnesses which cited in the charge sheet column. Therefore, it does not arise for call for interference and there are no justifiable grounds assigned in the petition as filed by the CBI by challenging :

55. : the impugned order passed by the trial Court as stated supra.

53. It is further contended that M/s.NMDC had complained about encroachment made by M/s.DMSPL in its area. Therefore, while effecting renewal of second

instalment of first renewal, the Officer of Mining Department LW-100 Mr.Ravikumar and accused No.4 Smt.Shameem Banu conducted spot inspection and found that the boundary demarcated by the officials at the time of grant of lease in favour of accused No.2 Company was little different from the sketch enclosed to the lease deed and therefore, they want to change the sketch in consonance with the actual demarcated area by officials, where the accused No.2 Company was undertaking mining operations and accordingly, a modified sketch was prepared and renewal was effected in favour of Accused No.2 company by issuing notification dated 29.1.1999 under notification No.CI-51-MMM-97 under lease deed No.ML2080. :

56. :

54. Whereas accused No.2 was in mining operation in the area since 1966 which was demarcated at the beginning and which was confirmed by issuing modified sketch by Government of Karnataka and renewed the lease for another ten years. Accordingly, accused No.2 company had undertaken mining operation by following all procedures prescribed by DMG Department including payment of royalty and obtaining of permit. Thereby no illegality was committed by accused No.2 Company. Further, accused No.2 Company had filed an application for renewal. The Government of Karnataka renewed the modified sketch of ML No.2080A for a period of 20 years as second renewal from 2006 to 2026 by notification dated 20.05.2006. Thereby, accused No.2 company was authorized to do mining in its area under ML No.2525 dated 15.06.2006. Since the NMDC was holding excess of 105 acres, it was directed to surrender and while surrendering, it has surrendered 105 acres from Harishankar Temple side and tried to grab the surrounding area of Accused No.2s lease area and regarding this Government of Karnataka has issued :

57. : Notification No.CI-35 MML2005dated 4.4.2005, renewing the lease of NMDC for 20 years, with this changed sketch w.e.f. 18.10.2002. These are all the contentions taken by learned Senior counsel for accused Nos.1, 2 and 3 relating to seeking discharge from the offences lugged by the CBI/ACB by filing charge sheet against these accused and even thorough investigation has been done and

investigating officer has secured statement of witnesses and also several documents. But there cannot be the ingredients for committing the offences as alleged against accused Nos.1, 2 and 3.

55. It is further contended that both writ petitions of accused No.2 company and of NMDC which are W.P.No.19766/2005 and W.P.No.10335/1998 was together considered and final order is passed by order dated 31.3.2008. Insofar as para 17, 23 of the order, it is confirmed that, all the renewals from 1966 to 2006-2026 are correct. The order of the High Court is to the effect that the lease area of NMDC commences from the side of Harishankar Temple marked as A and 1600 acres of it :

58. : will continue up to the point Q and from point Q it continues to and ends at point A in the sketch drawn by the Surveyor which was surveyed as per the direction of High Court and this sketch in the charge sheet is D-8e. It is further held that since 1600 acres commences from Harishankar Temple side i.e., point A it ends before the mining area of accused No.2 - M/s.DMSPL and in between a gap of more than 105 acres and thereby the NMDC area do not encircle the lease area of accused No.2, and therefore, the allegation of encroachment in NMDC mine area by accused No.2 Company does not arise. Therefore, no offence is committed by accused No.2.

56. Further, the order passed in writ petition was challenged by filing writ appeal in W.A.No.1134/2008 and W.A.No.1135/2008 by NMDC. But later it has withdrawn the writ appeal by order dated 12.8.2011 and thereby the order passed in writ petition has attained finality. Whereas the Honble Supreme Court had taken up the SLP No.7366-7367/2010 and directed CEC team for enquiry regarding illegal mining in Bellary District and :

59. : also directed joint team to conduct survey and at that juncture, this NMDC suppressing the order of High Court in W.P.No.10335/1998 and W.P.No.19766/2005 made false allegation of illegal mining against accused No.2 company before CEC and thereby the CEC was mislead and on the basis of CEC report without hearing accused No.2 Company, the Honble Supreme Court directed for investigation by order dated 23.09.2011 and consequent upon this

order FIR in RC No.19(A)/2011 was registered by CBI against accused Nos.1 to 3 and investigation was taken up by CBI. The observation made by the Honble Supreme Court was only to refer the matter of investigation and the same cannot be relied upon. Though during the investigation the investigating officer of CBI seized the order copy of the order passed in writ petition by High Court where it is clearly stated that NMDC lease area do not encircle the lease area of accused No.2 company, the CBI investigation officer misdirected its investigation and filed charge sheet against Accused Nos.1 to 7 for the offences under Sections 120-B r/w Sections :

60. :

379. 420, 427, 447 of IPC and Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act.

57. Lastly, it is contended relating to the role of these accused that CBI being an investigating agency on filing of defective charge sheet, the trial Court has mechanically taken cognizance for the aforesaid offences and registered the case in Spl.CC No.165/2013. But during investigation accused Nos.1 and 3 were arrested on 5.6.2013 and later they were released on bail. The only allegation against accused No.3 in the charge sheet is that he was the Chief Executive Officer of Accused No.2 Company and while so working he has dispatched the iron ore material to the extent of 1,47,095 MTs with delayed permit. Before dispatch of iron ore the application for grant of permit was filed by depositing entire royalty amount by way of DD but the DMG department failed to issue permit in time and in the meanwhile a railway rack had reached the railway stock yard area, the iron ore was loaded and thereafter the permit was released and the same was acknowledged by purchaser and this kind of :

61. : discrepancy do not constitute any offence under law as held by the High Court in W.P.No.3167/2009. Therefore, no offence is committed by accused Nos.1, 2 and 3. When no offence is constituted against Accused Nos. 1 and 3 as the offences alleged are under the Indian Penal Code and for which no statutory vicarious liability is defined under Indian Penal Code for the offences alleged. Therefore, the accused Nos.1 to 3 had applied for discharge by filing applications

under Section 239 of Cr.P.C. which were allowed by the impugned order in discharging them by the trial Court. The impugned order do not suffer from any illegality but it is based on valid and detailed reasons and therefore, the criminal revision petition filed by the petitioner - CBI does not call for interference by this Court. Accordingly, the petitions are liable to be dismissed in limine.

58. In support of his arguments, learned Senior counsel has facilitated the following reliances of the Honble Supreme Court: :

62. : (i) Sanjay Kumar Rai vs. State of Uttar Pradesh AIR 2021 SC2351 In this judgment it is held that further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. (ii) Century Spinning and Manufacturing Co.Ltd vs. The State of Maharashtra (AIR 1972 SC545 In this judgment it is observed that it cannot be said that the Court at the stage of framing the charges had not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the persons liberty and it cannot be said that the court must automatically frame the charge merely because the prosecution authorities by :

63. : relying on the documents referred to in S.173 consider it proper to institute the case. The responsibility of framing the charges is that of the court and it has to judicially consider the question of doing so. Without of adverting to the material on record, it must not blindly adopt the decision of the prosecution. The trial Court rightly came to the conclusion that the prosecution for the offence charged was groundless. Order of discharge made by him was eminently just and fair order. (iii) Union of India vs. Prafulla Kumar Samal (AIR 1979 SC366 In this judgment it is observed that the test to determine a prima facie case could naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some

suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. :

64. : (iv) State of Orissa vs. Debendra Nath Padhi (2005) 1 SCC568 In this reliance it is held that further, the scheme of the Code when examined in the light of the provisions of the old Code of 1898, makes the position more clear. In the old Code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. (v) Sunil Bharti Mittal v. Central Bureau of Investigation (AIR 2015 SC923 The Honble Supreme Court in this judgment has observed that no doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. if such a company :

65. : commits an offence involving mensrea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be moreso, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

59. These are all the reliances which are squarely applicable to the present case in respect of role of accused Nos.1, 2 and 3 and equally applicable to the co-accused Nos.4, 5 and 6 also. On all these grounds, learned Senior counsel seeking for dismissal of the criminal revision petitions in CrI.RP No.1475/2016 and CrI.RP No.1478/2016 filed by the CBI by challenging the impugned order passed by the Court below in Spl.CC No.165/2013 dated 30.01.2016.

60. Whereas learned Senior counsel Sri Uday Holla in CrI.R.P.No.1479/2016 relating to Accused No.4 in respect of the I.A.No.7 filed under Section 239 of Cr.P.C. contends that the Court below has considered the reasons :

66. : assigned in the application and has passed well reasoned order by considering all the materials which secured by the investigating agency i.e., CBI and role of this petitioner/accused No.4 do not constitute any offence. Therefore, the contentions which are made in respect of accused Nos.1, 2 and 3 and remaining accused but role of each one of accused has to be distinctly taken into consideration. Accused No.4 - Smt.Shameem Bhanu was working as Secretary-II, Department of Commerce and Industry during the relevant period. Though the prosecution has mentioned in the charge sheet that no sanction is required for taking cognizance and conducting criminal proceeding against her, but under Section 197 of Cr.P.C. it is mandatory that whenever a Court takes cognizance of the offence against a public servant accused of an offence and if the offence is committed in discharge of official duty, even in respect of a past public servant, sanction is necessary. Admittedly, no sanction is obtained for prosecuting accused No.4. as required under Section 197 of Cr.P.C. Therefore, in the absence of sanction being taken, the prosecution cannot be :

67. : proceeded against accused No.4 and the order of trial Court allowing the application filed by accused No.4 and discharging accused No.4 is just and reasonable.

61. In support of his contentions learned Senior Counsel has placed the following reliances: (i) Indra Devi vs. State of Rajasthan and another - 2021 (8) SCC768In para 10 of the Judgment it is extensively addressed with regard to Section 197 seeks to protect an officer from unnecessary harassment who is accused of an offence committed while acting or purporting to act in the discharge of his duties. The yardstick is to see whether the act or omission had reasonable connection with the discharge of his duties. (ii) Anil Kumar and others Vs. M.K.Aiyappa and another - 2013 (1) SCC705In this judgment it is held that in the absence of sanction, Magistrate cannot even order investigation under Section 153. :

68. : (iii) Rajib Ranjan vs. R.Vijaykumar - 2015 (1) SCC513In para - 14 of the judgment it is held that without sanction cognizance not permissible. In para 15 it is held that if act is even remotely connected with official act, Section 197 is attracted. (iv) N.Bhargavan Pillai vs. State of Kerala - 2004 (13) SCC217Protection

of sanction needed under Section 197 even after public servant has retired. (para 8-10) (v) N.K.Ganguly vs. CBI, New Delhi - 2016 (2) SCC143 Prosecution of official / public servant accused of offence under Section 120-B and Section 13 of P.C.Act. It is held that in the absence of sanction under Section 197 of Cr.P.C. complaint is liable to be quashed. Hence, the complaint came to be quashed by the Supreme Court.

62. These are all the reliances which are produced by learned Senior Counsel relating to accused No.4 in respect of I.A.7 seeking discharge and that application has been considered by the Court below by rendering the :

69. : impugned order in Spl.CC No.165/2013 dated 30.01.2016 and almost all materials which secured by the investigating officer which has been considered by the trial Court and sound reasons has been assigned and justifiable reasons has been assigned relating to discharge of the accused for the offences under Indian Penal Code, 1860 and so also, offence under the provisions of Prevention of Corruption Act, 1988 which reflected in the charge sheet laid by the investigating officer.

63. Whereas learned counsel Sri Kalyan Basavaraj in respect of Accused No.5 in CrI.RP No.1476/2016 has taken the contention relating to the role of this accused No.5 and also has placed certain reliances. He would contend that Accused No.5 was charge sheeted by the investigating agency in respect of the offences under Sections 120B, 379, 420, 427, 447 of IPC, 1860 besides Section 13(1)(d) r/w 13 (2) of P.C.Act, 1988. But the CBI has, in its charge sheet dated 02.08.2013, very simplistically stated in para 24 that the sanction for prosecution is not required for the accused public :

70. : servants Smt.Shameem Bhanu (A-4), Shri N.Viswanathan (A-5) and Shri S.P.Raju (A-6) since they have all retired from service. But on the date of the alleged commission of offences, Accused No.5 was discharging the duties of the Principal Secretary in the Department of Industries and Commerce, which is an undisputed fact.

64. It is stated that there was no prior sanction as required under Section 197 of the Cr.P.C., before initiation of prosecution against Accused No.5, who was the public servant on the relevant date. The relevant portion of Section 197 of the Cr.P.C. reads thus: 1. When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction- (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; :

71. : (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government

65. Further it is contended that as could be gathered from the allegations made in the charge-sheet, it is evident that Accused No.5, during the course of discharging duties, has allegedly committed the offences. The allegations found in the charge-sheet are that Accused No.5 in the first reference dated 22.04.1998 made to the Government of India, seeking for an altered / modified mining sketch was concealed and the said approved letter was not put up to Accused No.4 / Secretary-II and the same was prepared as per his (Accused Nos.5) orders.

66. It is stated that at any stretch of imagination it cannot be inferred that the said discharge of duty is alleged to be an offence was allegedly committed by Accused No.5 can be treated as the one which was outside the purview of official duty. Further, Accused No.5 had made some official notes on the file in the regular course :

72. : of discharging his duties and the administrative orders passed from time to time as found in the file related to the case on hand, no criminality could be attributed. Absolutely there are no allegations, which constitute the offences under the provisions of the PC Act. The element of quid pro quo which is an essential fact to constitute an offence under the PC Act, is not forthcoming in the charge-

sheet allegations.

67. Lastly, it is contended that as regards the accusations under the IPC, the theory of conspiracy is also not made out let alone the offences under Sections 411, 444 and 468 of the IPC, Sections 13(1)(d) read with Section 13(2) of the PC Act, Section 26 of the Indian Forest Act, 1927, Section 21 read with Sections 4(1), 4(1)(A) and Section 23 of the Mines & Minerals (Development & Regulation) Act, 1957. It is further contended that the protection of previous sanction is available to a public servant even if he has ceased to be so by the time the Court is asked to take cognizance of the offence committed by him when he was a public servant :

73. : while acting or purporting to act in the discharge of his official duties under Section 197 of the Cr.P.C. When a person who is or was a public servant, and removable from office save with the sanction of the Government, is accused of an offence committed by him while acting or purporting to act in the discharge of his official duties, then no court can take cognizance of an offence without the prior sanction of the Government which was competent to remove him from office at the time of commission of the offence. Thus, if a public servant is to be prosecuted after retirement in respect of an offence committed by him while in service in the course of his official duties, then sanction of the authority which was competent to remove him from office at that time, should be obtained.

68. It is contended that the learned trial Judge has rightly found that there was no prior sanction to prosecute Accused No.5. In fact, Accused No.5 and Accused No.4 are on a similar footing insofar as the allegations of :

74. : commission of offences under the IPC, though there is no specific allegation made in the PC Act, 1988.

69. The material collected by the prosecution and having regard to the allegations made in the charge-sheet and particularly having regard to the fact that there was no prior sanction to prosecute Accused No.5, the Trial Court has rightly found that Accused No.5 is entitled to be discharged under Section 227 of the Cr.P.C.

70. The conspiracy as alleged has not been made out by the investigating agency / CBI even though filing of charge sheet consisting plethora of material which secured by the investigating officer during the course of investigation and also recording statement of witnesses in pursuance of the order by registering FIR in RC No.19(A)/2011. In support of his contentions, the learned counsel for Accused No.5 has placed reliance on the following citations:

1. Indra Devi vs. State of Rajasthan and Others with State of Rajasthan vs. Yogesh Acharya ((2021) 8 SCC768). The relevant portion in the said judgment, reads thus: :

75. : 10. We have given our thought to the submissions of learned counsel for the parties. Section 197 of the Cr PC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. [See Subramanian Swamy Vs. Manmohan Singh (2012) 3 SCC64].. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him while acting or purporting to act in the discharge of his official duty and in order to find out whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had :

76. : a reasonable connection with the discharge of his duties. [See State of Maharashtra Vs. Dr. Budhikota Subbarao (1993) 3 SCC339. The real question, therefore, is whether the act committed is directly concerned with the official duty.

11. We have to apply the aforesaid test to the facts of the present case. In that behalf, the factum of Respondent No.2 not being named in the FIR is not of much

significance as the alleged role came to light later on. However, what is of significance is the role assigned to him in the alleged infraction, i.e. conspiring with his superiors. What emerges therefrom is that insofar as the processing of the papers was concerned, Surendra Kumar Mathur, the Executive Officer, had put his initials to the relevant papers which was held in discharge of his official duties. Not only that, Sandeep Mathur, who was part of the alleged transaction, was also similarly granted protection. The work which was assigned to Respondent No.2 pertained to the subject matter of allotment, regularisation, conversion of agricultural land and fell within his domain of work. In the processing of application of Megharam, the file was initially put up to the Executive Officer who directed the inspection and the inspection was carried out by the Junior Engineer and only thereafter the Municipal Commissioner signed the file. The result is that :

77. : the superior officers, who have dealt with the file, have been granted protection while the clerk, who did the paper work, i.e. Respondent No.2, has been denied similar protection by the trial court even though the allegation is of really conspiring with his superior officers. Neither the State nor the complainant appealed against the protection granted under Section 197 of the Cr PC qua these two other officers. Section 197 of Cr.P.C. provides protection to an Officer being prosecuted in respect of the offences committed by him while acting or purporting to act during the course of his discharge of his duties. Whether there was any commission of an offence and the same had reasonable connection with discharge of his duties. N.K. Ganguly vs. Central Bureau of Investigation, New Delhi ((2016) 2 SCC143) wherein it is held thus: Criminal Procedure Code, 1973 - S. 197 - Prosecution of public servants - Previous sanction from appropriate Government - Essentials of - Nexus with discharge of public duty - Examination and Determination of - Prosecution for offences under S. 120-B IPC r/w Ss. 13(1)(d) and (2), Prevention of Corruption Act, 1988 - Cognizance taken and :

78. : summons issued to accused public servants - Allegations in police report showing that alleged offences committed in discharge of official duty i.e. the necessary nexus - Absence of previous sanction - Proceedings quashed. C.K. Jaffer Sharief vs. State (Through CBI) (Crl.A.No.1804 /2012 (Arising out of SLP (Crl.) No.3841/2012) wherein it is held thus: Code of Criminal Procedure, 1973 -

Sections 239 / 227 - Discharge - Cognizance of offence under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 taken against appellant - Allegation against appellant that during his tenure as Union Railway Minister from 21.06.1991 to 13.10.1995 - He dishonestly made Managing Directors of R.I.T.E.S and I.R.C.O.N. to approve journeys of four persons to London in connection with medical treatment of appellant - Ingredients of Section 13(1)(d) - On facts held, no offence under Section 13(2) read with Section 13(1)(d) made out against appellant - Impugned orders set aside - Criminal proceedings against appellant quashed.

71. On all these premises it is contended that the findings recorded by the trial Court is well founded and does not warrant interference and accused No.5 relies :

79. : upon the judgments of the Honble Supreme Court and submits that they are squarely applicable to the present given facts and circumstances of the case on hand and the same may be considered and dismiss the criminal revision petition filed by CBI/ACB in limine and being devoid of merits.

72. Whereas learned counsel Sri Chandan for Respondent No.6 / accused No.6 - Sri S.P. Raju, Retired Deputy Director, Mines & Geology, Hospet who is the respondent in Crl.R.P.No.1477/2016 contends that vide order dated 23.09.2011, the Honble Supreme Court of India in SLP (Civil) No.7366-7367/2010 directed the CBI to carry out the investigation in the alleged illegalities including encroachment by M/s.Deccan Mining Syndicate in the area leased out to M/s. NMDC. Pursuant to the said order, CBI registered FIR in RC.No.19(A)/2011 against Accused Nos.1 to 7 for the offences punishable under Sections 120B, 379, 420, 427, 447 of IPC and Section 13(2) r/w Section 13(1)(d) of the P.C.Act. Subsequently, the investigating officer took up the case for :

80. : investigation and thoroughly investigation was done and laid the charge sheet against accused Nos.1 to 7 for the aforesaid offences whereby accused were secured to facing of trial and during the course of pendency of the case in Spl.CC No.165/2013 whereby Accused No.6 filed an application in I.A.24 seeking discharge and that application came to be allowed.

73. It is contended that the prosecution has failed to obtain order of sanction from appropriate authority in respect of the offences under IPC that have been filed against accused No.6. The accused No.6 was Deputy Director of Mines at the relevant period between 20.07.2009 and 29.10.2009 and thereafter from 18.1.2010 to 14.3.2011. In the charge sheet submitted by the CBI, it is admitted that no sanction for prosecution has been obtained for accused No.4 to 6 since they have retired from public service. The said reasoning is contrary to law laid down by the Honble Supreme Court which requires sanction order to be obtained even to initiate prosecution against retired public servants. :

81. :

74. It is further contended by the learned counsel for Accused No.6 / Respondent in Crl.R.P.No.1477/2016 that no cogent evidence has been produced by the prosecution to implicate this respondent. Further, the charge-sheet also does not disclose any credible evidence or witness statements against the respondent. The sole allegation against the respondent herein is found at paragraph 18 of the charge-sheet which relates to issuance of permit for transportation of iron ore and the same is vague and based on presumptions.

75. It is the further contention of learned counsel that Accused No.2 / Company had already applied for dispatch permits on various dates starting from 30.08.2007 to 07.09.2007 for transporting various quantities of iron ore and the respondent herein had issued permits on 07.09.2007. Mere delay in issuance of permits cannot be said to be an illegality and malafide action on the part of the sixth respondent who was discharging his official functions. It is further contended that Respondent in Crl.R.P.No.1477/2016 / Accused No.6 :

82. : adopts the contentions advanced by Accused Nos.1 to 3 to the extent that when at the very foundation no illegality is made out and that the contentious issue of jurisdiction for mining rights between NMDC and Accused Nos.1 to 3 was decided by this Court in favour of Accused Nos.1 to 3, without prejudice to respondent No.6, no liability can be fastened on him as well. In other words, when the actions of the main accused namely Accused Nos.1 to 3 themselves do not attract any criminality, there is no question of any criminality attracting the conduct

of Accused No.6 as well who in his capacity as a public servant, has executed his duties. The same would entirely erase the scope and applicability of Section 120-B of the IPC, which is the main provision used by the prosecution to attach criminal liability upon Accused No.6. In support of his contentions, the learned counsel for Accused No.6 relied on the following citations, in support of his contentions:

1. R. Balakrishna Pillai vs. State of Kerala (AIR 1996 SC901. At paragraph 5 of the said judgment, it is laid down thus: :

83. : 5. . . . The question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the concerned public servant would depend on the facts of each case. There can be no general proposition that whenever there is a charge of criminal conspiracy levelled against a public servant in or out of office the bar of Section 197(1) of the Code would have no application. Such a view would render Section 197(1) of the Code specious. Therefore, the question would have to be examined in the facts of each case. The observations were made by the court in the special facts of that case which clearly indicated that the criminal conspiracy entered into by the three delinquent public servants had no relation whatsoever with their official duties and, therefore, the bar of Section 197(1) was not attracted. It must also be remembered that the said decision was rendered keeping in view Section 197(1), as it then stood, but we do not base our decision on that distinction. Our attention was next invited to a three-Judge decision in B. Saha & Ors. vs. M.S. Kochar (1979 (4) SCC177. The relevant observations relied upon are to be found in paragraph 17 of the judgment. It is pointed out that the words 'any offence alleged to have been committed by him while acting or purporting to :

84. : act in the discharge of his official duty' employed Section 197(1) of the code, are capable of both a narrow and a wide interpretation but their Lordships pointed out that if they were construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". At the same time, if they were too widely construed, they will take under their umbrella every act constituting an offence committed in the course of the same transaction in which the official duty is performed or is purported to be performed.

The right approach, it was pointed out, was to see that the meaning of this expression lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection. Only an act constituting an offence directly or reasonably connected with his official duty will require sanction for prosecution. To put it briefly, it is the quality of the act that is important, and if it falls within the scope of the afore-quoted words, the protection of Section 197 will have to be extended to the concerned public servant. This decision, therefore, points out what approach the Court should adopt while construing Section 197(1) of the Code and its application to the facts of the case on hand. :

85. : (emphasis supplied) State of Karnataka vs. V. Chandrashekhar (Crl.R.P.790/2015 decided on 09.02.2022). The relevant paragraphs 14 and 15 of the said judgment reads thus: 14. Therefore it is clear that the amended Section makes it very clear that sanction is necessary not only for subjecting a public servant while in service (or who is in service) but also a public servant who has retired from service (who was in service). This amendment is by way of substitution, and it takes effect from the inception in the sense it must be understood as if the substituted provision is there from the day when the law was enacted. This position is made clear by the Division Bench of this Court in the case of PUSHPALATHA N.V. VS. V.PADMA AND OTHERS (ILR 2010 KAR1484. Though this decision was rendered in an appeal arising from a suit, for the purpose of understanding the effect of amendment by substituting a provision of law, it can be referred to here. What is held is as below:

"52. This declaration and conferment of right in coparcenary property, a salient and distinguishing feature of a coparcenary property in Mitakshara, is the right by birth. Once daughter is conferred the right of a coparcener, it :

86. : follows that, she would get a right by birth in the coparcenary property. When the amending Act came into force in 2005, naturally the question and a doubt would arise, as to when the daughter would get that right. The Parliament realised this problem and did not want to leave any one in doubt about its intention. It is expressly stated in the section itself that this "right is by birth", leaving no scope for

interpretation. This amendment is introduced by way of substitution. The result is, this amended provision is there in the statute on the day it came into force i.e, 17-6-1956. From that day till the amendment Act came into force on 9-9-2005, the daughter of the coparcener was not a coparcener and she became a coparcener only from 9-9- 2005. Though her status was so declared on 9-9- 2005, she has been given right in the coparcenery property from the date of her birth. It would result in absurdity. Therefore, what the Parliament did was to use the phrase, "on and from the commencement of the Hindu Succession (Amendment) Act, 2005", as the opening words of the Section, thus removing the absurdity. (emphasis supplied) 15. Thus seen, it may be stated that the amendment brought to Section 19 of the :

87. : Prevention of Corruption Act by Act No.16 of 2018 is to be understood as if it came into effect from the date the Prevention of Corruption Act was first given into effect i.e., from 09.09.1988. This being the change in law, definitely the respondent can contend that he cannot be prosecuted without sanction and his retirement from service does not make any difference in the matter of obtaining sanction. Therefore the argument of Sri B.S.Prasad cannot be accepted, I do not find any infirmity in the ultimate conclusion taken in the impugned order to discharge the respondent. The revision petition fails and it is dismissed. On all premises learned counsel for Accused No.6 submits that the Court below has rightly allowed the application filed by Accused No.6 and discharged of the offences leveled against him and same requires no interference of this Honble Court and the revision petition filed by the petitioner - CBI/ACB may be dismissed being devoid of merits.

76. Whereas learned counsel Sri Sagar B.B. in Crl.R.P.No.1486/2016 for respondent / accused No.7 namely Ramakant Y.Hullar contends that accused No.7, :

88. : was working as Circle Inspector or Police, Sandur at the relevant period. It is contended that pursuant to the direction of the Honble Supreme Court of India, the CBI anti corruption branch registered an FIR in RC.No.19(A)/2011 for the offences under Sections 120B r/w 379, 420, 427 and 447 of IPC and under Section 13(2) r/w 13(1)(d) of P.C.Act and so also, under Sections 4(1), 4(1)(A) and 23 of the

Mines and Minerals (Development and Regulation) Act, 1963 and under Section 24 of the Karnataka Forest Act, 1963 and conducted investigation where accused No.7 was also arraigned as an accused in the FIR. The only allegation as against this accused in the charge sheet is that he being the Station House Officer of Sandur Police Station did not act upon the complaints made by M/s.NMDCL and failed to prevent illegal transportation of iron ore. It is contended that the allegations even if accepted as gospel truth do not constitute any of the offences as imputed as against this accused. In view of the decisions of the High Court of Karnataka that lease area of M/s.NMDC in M.L.No.1111 is not at all encircling :

89. : lease area of accused No.2, the case of the prosecution that Accused No.7 failed to register case against M/s.DMSPL and its employees, only in order to help them for extraneous consideration does not hold any water. It is contended that it is the duty of the Sub- inspector of any police station to register any complaint made by the public and at the best role of accused for that matter is to supervise the duties of his subordinate. It is further contended that it is not the case of the prosecution when the sub inspector of Sandur Police Station did not register the complaint, the same was brought to the notice of the accused and in spite of it he has not acted, if there was a written intimation by any of the aggrieved person to that even then the inaction on the part of this accused only amount to misconduct and accused has not committed any of the offences impugned against him. Even if entire prosecution case accepted against Accused No.7 as it is, it may amount to dereliction of duty and for that the offence under Section 13(1)(d) r/w 13(2) of the P.C.Act, 1988 cannot be attributed, as held by the trial Court. The trial Court :

90. : has held that since prosecution has failed to prove from the statements of witnesses under Section 161 of Cr.P.C. as well as documents relied by it that Accused No.2 Company has encroached area of NMDC and thereby it has illegally carried out mining operation and exported iron ore from the area does not belongs to them does not holds any water as area leased to M/s.DMSPL - accused No.2 is not at all encircling in any direction to the area of M/s.NMDC. Therefore, no ingredients have been constituted relating to the offences lugged against accused No.7 in the petition filed by challenging the impugned order passed by the trial Court in Spl.C.C.No.165/2013 dated 30.01.2016. Therefore, the

petition relating to the role of Accused No.7 does not arise warranting interference of the impugned order passed by the trial Court discharging the accused No.7. The petition filed by CBI/ACB is devoid of merits and hence, seeks for dismissal of the petition. :

91. :

77. It is in this context of the contentions made by learned Senior counsel namely Sri Hashmath Pasha in respect of Accused Nos.1 to 3, learned Senior counsel namely Uday Holla in respect of Accused No.4, learned counsel in respect of other accused, it is relevant to refer the charge sheet wherein it is alleged that in the year 1966, Government of Karnataka had sanctioned Mining Lease in favour of Mr.Motilal J.Boal under Mining Lease No.ML-636 in Kammateravu village, Sandur Taluk, Bellary District to an extent of 50 acres in which 3 acres as forest area towards North-Eastern side. The Mining Lease that was granted was for a period of 20 years. To this mining lease, initially sketch was also accompanied. At the time of grant of mining lease, the officials in the Department of Mines and Geology had demarcated the area by fixing the boundaries of lease granted in favour of Mr.Motilal J.Boal. In the year 1980, Mr.Motilal J.Boal had transferred the said mining lease in favour of partnership firm by name M/s.Deccan Mining Syndicate and the same was approved by Government of :

92. : Karnataka on 30.06.1980 in CI-71.MML-1980. Since then M/s.Deccan Mining Syndicate having become owner of the mining lease continued the mining operation in the demarcated area. Before completion of period of 20 years, as per the procedure, M/s.Deccan Mining syndicate applied for first renewal of mining lease in its favour by filing an application in the year 1985. The Government of Karnataka with prior approval of Government of India renewed the mining lease for a period of 10 years. Accordingly, M/s.Deccan Mining Syndicate continued the mining operation. Even at the stage of renewal of lease in the year 1986 when the recommendation for renewal of lease in favour of accused No.2, the State Government had written letter dated 4.6.1987 clarifying that the area of M/s.Deccan Mining Syndicate (accused No.2) was outside the area of M/s.NMDC and it falls in revenue land of Deogiri village. Hence, the area of M/s.Deccan

Mining Syndicate is a separate one and does not lie within the area of 1,600 acres of M/s.NMDC under ML No.1111. :

93. :

78. Whereas in the charge sheet it is alleged that when the first renewal of 10 years was about to lapse, on behalf of accused No.2 M/s.Deccan Mining Syndicate, an application for second renewal was filed before the Department of Mines and Geology complying all formalities in the year 1995. This application for second renewal was under process before the Department of Mines and Geology and also at the Secretariat level. In the year 1972, Government of Karnataka had granted another mining lease No.ML- 1111 in favour of M/s.NMDC to an extent of 1600 acres of Subbarayana Halli and Kumara Swamy range. The application of accused No.2 company for second renewal was being processed by the Department of Mines and Geology and also the Secretary -II of Commerce and Industries Department, Government of Karnataka and then, they found that accused No.2 company had undertaken mining operation in the demarcated area. When an application for second renewal was filed by accused No.2 Company, it had enclosed the sketch that was sanctioned along with the mining lease granted in :

94. : the year 1966 and renewed in the year 1985 under ML Nos.636 and 2080. While conducting spot inspection and survey, these officials said to have compared the sketch that was sanctioned with that of the area demarcated at the field and found that there was difference between the map and the demarcated area. But it was found that accused No.2 Company had undertaken mining operation in the demarcated area and that was noted as worked area by it.

79. Further, as per the letter dated 8.11.1995 of the Deputy Commissioner of Bellary on such fresh survey and inspection, these officials found that M/s.Deccan Mining Syndicate has not done any mining activities in the Forest Land. A report was submitted that this accused No.2 Company is doing mining activity within the area of the boundaries fixed by the Department of Mines and Geology since 25 years. Therefore, there was no encroachment in the area of M/s.NMDC. :

95. :

80. Whereas in pursuance of the registration of crime by CBI/ACB, Bangalore the charge sheet came to be laid against the accused persons respectively of their role relating to the offence under Sections 120-B r/w 379, 420, 427, 447 of IPC without there being any basis. As this contention has been taken by learned Senior counsels as well as respective counsel for other accused. The allegation in para - 7 of the charge sheet is that since year 1980, M/s.DMSPL (A-2) was doing mining from the lease area of M/s.NMDC in two pits i.e., Pit No.1 and 2 is denied as false. The complaint given by M/s.NMDC to various authorities that M/s.DMSPL (A-2) had indulged in illegal mining was enquired and investigated by the Deputy Commissioner of Bellary, Police and Forest Departments. But the said allegation was found to be false and per contra, it was confirmed that the mining operation undertaken by M/s.DMSPL was within its area of lease that was demarcated by the Department. Therefore, the complaints lodged by M/s.NMDC were found to be :

96. : without any basis and hence, the complaints were closed.

81. The notice was issued by the Director, Mines and Geology that M/s.DMSPL has illegally entered into mining lease area of M/s.NMDC and illegally extracted iron ore, was again denied as false. Accused No.2 company had challenged the notice issued by filing W.P.No.2564/1996 before the High Court of Karnataka by asserting that it has undertaken mining operation within the leased area and as per the boundary fixed at the time of original lease granted in the year 1966. In the said writ petition M/s.NMDC was also made as one of the respondent. The said writ petition was disposed of by order dated 14.02.2022 because by then the State has granted renewal for another 10 years by recognizing the worked area and regularized by receiving the lease with this modified sketch.

82. Whereas accused Nos.4 to 6 were holding the posts of Secretary-II, Principal Secretary of Industries and Commerce and Deputy Director of Mines and :

97. : Geology during the relevant period. Accused No.7 was the then Circle Inspector of Police, Sandur Circle, Bellary District but since they being the

Government servants the provision under Sections 13(1)(d) r/w 13(2) of P.C.Act, 1988 in addition to the offence under Indian Penal Code were invoked. It is contended that it was the act of Director of Mines and Geology and Secretary to Department of Commerce and Industries in redrawing the sketch including the worked area stating that the worked area is included in the sketch. But the actually worked area was the demarcated area in favour of accused No.2 Company and in order to correct the mistake on the part of the Survey officials, modified sketch has been issued, this was the self act of the officials. This is by imposing penalty of Rs.10,00,000/- on accused No.2 Company. It was not the prayer of accused No.2 Company to redraw the sketch and grant renewal with modified sketch. Along with the application for grant of renewal of lease filed for the year 1995, it had enclosed with the previous sketch which discloses the area that was leased to it. In fact, accused :

98. : No.2 Company deposited the penalty amount of Rs.10 lakhs with protest and not agreed to the conditions put by the officials of the Department. Therefore, there was no act on the part of accused No.2 Company to suggest that there was conspiracy in between it and with other officials particularly accused Nos.4 and 5. Therefore, the allegations of conspiracy is totally baseless.

83. Whereas learned Senior counsel contends that if the fact that Accused No.2 - M/s.DMSPL had undertaken the mining operation in the demarcated area by the Department and not in the area of M/s.NMDC because the leased area of accused No.2 is not encircled by the leased area of M/s.NMDC and this fact has been settled by the High Court in W.P.No.10335/1998 and W.P.No.19766/2005 by order dated 31.03.2008 and this fact is also clarified by the Department of Mines and Geology and spot verification that the worked area of accused No.2 was actually the area demarcated by Survey Department though there may be little difference in the sketch enclosed to the :

99. : lease. At the field the actual demarcation done by the officials of Survey Department is the worked area and this is only a mistake on the part of the officials and not on the part of accused No.2 Company. If this is the actual fact, question of indulging in illegal mining operation in the area of M/s.NMDC under M.L.No.1111

does not arise.

84. It is pertinent to note that only after the death of Mr.S.M.Jain in the year 2005, accused No.1 - Mr.Rajendra Kumar Jain took over the position of Managing Director in the year 2005. But prior to it, he was not a shareholder or director of accused No.2 Company. Therefore, for the main period of allegation made i.e. in the year 1995-1999 when the renewal of Mining Lease granted by State Government with the alleged modified sketch and thereafter mining operation conducted till 2005 and the application for renewal of Mining Lease in the year 2005 was applied by Mr.S.M.Jain and during these crucial periods of allegations made in the charge sheet, Accused No.1 was :

100. : not the Managing Director nor incharge of the business affairs of the company. Therefore, for any criminal act of the Company, the liability cannot be fastened on accused No.1.

85. Now point to be considered whether the 2nd accused has encroached upon the area of M/s.NMDC as contended by M/s.NMDC. In respect of the said dispute M/s.NMDC filed W.P.No.10335/1998 and 2nd accused Company filed W.P.No.19766/2005. The learned single Judge of this Court by the Order dated 31.3.2008 disposed the said writ petitions by common order. The said order has been challenged by M/s.NMDC in Writ Appeal No.1134/08 and 1135/08 and ultimately vide order dated 12.8.2011, the said Appeals were dismissed as withdrawn in view of the memo filed by the appellants and as such the order passed in writ petitions became final and in view of the said orders it is evident that the area leased in ML No.1111 is not at all encircled lease area of M/s.DMSPL i.e. accused No.2. When such being the situation, the contentions of the :

101. : officials of M/s.NMDC that 2nd accused has encroached upon the area of M/s.NMDC and carried out illegal mining does not holds any water and it falls to the ground when 2nd accused has not at all encroached upon the area of M/s.NMDC, the prosecution case against accused No.2 that it has illegally carried out mining operation beyond their area does not hold any water. Moreover, the sketch attached to the orders of the High Court clearly goes to show the location of the properties of accused No.2 as well as M/s.NMDC. On perusal of said sketch, it

is evident that the property leased to NMDC in M.L.No.1111 does not encircle the property leased to accused No.2 i.e. DMS and as such, the trial Court was right in observing that prosecution case that accused No.2 has encroached the area of NMDC and continued illegal operation when the prosecution has failed to prove case against accused No.2 and accused No.1 being Managing Director of accused No.2 from 2005, also has not committed any offences. On perusal of entire prosecution case, nowhere it is alleged that accused No.1 in his individual capacity has committed alleged offence. :

102. : Moreover, accused No.1 has been shown as Managing Director of accused No.2 and as such his role only pertains to the period from 2005 and prior to that he was not at all in any way connected with accused No.2 and as such prosecution case against accused No.1 is not at all maintainable.

86. Insofar as Accused No.3 - Mr.Ritesh Milapchand Jain he joined the company in the year 2003-2004 as Manager and continued to be so till 2011. Therefore, no criminal liability of Company can be fastened on accused No.3 also. Even otherwise, as stated supra no offence is committed by accused No.2 Company since it had actually undertaken mining operation in the area which was leased to it and there was no encroachment or illegal mining operation undertaken in the area of M/s.NMDC and from the beginning, the entire mining operation that was undertaken by accused No.2 Company was in the actual area demarcated by the Department. Therefore, the offence of either trespass under Section 447, mischief :

103. : under Section 427, theft under Section 379 and cheating under Section 420 of IPC are not attracted which were lugged against the accused persons. Since no illegal mining operation had been undertaken there was no scope for conspiring with the other officials and therefore, Section 120B of IPC also does not attract and consequently, the offences under Sections 13(2) r/w Section 13(1)(d) of the PC Act, 1988 also does not attract. All these averments made are based on the charge sheet material on the undisputed facts and documents enclosed to the charge sheet and the decision of High Court in W.P.No.10335/1998 c/w W.P.No.19766/2005 had attained finality by dismissal of appeal in

W.A.No.1134/2008 c/w W.A.No.1135/2008 dated 12.08.2011. Therefore, it is contended that on perusal of charge sheet material on its face value, if it is assessed the definite conclusion can be reached that the facts do not constitute the offences as alleged in the charge sheet. Therefore, accused are entitled for discharge. :

104. :

87. Whereas in para 16 to 19 is pertaining to the CEC survey and the order of Honble Supreme Court of India in which CBI registered the case and conducted the investigation. CEC survey had clearly brought out the encroachment and illegal mining done by the accused company M/s.DMSPL and the said mining lease was categorized as category-C and its mining lease was cancelled and the survey report was accepted by the Honble Supreme Court of India which confirmed that the illegal mining carried out by the accused company. Further investigation conducted by CBI reveals that the accused company had conducted illegal mining from the areas of M/s.NMDC and iron ore to the extent of Rs.1232 crores were mined and in the illegal mining the petitioner Accused No.1 had directly participated and also benefited. Further, in para 20 to 37 are relating to the boundaries of mining area of M/s.NMDC and M/s.Deccan Mining Syndicate. It is pertinent to mention here that M/s.NMDC has surrendered 105 Acres only on the forest area and not where the mining activities and encroachment done by :

105. : M/s.Deccan Mining Syndicate Pvt. Ltd. Further, during the period of S.M.Jain also Rajendra Kumar Jain was actively involved in the mining activities and the same were through the ROC documents submitted along with the charge sheet for the purpose of perusal.

88. Insofar as I.A.14 of the application filed under Section 239 of Cr.P.C. in respect of accused No.3 seeking discharge, but the learned Senior counsel in this matter contended that complainant/CBI has filed the charge sheet against Accused Nos.1 to 7 for the offence punishable under Section 120-B r/w Sections 379, 420, 427, 447 of IPC and under Sections 13(2) r/w 13(1)(d) of P.C.Act, 1988. Whereas the allegations made in the charge sheet laid by the investigating agency that accused No.3 was working as CEO of accused No.2 Company while he was working so in

the year 2007- 2008, there was dispatch of iron ore material on behalf of M/s.DMSPL to an extent of 1,47,095 MTs of iron ore to Goa Port and 11,070 MTs. iron ore material to Belekeri Port totally to an extent of 1,59,250 MTs. of :

106. : iron ore. The allegation is, before obtaining dispatch permits from the Department of Mines and Geology, these iron ore materials were transported to Goa and Belekeri ports. For this accused No.6 - S.P.Raju, Deputy Director of Mines and Geology, Bellary also facilitated them to transport these iron ore material before issue of dispatch permits. Thereby accused No.6, accused No.2 Company and accused No.3 being the CEO have conspired together to commit the offences. Therefore, this allegation made in paragraph No.18 of the charge sheet is denied as false.

89. Whereas the delay in issuance of permit does not amount to conspiracy because it is settled law that in order to attract the offence of conspiracy, two or more persons agreed to do an act which is illegal by illegal means or an act which is legal by illegal means. Since no illegality is committed either by the company or by accused No.3 and only because certain procedural delay in issue of permits, which normally occurs in discharge of official duties cannot be considered as a product of :

107. : conspiracy. Therefore, offence alleged under Section 120-B IPC is not attracted. Insofar as offences under Sections 379, 420, 427 and 447 of IPC, the accused No.3 is innocent of the same. There was no theft of iron ore material and the entire iron ore material was produced from the leasehold area of M/s.DMSPL and since mining operation was done in the demarcated mining area of M/s.DMSPL the offence of mischief under Section 447 of IPC and offence of cheating under Section 420 of IPC does not attract and absolutely there is no material to frame charge against Accused No.3.

90. Insofar as I.A.7 which is filed under Section 239 of Cr.P.C. by accused No.4 seeking discharge. Whereas the investigating agency/CBI laid the charge sheet for the offence punishable under Section 120-B r/w 379, 420, 427 and 447 of IPC and under Sections 13(2) r/w 13(1)(d) of P.C.Act, 1988. The Honble Supreme court vide order dated 23.9.2011 passed in Spl.Leave Petition Nos.7366-7367/2010

directed the CBI to conduct investigation in respect of illegal mining :

108. : in the area of M/s.NMDC under mining lease No.1111 by the 3rd party i.e., M/s.DMSPL. As per the direction of the Apex court, the CBI registered FIR in Crime No.RC19A)/2011 on 01.10.2011 and proceeded for investigation. During the course of investigation the investigating agency issued notice to accused No.4 being a public servant. Accordingly, accused No.4 appeared and explained her position in the Government of Karnataka, Department of Commerce and Industries as Secretary-II, pertaining to the renewal of mining lease No.2080, in favour of M/s.DMSPL on 29.1.1999. Accordingly, the investigating agency recorded her statement. After completion of formalities of investigation, charge sheet has been laid for the aforesaid offences relating to the role of accused No.4. But no ingredients have been constituted relating to the offences lugged against accused No.4 being public servant. Whereas in the second renewal of mining lease No.ML-2080 in favour of accused No.2, accused No.4 has put a clear note i.e., this second renewal is for an altered area i.e., with the modified sketch including the :

109. : area where M/s.Deccan Mining Syndicate has done mining operations outside the original boundary keeping total extent unchanged at 47 acres only. But as per the procedure and entrustment of duty in the Department of Commerce and Industries, it should have been processed only through accused No.4 who was then working as Secretary-II to the Department of Commerce and Industries, Government of Karnataka. Accused No.5 was then working as Principal Secretary to Department of Commerce and Industries has also taken part in taking decision for recommendation for second renewal in favour of accused No.2. In the meanwhile, on behalf of accused No.2 - M/s. Deccan Mining Syndicate, a letter dated 23.6.1998 was submitted to the Department of Commerce and Industries requesting for grant of second installment of first renewal under Section 8(2), that is to treat the application for second renewal under Section 8(3) of the Act as infructuous. The Government of India, by letter dated 6.11.1998, has returned back the file to Government of Karnataka for consideration of :

110. : application of accused No.2 under Section 8(2) of the Act. The file was then put up before the Principal Secretary, Department of Commerce and Industries,

Government of Karnataka, by the Deputy Secretary for consideration of grant of second installment of first renewal to accused No.2 and ultimately, the file was sent to the Minister of Mines and Geology and the Minister has sanctioned for grant of second installment of first renewal in favour of accused No.2 subject to collection of full penalty. It is definite that this addition of the words modified sketch while issuing Notification is not done by this accused No.4. Therefore, accused No.4 has not conspired with the other accused or any other persons in according renewal of lease in favour of accused No.2 with the modified sketch.

91. Whereas learned Senior counsel relating to role of accused No.4 submits though the investigating officer has mentioned in the charge sheet that accused No.4 being the public servant has retired from service and to prosecute her, no sanction is required for taking :

111. : cognizance and conducting criminal proceeding against her but this note of the investigating officer in the charge sheet is not correct. Because, under Section 197 of Cr.P.C., it is mandatory that whenever a Court takes cognizance of the offence against a public servant accused of an offence and if the offence is committed in discharge of official duty, even in respect of a past public servant, sanction is necessary. Admittedly, in this case, no sanction is obtained for prosecuting accused No.4 as required under Section 197 of Cr.P.C. Therefore, the alleged act of accused No.4 was in the course of discharge of official duty and therefore, any act committed in connection with discharge of official duty, no prosecution can be launched without obtaining sanction from appropriate authority and in respect of accused No.4, she was working as Secretary to Department of Commerce and Industries as an IAS Officer, sanction from competent authority is must. Though this point was not considered at the stage of taking cognizance, it is settled law that point of sanction can be raised at any stage of proceeding. Therefore, it is :

112. : urged at this stage, particularly the accused No.4 after appearance getting this first stage to urge the same. Hence, in the absence of sanction being taken, the prosecution cannot be proceeded against accused No.4 she was rightly discharged by the trial Court by considering the application filed by her.

92. The complainant/CBI through the Public Prosecutor has filed objections denying the petition averments as false. At paragraph 14 it is contended that the acts committed by the accused person is so grave that she has violated the MMDR Act and MC Rules, 1960 and gone out of the way to issue a renewed lease.

93. Insofar as accused No.5 who has filed application under Section 227 of Cr.P.C. seeking discharge has contended that accused No.5 has been charge sheeted by complainant - CBI under Section 120-B of IPC and other Sections of Indian Penal Code and so also, under the provisions of P.C.Act, 1988, Indian Forest Act, 1927 and MMDR Act, 1957. :

113. : However, the only accusation made by the complainant against Accused No.5 is that he fraudulently and dishonestly facilitated the illegal mining by way of illegally renewing the mining lease by changing the original sketch. The complainant has claimed that the State Government had no power to renew a mining lease based on a modified sketch; that when the mining lease boundaries were already determined with the prior approval of the Central Government as was done while issuing first mining lease No.ML-636 which was later renewed as ML2080 with the same boundaries, any further modifications of the mining lease being carried out by the State Government is an illegal act, and there is no provision under the Mines Minerals (Regulation and Development) Act, 1957 to renew a mining lease based on a modified sketch.

94. In exercise of the powers conferred by sub- section (1) of Section 26 of the Mines Minerals (Regulation and Development) Act, 1957 (67 of 1957, the Central Government directed that the powers :

114. : exercisable by it under sub-section (2) of Section 7 and sub-section (2) of Section of the Act, in respect of minerals specified in part C of the First schedule to the Act in an area in a State shall be exercisable also by the Government of that State, with immediate effect and until further orders. This contention was also made by learned counsel for accused No.5. It is further contended that Section 7 of the MMDR Act deals with prospecting licences, it is Section 8 that deals with the grant or renewal of Mining leases and sub-section (2) of Section 8 reads as under:

A mining lease may be renewed for a period not exceeding twenty years. In pursuance of sub-section 2 of Section 8 of the MM (R&D) Act, 1957 and as per letter No.7(2)/98-M.IV dated 5.8.1998 of Government of India, Ministry of Mines, New Delhi, read with Notification No.16/56/96- M.VI dated 30.1.1997, the Government of Karnataka hereby accord sanction for the second instalment of 1st renewal of mining lease No.2080 :

115. :

95. Whereas learned counsel in respect of accused No.5 has taken contention and that the case has been registered against this accused even though there is no specific role played by him. This ground has been urged seeking discharge. Accused No.5 being an Officer of the State Government had every responsibility to discharge his duties strictly in accordance with law pertaining to every matter that is brought to his notice. But complainant/CBI contends that it is pertinent to mention that this accused was not only charge sheeted for illegally renewing the mining sketch but also for criminal conspiracy with other accused persons and the acts of accused has led to continuation of illegal mining which caused huge revenue loss to the Government Exchequer and corresponding wrongful gain to the accused persons.

96. Insofar as I.A.No.24 relating to Accused No.6 whereby it is contended that the case came to be registered on 01.10.2011 in Crime No.RC/19(A)2011 for the offence punishable under Sections 120-B, 379, 411, :

116. :

420. 427, 477, 468, 471 of IPC and under Sections 13(2) r/w 13(1)(d) of the P.C.Act, 1988 and Section 26 of Karnataka Forest Act, 1927 and under Section 21 r/w 4(1), 4(1)(A) and 23 of the Mines and Minerals (Development and Regulation) Act, 1957 against the Directors of M/s.Deccan Mining Syndicate, and other persons including the present accused. The charge sheet in this case was filed on 02.08.2013 under Sections 120-B, 379, 420, 427, 447 of IPC and under Sections 13(2) r/w 13(1)(d) of the P.C.Act, 1988.

97. Whereas learned counsel relating to accused No.6 contends that the prosecution has failed to obtain an order of sanction from the appropriate authority in respect of the offences under the IPC that has been filed against this accused who was a public servant. The Trial Court observed that this ground alone is sufficient to allow discharge application regardless of the merits of the case of the prosecution. The allegation against this accused is found only in para-18 of the charge sheet which states that S.P.Raju (A-6), posted as Deputy :

117. : Director, Department of Mines and Geology, Bellary. During the period 2007-08, he conspired with other accused in the matter of transportation of iron ore to Goa and Belekeri port and in pursuance of the said conspiracy, M/s.DMSPL (A-2) had transported 1,47,095 MTs of iron ore to Goa and 11,070 MTs to Belekeri respectively without obtaining any transport permits from the Department of Mines and Geology, Hospet. That S.P.Raju (A-6) had issued permits for transportation of 1,59,250 MTs. Iron ore to Goa and Belekeri on 7.9.2007 without causing any verification with regards to the availability of iron ore stocks at the mines. Further, it is contended that this accused is innocent of the alleged offences against him and only for discharge of his official duty as per the rules governing his Department he has been arraigned as an accused herein without basis or any credible evidence or witnesses incriminating him. Between the relevant years, as per the prosecution 2009-2011, there have been 3 Deputy Directors in the State Mines and Geology Department. However, the present accused has been :

118. : singled out without any specific allegations against this accused. This accused served in the relevant period in the said post between 20.07.2009 and 29.10.2009 and thereafter between 18.01.2010 and 14.03.2011. In the backdrop of law laid down by the Honble Supreme Court in various cases the Court was duly empowered to consider and weigh the evidence at this stage itself to find if prima facie case is made out or not. Thus, the prosecution has not brought out any material to make out a prima facie against accused No.6 and as such this is eminently a fit case to discharge the accused from the alleged offences.

98. Insofar as I.A.25 filed under Section 227 of Cr.P.C. relating to accused No.7 seeking discharge, it is contended that an independent body by name Samaja

Parivartana Samsthe approached the Honble Supreme Court alleging rampant and illegal mining being carried out in the District of Bellary which had caused huge monetary loss to the Central and State exchequer and sought for a direction to stop all mining activities in the :

119. : District and for a probe by the CBI. In pursuance of the directions issued by Honble Supreme Court, the CBI anti corruption branch registered an FIR in RC No.19(A)/2011 for the offences punishable under Sections 120-B r/w 379, 420, 427 and 447 of IPC and Sections 13(2) r/w 13(1)(d) of P.C.Act, 1988 and under Sections 21 r/w 4(1), 4(1) (A) and 23 of the Mines and Minerals (Development and Regulation) Act, 1963 and under Section 24 of the Karnataka Forest Act, 1963. Subsequent to registration of crime, the investigating agency conducted the investigation and this petitioner is arraigned as accused No.7 in the said FIR. The charge against this accused is that he being the Station House Officer of Sandur Police Station did not act upon the complaints made by M/s.NMDC and failed to prevent illegal transportation of iron ore. It is contended that it is the duty of the Sub-inspector of any police station to register any complaint made by the public and at best the role of the accused for any inspector for that matter is to supervise the duties of his subordinate. But it is not the case of the prosecution that when the sub :

120. : inspector of Sandur Police Station did not register the complaint the same was brought to the notice of the accused and inspite of it has not acted. Further, it is contended that the allegations does not satisfy the basic ingredients required to impute sections and accordingly, it was prayed to discharge accused No.7.

99. Whereas in the nutshell relating to the charge sheet against accused as well as the role of accused Nos.4 to 7 it is vehemently contended that prosecution has not obtained sanction under Section 197 of Cr.P.C. in order to prosecute accused Nos.4 to 6. But accused Nos.4 to 6 were holding posts of Secretary-II, Principal Secretary of Industries and Commerce and Deputy Director of Mines and Geology during the relevant period. But accused No.7 namely Sri Y.Ramakant Hullur, the then Circle Inspector of Police, Sandur Circle, Bellary District, has been issued sanction by the competent authority under Section 19(1)(c) of the P.C.Act, 1988 is

enclosed and the sanction order under Section 170 of Karnataka Police Act, 1963 and under :

121. : Section 197 of Cr.P.C. was sought from the competent authority. But the sanction for prosecution was not required for the accused public servants Smt.Shameem Bhanu (A-4), Sri N.Viswanathan (A-5) and Sri S.P.Raju (A-6) since they have all retired from service. The prosecution has produced documents to show that sanction has been accorded to prosecute accused No.7 under Section 19(1)(c) of P.C.Act, 1988 and also for the offences punishable under Sections 120-B, 379, 420, 427 and 447 of IPC and Sections 13(2) r/w 13(1)(d) of P.C.Act, 1988, but the prosecution has not at all produced any material to show that sanction as required under Section 197 of Cr.P.C. has been obtained in respect of accused Nos.4 to 6. In this regard, it is relevant to refer Section 197 Cr.P.C. which reads as under:

197. Prosecution of Judges and public servants. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court :

122. : shall take cognizance of such offence except with the previous sanction- (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

100. Thus, on perusal of the said provision, it is evident that sanction as required under Section 197 of Cr.P.C. is mandatory in order to prosecute the case against accused Nos.4 to 6 being public servant. It is held by the prosecution that accused Nos.4 to 6 have dishonestly acted in order to help accused No.2 to obtain the lease of the area of the modified sketch and accused No.6 has facilitated accused No.3 to transport the iron ore without valid permits.

101. Learned counsel for accused Nos.4 to 6 have vehemently contended that the act of accused Nos.4 to 6 was in discharge of their official duties and nothing could be attributed against them with respect to :

123. : discharge of their official duties. Even on perusal of prosecution papers, it is not in dispute that originally 50 acres of mining was leased in favour of Motilal J Boal during 1966 and subsequently, he transferred the said lease in favour of M/s.Deccan Mining Syndicate in the year 1980 and the said transfer was approved by Government of Karnataka and in the year 1985 the said Company became a firm by name Deccan Mining Pvt. Ltd. Further, it is not in dispute that the said M.J.Boal transferred the leased area i.e. 50 acres of land in favour of M/s.Deccan Mining Syndicate Pvt. Ltd. It was father of accused No.1 Mr.Sumermal Manmal Jain, who was the Managing Director at that time and even after M/s.DMSPL came into existence in 1991, he continued to be the Managing Director of the said firm till his death in 2005 and only from 1.5.2005 accused No.1 became the Managing Director of M/s.DMSPL i.e., Accused No.2. As far as renewal of licence of accused No.2 is concerned, it was during 1997-98 and the prosecution papers as well as statements of witnesses relied upon by the prosecution clearly goes to show on :

124. : the notes prepared by accused Nos.4 and 5 and their subordinate officials and the spot inspection report of accused No.4 along with revenue officials, officials of Mines and Geology, whereby Accused No.5 recommended for renewal of lease of accused No.2 in respect of worked area, as by that time M/s.NMDC was disputing lease area of accused No.2 with the allegation that M/s.DMSPL - accused No.2.

102. Further, it is relevant to refer that it is not at all the case of accused No.2 that it had deviated from the area which was leased to it and company of accused No.2 i.e., Deccan Mining conducted mining operation only in the area allotted to it as originally 50 acres was allotted since 3 acres was in the Forest area they have restricted their mining area to 47 acres. The spot inspection was conducted by survey officials, Department of Mines and Geology and accused No.4 and then they thought fit to recommend for renewal of lease to accused No.2 in the worked

area i.e. mining operation undertaken by them since there was a slight :

125. : variation in the original sketch attached to the lease deed of accused No.2 and the worked area. But LW-4 and other officials have suggested to impose penalty of Rs.10,00,000/- on accused No.2 and the said proposal was approved by the then Director of Mines and Geology and ultimately lease was renewed in favour of accused No.2 on 29.1.1999.

103. A perusal of the material on record secured by the investigating agency/ CBI the point that arises for consideration is whether accused No.2 has encroached upon the area of M/s.NMDC as contended by officials of M/s.NMDC. It is pertinent to note here that the said dispute had been agitated before the High Court of Karnataka in W.P.No.10335/1998 which was filed by M/s.NMDC against State of Karnataka, Director of Mines and Geology, Additional Surveyor General of India, Deccan Mining Syndicate Pvt. Ltd. and W.P.No.19766/2005 was preferred by accused No.1 and 2 against State of Karnataka, Under Secretary to Government (Mines) Commerce and Industries :

126. : Department, Director, Department of Mines and Geology, Principal Chief Conservator of Forests, National Mineral Development Corporation Ltd. The High Court of Karnataka vide order dated 31.3.2008 disposed of the said writ petitions by a common order.

104. The said order was challenged by M/s.NMDC in Writ Appeal No.1134/2008 and 1135/2008 and ultimately vide order dated 12.8.2011, the appeals were dismissed as withdrawn in view of the memo filed by the appellants and as such the order passed in the writ petitions attained finality. In view of the said orders it is evident that the area leased in ML No.1111 is not at all encircled lease area of M/s.DMSPL i.e., accused No.2. When such being the case, the contentions of the officials of M/s.NMDC that accused No.2 has encroached upon the area of M/s.NMDC and carried out illegal mining does not hold any water and it falls to the ground when accused No.2 has not at all encroached upon the area of M/s.NMDC, the prosecution case against Accused No.2 that it has :

127. : illegally carried out mining operation beyond their area does not hold any water.

105. It is also rightly observed, that moreover the sketch attached to the orders of the High court clearly goes to show the location of the properties of accused No.2 as well as M/s.NMDC. The property leased to NMDC in ML No.1111 does not encircle the property leased to accused No.2 i.e., DMS and as such the prosecution has failed to prove the case against accused No.2 and accused No.1 being Managing Director of accused No.2 from 2005, also has not committed any offences.

106. In this regard it is relevant to refer the decision reported in 1966 SCC (1) 478 i.e. R.Balakrishna Pillai Vs. State of Kerala and another, the Honble Supreme Court held:- We may mention that the Law Commission in its 41 Report in paragraph 15.123 while st dealing with Section 197, as it then stood, observed it appears to us that protection under :

128. : the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant. Further, at the last para of the said judgment, the Honble Supreme Court held:- For the above reasons, we are unable to accept the view taken by the High Court of Kerala insofar as the requirement of sanction under Section 197(1) of the Code is concerned, in relation to the charge of criminal conspiracy. We, therefore, allow this appeal, set aside the decision of the High Court insofar as that charge is concerned, and hold that sanction under Section 197(1) of the Code was a sine qua non. :

129. :

107. These are all the observations made by the trial Court while considering the applications seeking discharge filed by the accused persons insofar as the offences lugged against them and so also, the grounds urged seeking discharge.

108. Based upon the material collected by the investigating officer during the course of investigation and so also, the contentions as taken by learned Senior counsel Sri Hashmath Pasha for accused Nos.1 to 3, learned Senior counsel Sri Uday Holla for accused No.4 and so also, learned counsel for accused Nos.5, 6 and 7, but there is no dispute with regard to the propositions laid down in the said decisions, since prosecution has failed to prove from the statements of witnesses under Section 161 Cr.P.C. as well as documents relied by it that Accused No.2 - Company has encroached area of NMDC and thereby it has illegally carried out mining operation and exported iron ore from the area that does not belongs to them, does not holds any water as the area leased to M/s.DMSPL - accused No.2 is not at all encircling in any :

130. : direction to the area of M/s.NMDC and as such, the trial Court rightly considered the grounds which were urged by accused Nos.1 to 7 respectively seeking discharge of the offences alleged against them and the trial Court rightly allowed I.A.Nos.7, 13, 14, 24 and 25 and application dated 6.2.2015 and discharged accused Nos.1 to 7.

109. It is in the nutshell of the submission made by learned Senior counsel for accused Nos.1 to 4 and also learned counsel for accused Nos.5, 6 and 7 in Spl.CC. No.165/2013 arising out R.C.No.19(A)/2011, initiated by the complainant - CBI/ACB, Bangalore against Accused No.1 - Rajendra Kumar Jain, Accused No.2 - M/s.Deccan Mining Syndicate Pvt. Ltd represented by its Managing Director, Rajendra Kumar Jain, Accused No.3 - Ritesh Milapchand Jain filed applications I.A.No.13 and I.A.No.14 respectively, under Section 239 of Cr.P.C. relating to the offence punishable under Sections 120-B r/w 379, 420, 427 and 447 of IPC and under Sections 13(1)(d) of the P.C.Act, 1988. Whereas learned Senior counsel Sri Hashmath Pasha has taken through the :

131. : materials collected by the investigating agency during the course of investigation and role of accused Nos.1 to 3 and similarly, learned Senior counsel

Sri Uday Holla for Accused No.4 and learned counsel for Accused Nos.5 to 7 being public servants.

110. With regard to the contention taken by the learned counsel respectively it is relevant to refer the offence under Section 120-B of IPC. It is the settled position of law in order to attract the offence of conspiracy, two or more persons agreed to do an act which is illegal by illegal means or an act which is legal by illegal means. Since no illegality is committed either by the Company or by accused No.3 and only because certain procedural delay in issue of permits, which normally occurs in discharge of official duties cannot be considered as a product of conspiracy. Therefore, offence alleged under Section 120-B of IPC is not attracted. Even with regard to offences under Sections 379, 420, 427 and 447 of IPC, accused No.3 is totally innocent of the alleged :

132. : offence. But there was no theft of iron ore material and the entire iron ore material was produced from the leasehold area of M/s.DMSPL and since mining operation was done in the demarcated mining area of M/s.DMPSL offence of trespass under Section 447 of IPC and offence of mischief under Section 427 of IPC and offence of cheating under Section 420 of IPC does not attract. Therefore, there is no material to frame charge against accused No.3. It is also relevant to notice that accused No.2 company has not at all committed any offence and it is also entitled for discharge and if the company has not involved in the commission of any offence, accused No.3 is no way liable for any offence in any manner and hence, at this stage itself entitled for discharge from the proceedings. Further, insofar as, accused No.3 is concerned, he joined the service only in 2003-2004 and he joined company of Accused No.2 as Manager, subsequently, he was promoted as General Manager and he served in that capacity till 2011. In order to attribute case against accused No.3, being representative of Accused No.2, prosecution must show that accused No.3 :

133. : was in actual business and in control of accused No.2 Company as according to Section 23 of the MMDR Act. Therefore, in view of the above said provision, accused No.3 being the General Manager of accused No.2 Company from 2004-2011 does not in any way comes within the purview of person

continued business of Accused No.2 and as such the trial Court has rightly held that the prosecution case as alleged against accused No.3 is not at all sustainable. 110. Insofar as accused Nos.4 and 5 is concerned, they served as Secretary-II and Principal Secretary to Department of Commerce and Industry during 1997-98 i.e., when the renewal of the lease of accused No.2 was processed. If the case of the prosecution is accepted, as it is the act of accused Nos.4 and 5 might be in error of judgment and for the said purpose Section 120-B cannot be attributed to them. The trial Court has observed that the charge sheet filed against the accused persons is not maintainable in view of non-filing of complaint by the authorized person of the Central Government or State Government as the case may be. :

134. :

111. It is in the given peculiar facts and circumstances of the case and so also, registration of the case in RC No.19(A)/2011 by CBI/ACB, Bangalore and whereby laying of charge sheet against the accused in Spl.C.C.No.165/2013 are concerned it is relevant to refer the order passed by the learned Single Judge of this Court in W.P.No.10335/1998 c/w W.P.No.19766/2005 (GM- MM/S) dated 31.03.2008. It is pertinent to note here that the said dispute had been agitated before the High Court of Karnataka in W.P.No.10335/1998 which was filed by M/s.NMDC against State of Karnataka, Director of Mines and Geology, Additional Surveyor General of India, Deccan Mining Syndicate Pvt. Ltd. and W.P.No.19766/2005 preferred by accused No.2 and 1 against State of Karnataka, Under Secretary to Government (Mines) Commerce and Industries Department, Director, Department of Mines and Geology, Principal Chief Conservator of Forests, National Mineral Development Corporation Ltd. The High Court of Karnataka vide order :

135. : dated 31.3.2008 disposed of the said writ petitions by common order.

112. It is relevant to state that M/s. National Mineral Development Corporation Ltd., the petitioner in W.P.No.10335/1998 though initially had questioned the notification dated 29.1.1999 renewing the mining lease No.2080 in favour of M/s.Deccan Mining Syndicate Pvt. Ltd., has thereafter questioned the subsequent notification dated 13.6.2006 in renewing the mining lease in favour of DMS for 20 years from 20.5.2006. The grievance of NMDC was that the renewal made by

shifting the original mining area would encroach on the area leased to NMDC under mining lease No.1111 dated 18.10.1972 which according to NMDC encircles the land leased to M.J.Boal in M.L.No.636 and thereafter transferred to DMS. According to them, though DMS are entitled to only 47 acres as per the initial lease and even though the subsequent renewal is to the extent of 47 acres, the renewal made by shifting the area from its original location is not sustainable. However, while :

136. : challenging the same, they contend that the renewal itself is contrary to Section 8(3) of the Mines and Minerals (Development & Regulation) Act read with Rule 24 of the said Rules.

113. M/s. DMS-the petitioner in W.P.No.19766/05 had prayed for issue of writ of certiorari to quash the notification bearing No.CI35MML2005dated 4.4.2005. By the said notification, the Government has accorded the sanction for renewal of mining lease No.1111 for a period of 20 years as per the sketch furnished with effect from 18.10.2002 in favour of NMDC. The grievance of DMS is that if the said renewal is sustained as per the sketch, not only the existing 47 acres would be treated as encircled, but the area of 188 acres which is a free area and to which DMS is an applicant would get included contrary to the fact situation and therefore not sustainable. According to them, the area leased to NMDC does not in fact encircle the area of 47 acres leased in favour of DMS. The entire renewal in favour of NMDC was also questioned on the ground that forest clearance has not been obtained :

137. : despite the area being forest and as such the same is contrary to law.

114. In the above background, the factual matrix to be noticed are that on 19-05-1966 the Government leased 50 acres of land in Kammatharu Village, Kumaraswamy Range, Sandur Taluk, Bellary District in favour of M/s M.J.

Boal for extracting iron ore for a period of 20 years in terms of the provision contained under the MM (D and R Act). During the subsistence of the same, it was transferred in the year 1980 in favour of DMS with the concurrence of the Government. Out of the said 50 acres, three acres of forest land was given up and

the extent retained was 47 acres. Though the initial period was 20 years and subsequent renewal was to be for 20 years, the same was done in two installments, the second of which was with effect from 20.5.1996. The said mining lease is numbered as 2080 and 2080A. Thereafter the same is renewed for a period of 20 years with effect from 20-5- 2006. This lease in favour of DMS was the one questioned by NMDC. The other mining lease is in M.L.No.1111 in :

138. : favour of NMDC which was granted on 18.10.1972 for a period of 30 years. The extent of land leased is 1600 acres mainly in Sandur State Forest which is in Kumaraswamy and Subbarayanahalli Ranges. Though the said land was leased in the year 1972, admittedly the NMDC started mining operations only in the year 1991. Though two different extents of 47 acres and 1600 acres of land are leased to DMS and NMDC respectively, the dispute really is that NMDC contends that the extent of 47 acres is encircled by the land leased to them while DMS contends that the said 47 acres is one of the southern boundaries for the area leased to NMDC and does not encircle the same. DMS further contends that the extent of 1600 acres of NMDC stops short of the area leased to them and as such an extent of 188 acres of Government revenue land which surrounds the said 47 acres leased to them is available for grant of lease and as such DMS has applied for the same. In this scenario, the grievance of NMDC is also that DMS have mined outside the original extent of 47 acres leased to them and while renewing the lease, that mined extent is treated as the 47 acres of DMS :

139. : by shifting the same and as such according to NMDC what is renewed is a portion of the land leased to them. Therefore, renewal of lease in favour of DMS is questioned on all grounds. On the other hand, DMS has questioned the entire renewal in favour of NMDC since the claim of NMDC that the lease granted earlier and renewal would encircle the extent of 47 acres would effect their interest. The consideration of the factual aspect of encircling or otherwise would reduce the intensity of the challenge on other aspects.

115. In this background, a perusal of the indenture of lease dated 18.10.1972 i.e., M.L. No.1111 in favour of NMDC indicates that the extent of land leased is 1600 acres and the boundaries indicated are North by: Sandur State Forest, South by:

M.L. area of M/s S.M. & I.O, M.K. Narayanachar, Sri. M.J.

Boal and P.L. executed by V.S.Lad, on the East by M.L. area of M/s S.M & I.O and M/s Srinivasa Ores and West by: M.L. area of M/s S.M & I.O and Harishankar temple. The plan attached also indicates the sanctioned area at 1600 acres to NMDC and :

140. : the surrounding areas which have been leased to different lessees and the boundaries stated in respect of East, West and North are similar to what has been stated in the lease agreement but the Southern boundary has been mentioned only as SM & IO, M. K.Narayanachar and V.S. Lad.

116. But, in the instant case, the attached plan is purportedly drawn for the area of 1600 acres and the boundaries are shown and obviously while surveying, the tri-junction point should have started from M/s. SM & IO and Harishankar temple since the Southern boundary in the agreement was indicated as SM & IO, M.K. Narayanachar, V.S. Lad and M.L. of M/s M.J.

Boal was also shown as one of the boundaries and therefore the extent of 1600 acres must have been marked within that area. But, despite showing the said boundaries in the map and the extent leased being 1600 acres, admittedly, even as per NMDC even though they claim beyond the area of DMS, the area enclosed therein was 1705 acres which itself indicates that the map cannot be relied on as :

141. : being accurate. Even though NMDC have thereafter relied on the revised map after excluding 105 acres on the western side, the same is made on 8.7.1992 in respect of a lease of 18.10.1972 and by such time already a decade had passed after DMS had made its application on 2.12.1981 seeking for lease of the land surrounding its 47 acres.

117. In this regard, the main aspect which is to be noticed at the outset is that as per the admitted case of NMDC itself, it is not the surrender of any portion of the leased area of 1600 acres, but it is the excess land over the area of 1600 acres. Therefore, the sketch indicating the boundaries to an area which was more than the extent leased was not only defective, but if that area which was found to be

excessive was to be reduced, the choice of either the location or the extent could not have been at the option of NMDC. Though Rule 29 of the MC Rules provides the manner of surrender to be made and even though the option of the area to be surrendered is available to lessee for the reasons stated therein that is a situation wherein the leased area is surrendered and even :

142. : in such event the state Government should permit such surrender. In the instant case, when the Senior Geologist noticed excess land, the proper procedure to bring the sketch in conformity with the lease should have been followed by making appropriate orders, instead NMDC has written letters surrendering the area at its convenience but the further procedure has not been effected by the State Government. But the Additional Director (Mines) by letter dated 8.7.1992 has accepted the change and enclosed plan by stating it as per Rule 27(1)(g) of MC Rules which provides for the demarcation in the plan annexed to the lease. The said plan dated 8.7.1992 would indicate deletion of a portion to detach the area from M.L. area of SM & IO and Hari Shankar temple on the western portion and in the key to the boundaries written in the map and to describe the eastern boundary an insertion is made which is not even legible. But the resultant effect of such alteration of the sketch alone would be that even though the said alteration is made in the sketch, the boundaries indicated in indenture of lease continued to be the same and as such the western boundary has :

143. : remained unaltered as M.L. area of SM & IO and Hari Shankar Temple when it would not be so if a portion is surrendered as claimed. That being the position, the said change could have been done only by the State Government by making the said change in the same manner and procedure adapted while granting the lease and at least at the stage of renewal, the procedure was required to be followed.

118. Apart from the above facts, one other surrounding circumstance of the matter which also requires to be noticed is that DMS applied for mining lease in additional area by application dated 28.1.1981 seeking for the extent of 265 acres i.e., the land in the vicinity of its existing 47 acres. That area in fact is the presently disputed area since according to NMDC that area also is a part of their

M.L.No.1111 encircling the 47 acres of DMS. The rejection of the application by the Government by communication dated 2.12.1981 is however on the ground that the extent available is 240 acres and not 265 acres as sought and also that the same is reserved area. Though the learned :

144. : counsel for NMDC sought to contend that stating it is reserved could also mean for NMDC, the same cannot be countenanced as it would amount to putting words into the mouth of Government when it is not their stand. When this was the position, the Indian Bureau of Mines also did not recommend a portion of it as not being fit for mining due to its terrain and as such excluding the same, the area available was said to be 188 acres and as such DMS once again by their application dated 16.10.1984 applied for the said extent of 188 acres and revision application dated 6.12.1985. The same was rejected by the Government on 26/30.06.1986 on the ground that the area falls within the reserved zone for state exploitation. The learned Senior counsel for DMS in this regard refers to the communication dated 30.12.1985 addressed by the Senior Geologist to the Director of Mines during the process, wherein there is mention of the M.L.No.1111 being of 1600 acres but sketch is encompassing an area of 1788 acres (1600+188) and that 188 acres is to be deleted. However, since the application was rejected, DMS filed revision application which was allowed by order :

145. : dated 30.1.1989 and was remanded to the State Government for passing fresh order on merits. The State Government however rejected the matter on 26.2.1990/2.3.1990 which was communicated by communication dated 22.3.1990 and the reason assigned at that juncture is that the area overlaps with M.L.No.1111. Against the same, DMS filed revision petition which has been allowed on 5.2.1996 and the matter is remanded to the State Government which is pending consideration and the power to do so vests with the State Government. That is one facet of the matter but, the question with regard to overlapping or encircling did not arise only in the context of DMS seeking for 188 acres or due to the renewal of M.L. No.1111, but it arose in the background of renewal of lease for 47 acres itself in M.L.No.2080 initially and thereafter in M.L.No.2080A and the present renewal. Since this issue is to be resolved, this Court by order dated 15.2.2002 passed in this petition ordered the appointment of a Surveyor to

measure the lands and submit the report. The Commissioner appointed is none other than the Joint :

146. : Director of Land Records, Department of Survey and Settlement. By the said order, this Court directed the Commissioner to survey the lands situated in Block Nos. 1, 2, 3 and 4 as per the sketch submitted in the Court. The said sketch was signed by the respective learned counsel. Parties were permitted to be present and produce documents. The Commissioner was permitted to measure the lands with reference to the village map and other official records relating to location of the land. As per the four blocks mentioned, Block-1 is the main area leased to NMDC, Block-2 is the area of 47 acres leased to DMS, Block-3 is the contentious area between NMDC and DMS and Block-4 is the area claimed to have been surrendered by NMDC. The Commissioner has submitted a spot inspection report and mahazar along with a sketch indicating measurements.

119. Therefore, the lease granted in favour of M.J.

Boal and thereafter transferred to DMS in M.L.No.636 and renewed in M.L.No.2080, 2080A and the present renewal cannot encircle the lease in favour of NMDC in :

147. : M.L.No.1111 and as such indicating M.L. of M.J.

Boal as one of the southern boundaries in the indenture of lease was appropriate. However, in view of this finding, the resurvey taking point-A as the starting point at the western end (Hari Shankar Temple) and measuring 1600 acres and redrawing the sketch for the renewed lease of NMDC is to be re-done by the Government in terms of Rule 33 of the MC Rules to determine the extent to which the area of 1600 acres would extend, starting from point A in the western corner and to fix the boundaries accurately. The application of DMS for the additional 188 acres would in that context be worthy of receiving independent consideration thereafter for the land available after such demarcation. Therefore, on all surrounding areas of M/s.Deccan Mining syndicate Pvt. Ltd., there is no such area of M/s.National Mineral Development Corporation.

120. The learned single Judge of this Court in W.P.No.10335/1998 c/w W.P.No.19766/2005 dated 31.3.2008 has analytically addressed the clinching issues :

148. : and considered in detail the disputes emerged in between the parties. The relevant portion of the order reads as under: For all the above said reasons, since the conclusion is that the lease of NMDC in M.L.No.1111 cannot encircle the lease of DMS in M.L.No.636, 2080, 2080A and the present renewal, the prayer sought in W. P. No.10335/98 to quash the notification dated 13.6.2006 cannot be granted nor can the subsequent lease deed dated 15.7.2006 be declared as illegal. Similarly, the notification dated 04.04.2005 impugned in W.P.No.19766/05 need not be quashed in its entirety. However, it is to be clarified that sanction accorded for the first renewal in favour of NMDC for Iron ore over 647.50 hectares (1600 acres) is upheld, but not as per the sketch appended thereto. The sketch shall however be redrawn after measuring the extent of 1600 acres starting from the point A at the end point of ML of M/s. SM & IO near Hari Shankar Temple. The final order of High Court in the above said writ petitions is hereunder: i) W.P.No.10335/1998 and W.P.No.19766/05 are disposed of in the above terms with the following directions. ii) The respondent-State Government is directed to secure the survey done in terms of Rule 33 of the MC Rules keeping in view the above :

149. : observations and redraw the sketch to accompany the renewal of ML No.1111 and shall thereafter treat the same as the sketch pursuant to notification dated 04.04.2005 and may also issue corrigendum if need be. iii) The renewed lease deed in favour of NMDC shall be executed enclosing the sketch to be prepared in the manner stated above and NMDC will be entitled to carryout mining operations in such area subject to compliance of other legal requirements. iv) Parties to bear their own costs. Further, it was observed that the parties have been litigating on this aspect of the matter, it would be appropriate that a joint survey be conducted by the State Government though in terms of Rule 33 of the MC Rules in the presence of representatives from NMDC and DMS. Since the Court had appointed the Joint Director of Land Records, Survey and Settlement as the Commissioner, it would be appropriate for the Director of Land Records to carry

out the survey to be conducted. The correct point on the north-east corner of M.L.No.1111 of NMDC with the common boundaries of M/s.SM & IO shall be :

150. : identified and for this purpose the point identified in the survey dated 28.11.1991 shall form the point since there is no agreement on Q, Q1, and Q2 earlier marked by the Joint Director of Land Records. With the said points on the western and the north-eastern point being identified, the survey shall be conducted to earmark the area of 1600 acres and based on such survey, the sketch to accompany the renewal of M.L.No.1111 vide notification dated 4.4.2005 shall be prepared and the same shall form the part of mining lease of NMDC. These are all the clinching issues which were dealt in detail and considered by the learned single Judge of this Court in the above referred writ petitions in respect of the dispute that emerged in between the parties.

121. Learned Senior counsel Sri Hasmath Pasha while addressing his arguments referred to the maxim *Suppressio Veri* or *Suggestio Falsi* which means Suppression of truth or Suggestion of an untruth. This maxim has emerged as a rule of equity, as well as a rule of law. It means that when with respect to a material fact of :

151. : the case, either suppression of truth or suggestion of a false statement is proven, then the injured party can seek relief. Both of these are considered to be equally wrong. This maxim is most often useful to rescind the contracts entered between parties, in order to ensure that all material facts are disclosed whilst making any agreement. Therefore, an important facet of this maxim is observed under the principle of good faith under general contracts as well as under special legislations like insurance contracts. It is also contended by learned Senior counsel relating to dwelling in detail each role of accused as well as the petition which is filed by CBI/ACT seeking intervention of the impugned order passed by the trial Court in Spl.CC.No.165/2013 dated 30.01.2016. Whereas the learned trial Judge has gone through entire materials which were secured by the investigating officer during the course of investigation and also dwelling in detail about the list of witnesses and list of documents and arrived at conclusion in the statement of witnesses by the investigating agency - CBI/ACB relating to initiation of criminal

prosecution against the accused persons. :

152. :

122. But, however, keeping in view the ambit and scope of Sections 227/239 of Cr.P.C. it is always the domain vested with the prosecution to proceed if the circumstances are warranting. But in the instant case, Accused Nos.1 to 7 have been discharged of the offences by the trial Court by allowing the applications i.e., I.A.Nos.7, 13, 14, 24 and 25 and application dated 6.2.2015 filed by them under Sections 227/239 of Cr.P.C. I.A.No.13 is filed by accused Nos.1 and 2 under Section 239 of Cr.P.C. I.A.No.14 is filed by accused No.3 under Section 239 of Cr.P.C. I.A.No.7 is filed by accused No.4 under Section 239 of Cr.P.C. Accused No.5 has filed application dated 6.2.2015 under Section 227 of Cr.P.C. I.A.No.24 is filed by Accused No.6. I.A.No.25 is the application under Section 227 of Cr.P.C. filed by accused No.7. But however, Section 239 of Cr.P.C. deals with under what circumstances the accused shall be discharged. If upon considering the police report and the document sent with it under Section 173 of Cr.P.C. and making such examination if any of the accused as the :

153. : Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. In the instant case, the Court below has considered the applications filed by the accused persons seeking discharge, after going through the entire material, statements of witnesses, oral and documentary evidence and came to the conclusion that since the prosecution has failed to prove from the statements of witnesses under Section 161 of Cr.P.C. as well as documents relied by it that Accused No.2 - Company has encroached area of NMDC and thereby it has illegally carried out mining operation and exported iron ore from the area does not belongs to them, does not hold any water as the area leased to M/s.DMSPL - Accused No.2 is not at all encircling in any direction to the area of M/s.NMDC. The trial Court by making such observations allowed the applications filed by accused Nos.1 to 7 and discharged of the offences lugged against them. :

154. :

123. Further, it is relevant to refer Section 227 of Cr.P.C. which reads as under:

227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

124. Section 239 of Cr.P.C. which postulates when accused shall be discharged - If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. In the instant case, the Magisterial powers has been exercised :

155. : by the rank of the District and Sessions Judge in Spl.CC.No.165/2013 as where accused Nos.1 to 7 have filed applications under Sections 227/239 of Cr.P.C seeking discharge.

125. In the instant case, it is necessary to examine +the scope of such exercise made by the Special Judge and even under Section 227 of Cr.P.C. part of Chapter 18 which applies to trial before the sessions court. But in the instant case, the Special Judge is of the rank of District and Sessions Judge. Discharge - If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. The language of Sections 239 and 227 are different. The scope of power exercisable to grant discharge under Section 227 is less compared to the power of discharge conferred on the Magistrate under :

156. : Section 239. But in the instant case, the Magisterial power is conferred to the Special Judge being rank of District and Sessions Judge. It is for this reason Sessions Judge is required to examine only the record of the case and documents

submitted therewith for ascertainment as to whether a case is made out for framing charge or discharge. But under Section 239, the requirement is different. It envisages ' If upon consideration the police report i.e., CBI report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.' But in the instant case, the applications filed by Accused Nos.1 to 7 were allowed by considering all oral and material documents secured by the investigating agency by laying the charge sheet as against the accused as contemplated under Section 173(2) of Cr.P.C. :

157. :

126. But while considering the case of discharge the trial Judge has to exercise his judicial mind to the facts of the case in order to determine whether the case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or documents produced before the court which ex-facie disclosed that there was suspicious circumstance against the accused. Then the trial Judge has to apply its mind to proceed with the case in further to framing of charge and so also, facing of trial by the accused. This Section 227 of Cr.P.C. is in Chapter XVIII - Trial before a court of session. But the trial court i.e., XLVI Addl.City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore in Spl.C.C.No.165/2013 has considered the applications filed under Sections 227/239 of Cr.P.C by Accused Nos.1 to 7. But the trial Judge is a rank of District and Sessions Judge but the concept of Section 239 of Cr.P.C the charge sheet is laid before the Magistrate but the trial Judge of the rank of District and Sessions Judge as in a special cases having Magisterial powers. Therefore, even to exercise the power :

158. : as contemplated under Section 239 of Cr.P.C seeking discharge as the trial Court having Magisterial powers also be discharging the accused as the trial Judge has to apply its mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The materials which

secured by the IO during the course of investigation other than those produced by the prosecution can also be looked into and should be considered even at the time of framing of charge to find out whether prima-facie case is made out or not.

127. But in the instant case, the charge sheet is laid by the investigating agency - CBI/ACB under Section 173(2) of Cr.P.C. Mere because of laying of charge sheet against the accused by the investigating agency for the offences which lugged in the charge sheet, but the accused are having right of recourse to file an application under Section 239/227 of Cr.P.C. seeking discharge if there are no sufficient evidence or materials secured by the IO to framing of a charge. If there are no strong :

159. : materials find place in the charge sheet case, then the trial Judge has to apply its mind to consider the application filed by the accused seeking discharge. But in the instant case, Accused Nos.1 to 7 have filed applications under Section 227/239 of Cr.P.C. seeking discharge. Subsequent to filing of applications, the Special Public Prosecutor has filed objections to the said applications in detail by referring the statement of witnesses and so also referring the material documents secured by the IO and ultimately accepting the arguments of learned counsel for Accused Nos.1 to 7 allowed the applications seeking discharge. Therefore, the XLVI Additional City Civil and Sessions Judge and Special Judge for CBI Case, Bangalore has rightly come to the conclusion that there are no sufficient materials/evidence against the accused persons to proceed in further for framing of charge and consequently, they were discharged from the case. Therefore, in these petitions, there are no merits or otherwise to say there is no substance to call for interference of this Court and no warranting :

160. : circumstances has arised for intervention of the impugned order passed by the trial court in Spl.C.C.No.165/2013 dated 30.01.2016. In terms of the aforesaid reasons and findings, I proceed to pass the following:

ORDER

The Criminal Revision Petitions filed by the Petitioner - CBI/ACB, Bengaluru under Sections 397 r/w 401 of Cr.P.C. are hereby rejected. Consequently, the impugned order passed by the XLVI Addl.City Civil and Sessions Judge and Special Judge

for CBI cases, Bangalore City in Spl.C.C.No.165/2013 dated 30.01.2016 allowing I.A.Nos.7, 13, 14, 24 and 25 and application dated 6.2.2015 and discharging accused Nos.1 to 7 is hereby confirmed. Ordered accordingly. Sd/- JUDGE KS/DKB

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com