

Umesh Kumar Ips Vs. the State of Andhra Pradesh, Rep. by Its Public Prosecutor

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Court : Andhra Pradesh

Decided On : Apr-11-2012

Judge : Ramesh Ranganathan

Appeal No. : CRIMINAL PETITION No.12791 OF 2011

Appellant : Umesh Kumar Ips

Respondent : The State of Andhra Pradesh, Rep. by Its Public Prosecutor

Advocate for Pet/Ap. : Sri. P. Nageswara Rao, Sri. P. Nageswara Rao Learned Counsel

Judgement :

Criminal Petition No.12791 of 2011 is filed under Section 482 of the Criminal Procedure Code to quash the charge sheet in C.C. No.555 of 2011, (later renumbered as C.C. No.846 of 2011) on the file of the Court of the Chief Metropolitan Magistrate, Nampally, Hyderabad.

2. The case of the prosecution, as detailed in the charge sheet, is that a forged letter dated 22.04.2011 was sent in the name of Sri M.A. Khan (Rajya Sabha M.P.) to the Ministry of Home Affairs, Government of India enclosing thereto a forged letter dated 19.4.2011 alleged to have been addressed to him by the All-India Banjara Seva Samithi, along with certified copies of a large number of documents.

On receipt of the said complaint the Ministry of Home Affairs, vide letter dated 05.05.2011, called for a detailed report from the Chief Secretary, Government of Andhra Pradesh, marking a copy of the said letter to Sri M.A. Khan. On 23.05.2011 Sri M.A. Khan addressed a letter to the Secretary, Ministry of Home Affairs, marking a copy to the Chief Secretary, Government of Andhra Pradesh, stating that no such letter was addressed by him; his signature was forged; and these acts were done by unscrupulous persons. Again, by his letter dated 22.06.2011, Sri M.A. Khan requested the Secretary, Ministry of Home Affairs to take the matter seriously, and cause an enquiry by the CBI. The State Government issued memo dated 02.08.2011 requesting the Additional Director - General of Police, CID to conduct an enquiry on the issues referred to therein. He, in turn, directed Sri M. Malla Reddy DSP-CID to enquire into the matter. After enquiry, Sri M. Malla Reddy submitted his enquiry report dated 22.08.2011. Cr. No.53 of 2011 was registered on 25.08.2011 by the P.S. CID Hyderabad under Section 468, 471 and 120-B IPC, and the matter was investigated into. A charge sheet in C.C. No.555 of 2011 (later renumbered as C.C. No.846 of 2011) was filed on 14.11.2011 wherein the petitioner (the 3rd accused) is alleged to have authored a forged letter; Sri T. Sunil Reddy (the 1st accused) is alleged to have forged the signature of Sri M.A. Khan, Member of Parliament (Rajya Sabha) on the said letter; and Sri Donthula Lokesh (Accused No.2) is alleged to have extended his co-operation in making a single search application with fictitious names, and to have secured 31 registered documents pursuant to the conspiracy hatched among themselves. All the three accused are alleged to have committed offences under Sections 468 and 471 read with Section 120-B IPC. The charge sheet also alleges that the petitioner, with the criminal intention of screening the evidence, had formatted the computer; deleted information relating to the commission of the offence; and was, therefore, liable to be punished under Section 201 IPC.

3. The allegations in the charge sheet are that the petitioner is the master-mind behind the offence; he entertained a mala fide intention of defaming a senior colleague officer to deprive him of his chances of being appointed as the DGP, Andhra Pradesh; the petitioner had close contacts with Sri T. Sunil Reddy (A-1), both over the phone and in person; the petitioner opened the IGRS website on his office computer, collected details of the documents registered in the name of Smt.

Kamala Reddy W/o Sri V. Dinesh Reddy and others; the petitioner gave the registered document numbers of the said land transactions (31 in number) to A-1, and asked him to obtain certified copies thereof; the petitioner had the certified copies of the said documents collected through A-1, A-2 and L.W.15; he also downloaded details of 542 registered documents of immovable properties standing in the names of Sri Y. Ravi Prasad and Sri A. Krishna Reddy, both of whom had entered into an agreement of sale cum GPA with Smt. V. Kamala Reddy for a limited extent of area of which certified copies of documents were obtained under CARD (computer aided registration details); the petitioner had forwarded the same, along with the forged letter, to the Ministry of Home Affairs, Government of India; he had prepared a false letter on the letter head of Sri M.A. Khan, M.P.(Rajya Sabha), and had asked A-1 to forge the signature of the M.P. luring him with financial and other benefits in the event of his becoming the DGP in future; A-1, having got lured by the petitioner, had forged the signature on the said false document as per their conspiracy to do an illegal act; the petitioner had also prepared a false letter in the name of Tejawath Ramulu Naik, President of the All India Banjara Samithi; and sent the letter dated 22.4.2011 to the Ministry of Home Affairs, New Delhi.

4. The prosecution relied not only on the confession statement of Sri T. Sunil Reddy (A-1) recorded by the VI Addl. CMM Court after he was tendered pardon under Section 306 IPC, but also the statements of Sri Manda Srinivas Reddy (LW17), Sri N. Muralidhar Sheshadri (LW18), Sri Musthafa Moinuddin (LW19), Sri Purushotham (LW20); LW17 to LW20 were the nodal officers of various telephone companies which had furnished the call details between A1 and A3 during the relevant period. The prosecution also relied on the statement of Sri S. Ashok (L.W.14) and Sri M. Suresh Babu (LW12) who spoke about allotment of computers to the petitioner, and in giving him the access code to the IGRS website as Addl. DG, ACB; they had also furnished the FSL report of examination of the computer seized from the ACB office; the statements of Sri N. Sarath Reddy (LW15), Sri R. Srikanth (LW3), Ms M.V. Nivedita (LW4), Sri Chandra Sekhar (LW2), Sri M.A.Khan, MP (LW13), Ramawath Roop Singh (LW6), Nayeemuddin (LW5), and Smt. D. Vasanthi (LW10) were recorded; LWs5, 6 and 10 had stated that there was no person by name Tejawath Ramulu Naik in Banjara Seva Samithi, working

as the organizing secretary, and there was no H.No.2-34/A1. Along with the charge-sheet, the prosecution also enclosed the opinion of the Andhra Pradesh Forensic Science Laboratory; the forged letter of Sri M.A. Khan on his letter head, enclosed with a letter purported to have been written by the All India Banjara Seva Samithi, R.R. District dated 19.4.2011 along with 31 registered documents of Smt. V. Kamala Reddy, Ms. S. Nalini, and other encumbrance certificates of Sri A. Krishna Reddy and Sri Y. Ravi Prasad numbering about 760 pages, which were sent to the Ministry of Home Affairs on 22.04.2011.

5. Oral submissions were made, and written argument filed, both by Sri P. Nageswara Rao, Learned Counsel for the petitioner, and the Learned Public Prosecutor. As the contentions urged in this petition also have a bearing on W.P. No.31927 of 2011, in so far as Section 468 IPC is concerned, Sri C.Padmanabha Reddy, Learned Senior Counsel appearing on behalf of the fifth respondent in the said Writ Petition (i.e., Sri V. Dinesh Reddy, DGP), was also heard.

SECTION 482 Cr.P.C. - ITS SCOPE:

6. Sri P. Nageswara Rao, Learned Counsel for the petitioner, would refer to several allegations made in the charge-sheet to submit that, since the petitioner has been charged of committing offences under Sections 471, 468, 120-B and 201 IPC, the allegations in the charge sheet, coupled with the documents enclosed thereto, should disclose commission of the said offences; neither the ingredients of Sections 471 nor of Section 468 IPC are attracted even on a bare reading of the charge sheet, and the documents enclosed thereto; and, as such, the charge sheet in C.C. No.846 of 2011 is liable to be quashed.

7. Learned Public Prosecutor would submit that the petition under Section 482 Cr.P.C. was presented after a charge sheet was filed, and after the Learned Magistrate had taken cognizance of the case; at this stage it is not open to this Court either to sift or appreciate the evidence and come to the conclusion that no prima facie case is made out; and it is only if no cognizable offence is made out, would it necessitate the charge sheet being quashed in exceptional cases i.e., in the rarest of rare cases of mala fide initiation of proceedings to wreck private vengeance.

8. Sri C. Padmanabha Reddy, Learned Senior Counsel, would submit that, while dealing with the Sections relating to the aforesaid offences, it is necessary also to consider the relevant provisions of the Cr.P.C; Section 173 Cr.P.C. refers to what all a charge sheet should contain; a bare reading of Section 173 Cr.P.C, in its entirety, reveals that no obligation is cast on the prosecution to incorporate all the ingredients in the charge sheet; a charge sheet, as understood in law, is only a gist of facts placed before the Magistrate after investigation; it need not crystallize all the ingredients of all the offences under the Sections referred to in the charge sheet at this stage itself; and from Section 173(8) Cr.P.C. it can be inferred that the prosecution can always collect or place further evidence, during the course of the trial, in fortifying the offences it has charged in the charge sheet.

9. Before the rival contentions urged by counsel on either side are examined it is necessary to briefly note the scope and extent of the jurisdiction of this Court under Section 482 Cr.P.C, which the petitioner has invoked in the present case. Section 482 Cr.P.C saves the inherent power of the High Court and, thereunder, nothing in the Code of Criminal Procedure shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 482 Cr.P.C. does not confer any new power on the High Court. It only saves the inherent power which the Court possessed even before the enactment of the Code. All courts whether civil or criminal, in the absence of any express provision, possess, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising power, under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the Section, though wide, has to be exercised sparingly, carefully, with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and, if any attempt is made to abuse that authority so as to produce injustice, the court

has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the power, the Court would be justified in quashing any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the material to assess what the complainant has alleged, and whether any offence is made out even if the allegations are accepted in toto. (**State of Karnataka v. M. Devendrappa** ((2002) 3 SCC 89).

10. In the following categories of cases the power under Section 482 Cr.P.C. can be exercised either to prevent abuse of the process of court or otherwise to secure the ends of justice. (a) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not, prima facie, constitute any offence or make out a case against the accused; (b) Where the uncontroverted allegations made in the FIR or the complaint, and the evidence collected in support of the same, do not disclose the commission of any offence, and make out a case against the accused; and (c) Where a criminal proceeding is manifestly attended with malafides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, and with a view to spite him due to private and personal grudge. (**State of Haryana v. Bhajan Lal** (AIR 1992 SC 604).

11. Jurisdiction under Section 482 of the Code has to be exercised with great care. (**G. Sagar Suri v. State of U.P.**, (2000) 2 SCC 636); **State of Karnataka v. L. Muniswamy** (1977) 2 SCC 699). The power possessed by the High Court under Section 482 of the Code are very wide, and the very plenitude of the power requires great caution in its exercise. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court, being the highest court of a State, should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without

sufficient material. (**Janata Dal v. H.S. Chowdhary** (1992) 4 SCC 305) and **Raghubir Saran (Dr) v. State of Bihar** (AIR 1964 SC 1).

12. The High Courts should not exercise their inherent power to repress a legitimate prosecution. (**M. Devendrappa (supra)**). When the investigation officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise of the inherent power to quash the charge-sheet. (**State of Bihar v. Rajendra Agrawalla** (1996) 8 SCC 164). The power to quash criminal complaints should be used sparingly and with abundant caution. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence. (**Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy** (2011(2) ALD 948 (SC); **Rajesh Bajaj v. State** (1999) 3 SCC 259); **Indian Oil Corporation v. NEPC India Ltd.** (2006) 6 SCC 736). The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. (**Rajesh Bajaj (supra)**; **Bhajan Lal (supra)**).

13. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable, and on such a premise arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent power to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of its inherent powers under Section 482 of the Code. It is, however, not necessary that

there should be a meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that, on consideration of the allegations in the light of the statement made on oath of the complainant, the ingredients of the offence or offences are disclosed; and there is no material to show that the complaint is malafide, frivolous or vexatious; there would be no justification for interference by the High Court.**(Rajesh Bajaj (supra))**. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence. **(Padal Venkata Rama Reddy (supra))**.

14. Section 173 (2) Cr.P.C. requires the investigating officer to forward to the Magistrate a report, in the Form prescribed by the State Government, stating the details mentioned therein. Under sub-section 5(a) and (b), the documents which the prosecution proposes to rely on, and the statements recorded under Section 161, have also to be forwarded. Under sub-section (8), nothing in Section 173 shall be deemed to preclude further investigation in respect of an offence, after a report under sub-section (2) has been forwarded to the Magistrate. Section 173(8) merely enables further investigation, if need be, to be conducted. It does not fetter exercise of inherent jurisdiction of this Court under Section 482 Cr.P.C. As noted here in above, the scope of enquiry in proceedings under Section 482 Cr.P.C. is limited to an examination whether the charge sheet, and the documents enclosed thereto, contain even bald and bare allegations attracting the ingredients of the offence of which the accused are charged. This Court would not be justified in presuming that further investigation, if carried out, would bring to light new facts which may satisfy the ingredients of the offence of which the accused are now charged. It is only the contents of the complaint/charge sheet, and the documents enclosed thereto, as on date which is required to be examined by this Court while exercising its inherent jurisdiction under Section 482 Cr.P.C.

ALLEGATIONS OF MALAFIDES:

15. Sri P. Nageswara Rao, Learned Counsel for the petitioner, would contend that the charge sheet in C.C. No.846 of 2011 is vitiated by malice as the very initiation

of criminal proceedings was at the behest of Sri V.Dinesh Reddy, DGP; and it was on his specific directions, vide letter dated 24.08.2011, that the complaint in Cr. No.53 of 2011 was lodged at the CID PS by Sri M. Malla Reddy, DSP.

16. Learned Public Prosecutor would deny malice either on the part of the State or Sri V. Dinesh Reddy or that they were biased against the petitioner. He would submit that, when an information is lodged at a police station, and a complaint is registered, the malafides of the informant is of secondary importance, of no consequence, and cannot be the basis for quashing the charge sheet. It is only the material collected during the course of investigation, and the evidence led in the Court, which decides the fate of the accused. It is not a case where either Sri V. Dinesh Reddy or the State had, on its own, directed any police officer to lodge a complaint suo motu, and undertake investigation. It is also nobody's case that Sri V. Dinesh Reddy or the State, on its own, had directed any individual to initiate prosecution against the petitioner or to have got the offence investigated with the help of the police machinery.

17. It is no doubt true that when an information is lodged at the police station, and an offence is registered, the malafides of the informant would be of secondary importance; it is the material collected during the investigation and evidence led in court which decides the fate of the accused; the allegations of malafides against the informant are of no consequence, and cannot by themselves be the basis for quashing the proceedings. (**Dhanalakshmi v. R. Prasanna Kumar** (1990) Supp. SCC 686), **State of Bihar v. P.P. Sharma** (1992) Supp.(1) SCC 222), **Rupan Deol Bajaj v. Kanwar Pal Singh Gill** (1995) 6 SCC 194), **State of Kerala v. O.C. Kuttan** (1999) 2 SCC 651), **State of U.P. v. O.P. Sharma** (1996) 7 SCC 705), **Rashmi Kumar v. Mahesh Kumar Bhada** (1997) 2 SCC 397), **Satvinder Kaur v. State (Govt. of NCT of Delhi)** (1999) 8 SCC 728); **Rajesh Bajaj (supra)**; and **M. Devendrappa (supra)**. Can this principle be extended even to cases where the allegation of malafides are leveled by a senior police officer (in the cadre of Director-General) against the Director-General of Police of the State of Andhra Pradesh? The law presumes that on an information being lodged at a police station, the complaint would be investigated by the police; and, as investigation is by an independent investigation agency, the motives of the informant in lodging

the complaint matters little as the truth or otherwise of the allegations in the complaint would come to light on the matter being investigated by the police. Would this Court be justified in extending this legal premise even to cases where the complaint is lodged on the specific directions of the Director-General of Police, vide his letter No.C.No.57/DGP/CAMP/2011 dated 24.08.2011, under whose overall control the entire police machinery in the State, (including the CBCID which carried out the investigation, filed the complaint on 25.08.2011, and later a charge sheet on 14.11.2011), functions? The fact that the complaint was lodged on the specific directions of the Director-General of Police, in his letter No.C.No.57/DGP/CAMP/2011 dated 24.08.2011, has not only not been disclosed to this Court, but has also not been brought to the notice of the Learned Public Prosecutor who, evidently unaware of this letter dated 24.08.2011, has specifically stated, in his written submissions, that **“This is not a case where Sri V.Dinesh Reddy as alleged nor the State on its own directed any Police Officer to lodge a complaint suo motto and undertake the investigation. This is also not a case where the said Sri V.Dinesh Reddy nor the State directed any individual to initiate the prosecution against the petitioner/A-3 and thereby with the help of police machinery got investigated into the offence”**

18. The fact, however, remains that a charge sheet has already been filed, and the matter is before the Learned Chief Metropolitan Magistrate. It is not as if the DGP can exercise control over judicial proceedings. I see no reason, therefore, to delve on this aspect any further or to quash the proceedings in C.C. No.555 of 2011 (renumbered later as C.C. No.846 of 2011) on this ground.

I. SECTION 471 IPC:

19. In so far as the charge under Section 471 IPC is concerned, Sri P. Nageswara Rao Learned Counsel for the petitioner, would submit that it was not the case of the prosecution that the petitioner intended to deceive any person; the allegations in the charge sheet were only that the petitioner intended to expose Sri V. Dinesh Reddy IPS as he did not disclose, in his annual property statement submitted to the Central Government, details of the properties transacted by his wife; the petitioner would have a fair chance if Sri V. Dinesh Reddy was exposed badly;

and, in order to draw attention of the Joint Secretary (Police-I), Ministry of Home Affairs, Government of India, the petitioner (A-3) had conspired with A-1 in preparing the letter. Learned Counsel would contend that the alleged fraudulent and dishonest acts must be with the intent to cause damage or injury; the charge sheet nowhere alleges that the mind and reputation of any person had been harmed; as the prosecution had attributed wrongful loss to Sri V. Dinesh Reddy they should have first enquired whether the facts stated in the letter were true or false; if the facts stated therein, that the wife of Sri V. Dinesh Reddy had assets in her name which Sri V. Dinesh Reddy had not disclosed in his annual property statement to the Government, are found to be true, then wrongful loss cannot be said to have been caused to him, or wrongful gain to the petitioner; the letter was only a complaint against Sri V. Dinesh Reddy IPS with a request that an impartial enquiry, by a competent agency, be conducted; Sri V. Dinesh Reddy did not even mention that there was wrongful loss to him; he was neither examined nor was he cited as a witness; the mere statement of the investigating officer that injury was caused or that it was directed against Sri V. Dinesh Reddy IPS, without even ascertaining from him whether he was injured or if his reputation had suffered or whether he had suffered loss, is imaginary and without any basis; if the facts mentioned in the alleged forged letter were true no wrongful loss can be said to have been caused to anyone; the mere fact that the petitioner would then have had a fair chance to become the DGP would not amount to wrongful gain, but would be something which he had legally gained, and not gained illegally; and, therefore, there was no wrongful gain to the petitioner, and gaining rightfully was not an offence. According to the Learned Counsel the charge sheet does not allege that the body, mind, reputation of any person was harmed; and the allegation that wrongful loss was intended to be caused to Sri V. Dinesh Reddy was without basis.

20. On the other hand, the Learned Public Prosecutor would submit that this was a case where the crime was registered which, ultimately, culminated in the filing of a charge sheet after an enquiry was conducted into the entire episode; statements of a large number of witnesses was recorded, and voluminous documentary evidence was collected; the charge sheet alleges that Sri T. Sunil Reddy (A1) and the petitioner (A3) had perpetrated the illegal act of forging a letter, and sending it

to the Ministry of Home Affairs, Government of India; these allegations in the charge-sheet satisfy the ingredients of Section 471 IPC i.e of the petitioner knowing, or having reason to believe, the document to be forged and using it as genuine; if the allegations in the charge sheet are accepted as true it is evident that A.1 had forged the signature of Sri M.A. Khan in the presence of, and with the knowledge of, the petitioner who knew that the said letter was forged; the document, in question, is the letter sent to the Secretary, Home Affairs in the name of Sri M.A. Khan, Member of Parliament, Rajya Sabha; the allegations in the charge sheet disclose that the petitioner had made the document with the intention of causing it to be believed that the said letter was made and signed by Sri M.A. Khan; the petitioner was aware that the said letter was not signed by Sri M.A. Khan; and it is also alleged in the charge sheet that the intention of making the false document was to cause damage or injury to Sri V. Dinesh Reddy.

21. Section 471 enjoins that whoever fraudulently or dishonestly uses as genuine any document, which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. (**Dr. S. Dutt v. State of U. P.**, (AIR 1966 SC 523). Under Section 470 IPC a false document made wholly, or in part, by forgery is defined to be a “**forged document**”. Under Section 463 IPC whoever makes any false document, or part of a document, with the intention to cause damage or injury to the public or to any person, or with the intention to commit fraud or that fraud may be committed, commits forgery. “**Fraud**” is made up of two ingredients, deceit and injury. To deceive is to induce a man to believe that a thing is true which is false, and which the person practicing the deceit knows or believes to be false. To defraud is to deprive by deceit. It is by deceit to induce a man to act to his injury. More tersely it may be put that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action. (**Jibrial Diwan v. State of Maharashtra** (1997 CRI.L.J (SC) 4070);In **Re London and Globe Finance Corporation Ltd** (1903-1 Ch 728 at p. 732). The words “**intent to defraud**” are not synonymous with the words “**intent to deceive**”. It requires some action resulting in a disadvantage which, but for the deception, the person defrauded would have avoided. (**Jibrial Diwan (supra)**;**Dr. S.Dutt (supra)**). The element of “injury”, in the expression “**defraud**”, is something other than economic loss, i.e., deprivation of

property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such other. In short, it is a non-economic or a non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (**Jibrial Diwan (supra)**; **Dr. Vimla v. The Delhi Administration** (1963(2) CrL.J.434 (SC)). By Section 24 of the Code a person does a thing “**dishonestly**” who does it with the intention of causing wrongful gain or wrongful loss. It is not necessary that there should be an intention to cause both. On the analogy of this definition, it might be said that either an intention to secure a benefit or advantage on the one hand, or to cause loss or detriment to the other, by means of deceit, is an intent to defraud. (**Jibrial Diwan (supra)**; **Kotamaraju Venkatarayadu v. Emperor** (ILR 28 Mad 90 (Madras High Court DB); **R. v. William** (1960) 1 All ER 260).

22. Under Section 464 IPC, a person is said to make a false document who dishonestly or fraudulently makes, signs or executes a document or a part of a document with the intention of causing it to be believed that such document was made, signed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed or executed. The definition of “**false document**” is a part of the definition of “**forgery**”. Both must be read together. If so read, the ingredients of the offence or forgery are:- (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority; and (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, mens rea described both in Section 464 i.e., “**fraudulently**” and “**the intention to commit fraud**” in Section 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of the other intentions mentioned in Section 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. In Section 464 two adverbs, “**dishonestly**” and “**fraudulently**” are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. The word “**defraud**” includes

an element of deceit. Deceit is not an ingredient of the definition of the word "**dishonestly**" while it is an important ingredient of the definition of the word "**fraudulently**". The juxta-position of the two expressions "**dishonestly**" and "**fraudulently**" used in the various sections of the Code indicates their close affinity and, therefore, the definition of one may give colour to the other. To illustrate, in the definition of "**dishonestly**", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "**fraudulently**" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. (**Jibrial Diwan (supra)**;**Dr. S. Dutt (supra)**; **Dr. Vimla (supra)**). While in most cases of an intention to defraud the intention is to cause an economic loss, there is no reason to introduce any such limitation. Provided that the intention is to cause the person deceived to act to his real detriment it matters not that he suffers no economic loss. It is sufficient if the intention is to deprive him of a right or to induce him to do something contrary to what it would have been his duty to do, had he not been deceived. (**Jibrial Diwan (supra)**;**William (supra)**).

23. The allegations in the charge sheet are that Sri T. Sunil Reddy (A-1), in his confession statement before the police, had stated that, on the request of the petitioner on 22.04.2011, he had gone over to the petitioner's office, and was asked to sign on a letter prepared by the petitioner purported to have been written by Sri M.A. Khan; he had then signed on the letter of Sri M.A. Khan; Sri M.A. Khan (L.W-13), in his statement, had stated that he had never sent such a letter; the admitted signatures of Sri M.A. Khan, and the signature on said letter, were sent for comparison to the handwriting expert; and, on comparison, the signature on the letter did not tally with the original signature of Sri M.A. Khan. These allegations, if taken at face value and accepted as true, (which is the test under Section 482 Cr.P.C), show that the petitioner was instrumental in making and signing the letter with the intention of causing it be believed that such a letter was made and signed by, or by the authority of, Sri M.A. Khan knowing that it was not made and signed by him. These allegations disclose that the petitioner had, in sending the letter, (wherein the signature of Sri M.A. Khan was forged), to the Secretary, Ministry of

Home Affairs, New Delhi, used as genuine the said letter though he knew that the letter was forged.

24. The requirement of the charge sheet, alleging that the false document was made with the intention to cause damage or injury to any person, (the necessary ingredient of “**forgery**” under Section 463 IPC), is also satisfied. The charge sheet records the statement of the first accused Sri T. Sunil Reddy that the petitioner had informed him that he had got some petitions generated against Sri V. Dinesh Reddy; and he had a fair chance of becoming the Director-General of Police, if only Sri V. Dinesh Reddy IPS was exposed badly. These allegations would suffice to show the petitioner’s intention of causing damage or injury to the prospects of Sri V. Dinesh Reddy, IPS, becoming the DGP.

25. This would not, however, suffice for, it is only if the charge sheet discloses that the petitioner had “**fraudulently**” or “**dishonestly**” used the said letter of Sri M.A. Khan which he knew to be forged, would Section 471 IPC be attracted. The words ‘**dishonestly**’ and ‘**fraudulently**’ have been defined respectively in Sections 24 and 25 of the Indian Penal Code. ‘**Dishonestly**’ has been defined to mean that, whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another, is said to do that thing ‘**dishonestly**’. The word ‘**fraudulently**’ has been defined to mean that a person is said to do a thing “**fraudulently**” if he does that thing with the intent to defraud, but not otherwise. (**Dr. S. Dutt (supra)**). The expression “**wrongful gain**” and “**wrongful loss**” are defined in Section 23 IPC; “**wrongful gain**” is gain by unlawful means of property to which the person gaining is not legally entitled to; wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled to; and a person is said to gain wrongfully, when such person retains wrongfully, as well as when the other person is wrongfully deprived of property. The word “**injury**” is defined in Section 44 as any harm illegally caused to any person in body, mind, reputation or property. Section 471 IPC is not attracted if there is no dishonest intention on the part of the accused or if the accused has not acted fraudulently. (**Parminder Kaur v. State of U.P.** (2010 CRI.L.J. 895).

26. It is specifically alleged in the charge sheet that the first accused Sri T. Sunil Reddy had stated that, during the 3rd week of April, 2011, on the petitioner's request he had met him; the petitioner took out one letter head carrying the name of Sri M.A. Khan, and made a print out; he asked Sri T. Sunil Reddy (A-1) to sign on the said letter head paper; the petitioner told A-1 that he had a fair chance to become the DGP, if only Sri V. Dinesh Reddy IPS was exposed badly; the petitioner lured A-1 informing him that he would be in service till 2014 and, if he became the DGP, he would take care of A-1 providing him certain financial benefits by effecting transfers, postings and in solving supporting cases etc; A-1, lured by the assurances of the petitioner, had forged the signature of Sri M.A. Khan, (Member of Parliament - Rajya Sabha) on the letter head; and the petitioner had sent the same to the Ministry of Home Affairs.

27. As noted hereinabove, in order to satisfy the definition of “**dishonestly**” it is enough if there is a non-economic advantage to the deceiver or a non-economic loss to the deceived. The allegations in the charge sheet are that the petitioner is the deceiver, and he had deceived the Secretary, Ministry of Home Affairs, New Delhi, into believing that the letter was being sent to him by Sri M.A. Khan, M.P. The non-economic advantage to the petitioner, as is alleged in the charge sheet, is that he had a fair chance of becoming the Director - General of Police if only Sri V. Dinesh Reddy DGP was exposed badly. As the ingredients of the definition “**dishonestly**” are satisfied it cannot be said that, accepting the allegations in the charge sheet and the documents annexed thereto as true, the ingredients of Section 471 IPC are not attracted.

28. Sri P. Nageswara Rao, Learned Counsel for the petitioner, would, however, contend that the petitioner's intention, even according to the charge sheet, was merely to expose Sri V. Dinesh Reddy badly as he was not revealing details of the properties, transacted by his wife, in his annual property statements submitted to the Government; and the petitioner would have a fair chance of becoming the Director-General of Police if Sri V. Dinesh Reddy was exposed badly; as such the petitioner cannot be said to have either “**fraudulently**” or “**dishonestly**” made or signed the document as, if the facts stated in the letter sent in the name of Sri M.A. Khan were true and it was found that the wife of Sri V. Dinesh Reddy had assets in

her name which he had not disclosed to the Government in his annual property statements, the question of wrongful gain being caused to the petitioner or wrongful loss being caused to Sri V. Dinesh Reddy would not arise; all that the alleged forged letter had stated was for an impartial enquiry to be conducted by a competent agency; if the facts mentioned in the alleged forged letter is found to be true, and the petitioner is held to have had a fair chance to become the DGP, it was merely something which he was rightfully and legally entitled to; it did not amount to gaining illegally; and there was no wrongful gain by the petitioner.

29. In proceedings under Section 482 Cr.P.C, this Court would not be justified in analyzing the allegations in the charge sheet, and the documents enclosed thereto, to determine whether or not there was, in fact, wrongful gain by the petitioner, and whether or not the contents of the forged letter are true. The factual foundation for the offence under Section 471 IPC is laid in the charge sheet. It would, therefore, be wholly inappropriate for this Court to interfere in proceedings under Section 482 Cr.P.C. on the premise that, while the letter sent in the name of Sri M.A. Khan is forged, its contents are true. While these are all matters which may arise for consideration during the course of trial, an examination thereof would be wholly extraneous to proceedings under Section 482 Cr.P.C. I see no reason, therefore, to interfere in proceedings under Section 482 Cr.P.C, to quash the charge sheet in so far as it relates to the offence under Section 471 IPC.

SECTION 120-B AND SECTION 201 IPC:

30. Both the Learned Public Prosecutor, and Sri C. Padmanabha Reddy, Learned Senior Counsel, would submit that the allegations in the charge sheet also satisfy the ingredients of “**criminal conspiracy**” as defined under Section 120-A, and the offence under Section 120-B IPC; as also the offence under Section 201 IPC.

31. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If, pursuant to the criminal conspiracy, the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences. (**State of H.P. v. Krishan Lal Pardhan** (1987) 2 SCC

17).

32. The charge sheet refers to the call details of the cellphones of A-1 and A-3, during the relevant period, which constitutes prima facie evidence of a conspiracy. The factual narration of Sri T. Sunil Reddy (A-1) in his confession statement, coupled with the petitioner, along with A-1, perpetrating the illegal act of using a forged letter as genuine, and sending it to the Ministry of Home Affairs, Government of India, satisfy the ingredients of a criminal conspiracy as envisaged under Section 120A and 120B IPC.

33. The allegation in the charge sheet that the petitioner had got his computer formatted after downloading information relating to the registered documents of various individuals, taking advantage of his official access code, would amount to causing disappearance of evidence of the offence under Section 201 IPC. The allegations, in the charge sheet, prima facie, constitute an offence under Section 201 IPC also.

SECTION 468 IPC:

34. Section 468 IPC whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Learned Public Prosecutor would submit, rightly so, that the ingredients, to constitute an offence under Section 468 IPC, are “**forgery**” under Section 463; “**making a false document**” under Section 464 and “**cheating**” under Section 415 IPC.

35. Section 468 IPC is an aggravated form of forgery. Unlike “**forgery**” under Section 463 IPC, and “**using as genuine a forged document**” under Section 471 IPC, for both of which the punishment prescribed in Section 465 IPC is upto two years imprisonment or with fine or with both, the prescribed punishment for “**forgery for the purpose of cheating**” under Section 468 IPC is imprisonment upto seven years and also fine. The essential ingredients of Section 468 IPC are (i) that the accused committed forgery; and (ii) that he did so intending that the document forged shall be used for the purpose of “**cheating**”. Under Section 463

IPC, whoever makes any false document with the intention of causing damage or injury to the public or to any person, or with the intention to commit fraud, commits "**forgery**". Section 464 suggests that a person makes a false document if he - (1) dishonestly or fraudulently makes, signs, seals or executes a document; and (2) does as above with the intention of causing it to be believed that such document was made, signed, sealed or executed, (a) by or by the authority of a person by whom or by whose authority it was not so made, signed, sealed or executed; or (b) at a time at which he knows that it was not made, signed, sealed or executed. (**Parminder Kaur (supra)**). Section 415 IPC defines "**cheating**" to mean that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "**cheat**"; under the explanation thereto, dishonest concealment of facts is a deception within the meaning of Section 415. The ingredients of "**cheating**", under Section 415 IPC, are (i) the accused had deceived another person; (ii) the accused had intentionally induced the person so deceived to do something which he would not do, or omit to do if he were not so deceived; and (iii) such act or omission was such as to cause, or was likely to cause, damage or harm to the person induced in body, mind, reputation or property. Any person, who intentionally induces a person so deceived to do or omit to do anything which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "**cheat**". Section 415 IPC is in two parts. While in the first part, the person must "**dishonestly**" or "**fraudulently**" induce the complainant to deliver any property; in the second part, the person should intentionally induce the person so deceived to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. In order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered. (**G.V. Rao v. L.H.V. Prasad** (2000 CRI.L.J.3487); **Jaswantrai Manilal Akhaney v. State of Bombay** (AIR 1956 SC 575);**Mahadeo Prasad v. State of West Bengal** (AIR 1954 SC 724).

36. While the first part of the definition of “**cheating**” in Section 415 IPC relates to property, the second part does not necessarily relate to property. The second part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property. (**G.V. Rao (supra)**; **Kandaswami Gounder v. State of Tamil Nadu** (AIR 1957 MAD 727)). In so far as the second part of Section 415 is concerned, “**property**” is not involved at any stage. Here it is the doing of an act or omission to do an act by the deceived, as a result of intentional inducement by the accused, which is material. Such inducement should result in the doing of an act, or the omission to do an act, as a result of which the person deceived should have suffered or was likely to suffer damage or harm in body, mind, reputation or property. (**Kandaswami Gounder (supra)**).

37. Sri P. Nageswara Rao, Learned Counsel for the petitioner, would submit that, in order to attract the ingredients of Section 468 IPC, the charge sheet and the documents annexed thereto should allege that the petitioner had committed forgery intending that the document forged should be used for the purposes of “**cheating**”; it is not the case of the prosecution that the petitioner had induced any person to do anything, (which he would not have done if he were not so deceived), which act had caused injury to his mind, body or reputation, let alone property; a feeble attempt was made, during the course of arguments, that the mind of the Joint Secretary, Ministry of Home Affairs, Government of India was injured; nowhere in the charge sheet, or in the documents enclosed thereto, is there any allegation that damage was caused to the mind or reputation of any person, let alone, the Joint Secretary, Ministry of Home affairs; and neither Sri V. Dinesh Reddy, IPS nor the Joint Secretary, Home Affairs were examined nor were they cited as witnesses.

38. As noted hereinabove, while the charge sheet need not verbatim reproduce all the offences alleged, and interference in proceedings under Section 482 Cr.P.C. may not be called for if one or two of the ingredients have not been stated in detail, the charge sheet should atleast lay down the factual foundation for the alleged offence (**Rajesh Bajaj (supra)**). It is only if the charge sheet, and the documents enclosed thereto, contain allegations (even bald and bare allegations would suffice) attracting the ingredients of “**cheating**” under Section 415 IPC, can the petitioner be prosecuted for the offence under Section 468 IPC.

39. The allegations in the charge sheet, and the documents annexed thereto, lend support to the submission of the Learned Public Prosecutor that the petitioner, by sending the forged letter in the name of Sri M.A. Khan, M.P. to the Secretary, Ministry of Home affairs had deceived the Joint Secretary, Ministry of Home Affairs, Government of India to believe that the letter was sent by Sri M.A. Khan, M.P, and had induced him to write a letter to the Chief Secretary, Govt. of A.P, which he may not have done if he had known that the letter was not genuine, and was not sent by Sri M.A. Khan, M.P. That, however, would not suffice as, in order to satisfy the ingredients of “**cheating**” in Section 415 IPC, the charge sheet, and the documents annexed thereto, must atleast allege that the act of writing the letter to the Chief Secretary, Govt. of A.P. had either caused, or was likely to cause, damage to the body, mind, reputation or property of the Joint Secretary, Ministry of Home Affairs, New Delhi.

40. Both the Learned Public Prosecutor and Sri C. Padmanabha Reddy, Learned Senior Counsel, do not contend that the body or property of the Joint Secretary was damaged or was likely to be damaged by such act. They would contend that his mind or reputation was likely to be damaged. In this context it is useful to note that the meaning of “**mind**”, as per Merriam Webster Dictionary (in its noun form), is a part of an individual which feels, perceives, thinks, wills; and the verbal expression of “**mind**” is to attend to closely, to be concerned about, to take charge of the mind, and regard with attention.

41. Learned Public Prosecutor would submit that the definition of “**cheating**” is not confined only to actual damage or harm caused, but also extends to the likelihood

of damage or harm being caused to that person in mind; the contention that the charge sheet does not specifically refer to the person who was deceived, or how the mind of the person so deceived was harmed, is not tenable; it is the Secretary, Ministry of Home Affairs who had initiated action on the forged letter; he did something which he would not do in the ordinary course i.e., calling for a report from the Chief Secretary, Government of A.P; the very application of mind, or the decision taken in this regard, would disturb the mind of the Secretary, Ministry of Home Affairs; the ingredients of “**cheating**” under Section 415 IPC would be attracted if, in future, the Secretary, Home Affairs is faulted by his superiors; this would come under the purview of “**likely to cause damage**”; the essential ingredients constituting the offence need not be stated in the charge sheet in detail; the cumulative effect of the allegations in the charge sheet should be taken into consideration; and a meticulous analysis of the ingredients of “**cheating**” under Section 415 IPC is not required while deciding an application under Section 482 Cr.P.C.

42. Sri C. Padmanabha Reddy, Learned Senior Counsel, would submit that the petitioner, in his official capacity as the DG-ACB, had not done any act legally, but wanted to achieve something which he desired; the petitioner had conspired with A.1, and had forged letters in the name of others; and an accused, who commits forgery intending that the document forged shall be used for the purpose of cheating, is liable to be punished under Section 468 IPC. While fairly stating that there is no judicial pronouncement on the subject in India, Sri C. Padmanabha Reddy, Learned Senior Counsel, would submit that Section 415 IPC should be broadly understood in the factual situation; the only intentional inducement that is likely to cause harm or damage is perceived in the mind of that person; the expression “**mind**” in Section 415 IPC includes the ability of an individual to perceive, and do or omit to do a particular act; the meaning of “**mind**”, contextually applied to Section 415 IPC, should be understood to mean a person who intentionally induces the person deceived to act or omit to act which causes, or is likely to cause harm to the person deceived as such inducement will be perceived on the mind on the said illegal act being committed; but for the forged letter of Sri M.A. Khan, the Secretary, Ministry of Home Affairs, Government of India would not have acted to direct an enquiry into the contents of the letter by taking attention

thereof in its perception; the intellectual and mental qualities of the said person, therefore, had been sensitized by the forged letter which prompted the State to initiate an enquiry; it is to be understood, at this stage of the proceedings, that the mind of that person can be attributable either to the de jure or the de facto complainant; no distinction can be drawn at this stage of the proceedings between the two; bearing this in mind it is also essential to consider, and take note of the timing of, the letter to cull out the mens rea of the petitioner in his conspiracy with Sri T. Sunil Reddy in forging the letter; the vacancy in the office of the DGP was to fall vacant on 30.6.2011 on the retirement of the then DGP Sri K. Aravinda Rao; and the forged letter had been received by the Government of India on 5.5.2011; it must, therefore, be understood that the petitioner had deliberately and intentionally got the act done through A-1 to make the Government of India act on the letter which was likely to affect the State as well as its officers namely Sri V. Dinesh Reddy, IPS; in offences of this nature no strict distinction can be drawn between de jure and de facto complaints; it has to be broadly understood that, in criminal jurisprudence, when the offence has come to light and to the knowledge of the State, the harm caused would be both to the State as well as its subjects; in the exercise of its constitutional functions and duties, the State is obligated to investigate into acts of the offenders stepping into the shoes of the complainant; in this case an officer of the State and his services would be affected by virtue of the action or inaction on the basis of the letter received by it; it is therefore to be understood that the forged letter sent by the petitioner causes, or is likely to cause, damage to the State; another aspect which should be considered, for giving an effective meaning to Section 468 and 415 IPC, would be the harm that would be caused to the State; the harm would be the loss of services of one of its senior officers on false and flimsy grounds; it should be borne in mind that the petitioner intended it to happen that his acts should deprive the State of the services of a colleague senior officer of the force; for the said purpose, he had created a fake document forging the signature of Sri M.A. Khan, M.P; the offence of forgery simpliciter is punishable under Section 465 IPC; the group of sections beginning with Section 466 and ending with Section 469 provide for an aggravated form of forgery; the ingredients of the offence under Section 468 is the act of committing forgery with a particular intent, and that intent is to use the said forged document

for the purpose of cheating; Section 468 does not require that the accused should actually commit the offence of cheating; it is sufficient if the said act is “**likely to cause**”; forgery is usually an act done in furtherance of some other criminal design; what is material is the intention or purpose of the offender in committing forgery; if his intention and purpose, in committing forgery, is that the forged document should be used for the purpose of cheating, the offender is guilty of the aggravated offence under Section 468 IPC.

43. The fact, however, remains that the aforementioned submissions of both the Learned Public Prosecutor, and Sri C. Padmanabha Reddy, Learned Senior Counsel, are their understanding of the damage caused, or likely to be caused, to the Secretary/Joint Secretary, Ministry of Home Affairs, Govt. of India or to the State of Andhra Pradesh. Let alone, laying the factual foundation on how their mind or reputation had either been damaged, or was likely to be damaged, the charge sheet and the documents annexed thereto do not even contain a bare and bald allegation that either the mind or the reputation of the Secretary/Joint Secretary, Ministry of Home Affairs or the State of A.P. had either been damaged or was likely to be damaged by the act of the Joint Secretary, in addressing a letter to the Chief Secretary, Govt. of A.P., believing the forged letter to have been addressed by Sri M.A. Khan, M.P.

44. The contention of Sri C. Padmanabha Reddy, Learned Senior Counsel, that as the charge sheet does state that Sri V. Dinesh Reddy had suffered wrongful loss, that would suffice to hold that Sri V. Dinesh Reddy, IPS had, or was likely to have, suffered damage to his mind or reputation, does not merit acceptance. Section 415, which defines “**cheating**”, requires the person who was deceived to do an act, (which he would not have done, if he were not so deceived), to suffer damage, or likely to suffer damage, to his mind or reputation. It is not even alleged in the charge sheet that Sri V. Dinesh Reddy had done an act, which he would not have done if he had not been deceived. The only person who had done an act, on having been deceived by the petitioner, was the Joint Secretary, Ministry of Home affairs, New Delhi. In **Ram Jas v. State of U.P.**, (1970) 2 SCC 740, the Supreme Court held:-

“.....the persons, who were cheated or attempted to be cheated, referred to in the charges framed against the appellant, were Madan Lal, Chunni Lal, or the office of the Relief and Rehabilitation-cum-Settlement Officer, Saharanpur. There was no charge at all relating to any cheating or attempting to cheat the Oath Commissioner. In fact, the case was never brought to Court with the intention of obtaining conviction of the appellant for any offence of cheating in respect of the Oath Commissioner. Not only was there no charge in this respect, but, in addition, the appellant, when questioned under Section 342 of the Code of Criminal Procedure after the prosecution evidence had been recorded, was not asked to explain evidence relating to such a charge of cheating the Oath Commissioner. **No doubt, there was mention of commission of forgery of affidavits; but the mention of the commission of that offence could not possibly lead the appellant to infer that he was liable to be convicted for abetting the offence of cheating the Oath Commissioner.....**”(emphasis supplied)

45. As the charge sheet, and the documents annexed thereto, do not allege that the Secretary/ Joint Secretary either suffered, or were likely to suffer, damage to their mind or reputation, the ingredients of “**cheating**” as defined in Section 415 IPC are not attracted. Even if the allegations in the charge sheet, and the documents annexed thereto, are read in its entirety and accepted as true, the petitioner cannot be said to have “**cheated**” or to have committed an offence under Section 468 IPC.

46. While no interference is called for regarding the offences under Section 471, 120-B and 201 IPC, the charge sheet, in so far as the petitioner is alleged to have committed an offence under Section 468 IPC, is liable to be quashed. This Court, in exercise of its jurisdiction under Section 482 Cr.P.C., can quash a charge sheet in part. Reference, in this context, can usefully be made to **State of U.P. v. Suresh Chandra Shrivastava** (1984) 3 SCC 92), wherein the Supreme Court held:-

“.....In the instant case, as already pointed out by us, on the facts narrated by the Registrar in his complaint no offence under Sections 467, 471 and 120-B, IPC is at all revealed and as such it is not necessary to go into

the question as to what offences are connected with Sections 467, 471 and 120-B and which are severable from them. **The High Court was fully justified in quashing the proceedings against the accused as far as offences under Sections 467, 471 and 120-B, IPC were concerned**, not because they were covered by Section 195 of the Code but because allegations contained in the complaint did not constitute these offences. **The High Court was further fully justified in directing that other offences mentioned above did not require a complaint under Section 195 and would have to be tried.....**” (emphasis supplied)

MAINTAINABILITY OF A PETITION UNDER SECTION 482 Cr.P.C. WHERE THERE IS AN ALTERNATIVE REMEDY:

47. On the maintainability of the Criminal Petition under Section 482 Cr.P.C, Learned Public Prosecutor would submit that, if a particular charge against the accused is without basis, Section 239 Cr.P.C. enables the accused to seek, or the Court to direct, his discharge; and, when a remedy under Section 239 Cr.P.C. is available, a petition under Section 482 Cr.P.C. ought not to be entertained.

48. Sri C. Padmanabha Reddy, Learned Senior Counsel, would submit that the petitioner can always invoke the jurisdiction of the concerned Magistrate's Court at the time of framing charges, as also by filing an application for discharge under Section 239 Cr.P.C; if the Magistrate concerned does not exercise jurisdiction to discharge, there is always a remedy available to the aggrieved under Section 397 Cr.P.C; if the offences as framed are not made out the prosecution can, at any stage, withdraw prosecution under Section 321 Cr.P.C; the standard of proof for discharge under Section 239 Cr.P.C is the availability of a prima facie case and it need not eventually stand up to judicial scrutiny; if, upon considering the police report, the trial court comes to the conclusion that no prima facie case is made out it can pass an order discharging the accused of any offence or all the offences which he was charged by the prosecution; when an alternative remedy is available to the petitioner, any exercise of inherent powers by this Court would amount to interference with the discretion of the Magistrate who is empowered to proceed with the trial of the case in order to come to a final conclusion whether the

allegations are substantiated with suitable clinching oral and documentary evidence; and the Court cannot examine facts/evidence in every case to find out whether there is sufficient material on the basis of which the case would end in conviction.

49. On the other hand Sri P. Nageswara Rao, Learned Counsel for the petitioner, would submit that the provision of “**discharge**” under Section 239 Cr.P.C. does not bar an application under Section 482 Cr.P.C and, hence, the petition filed before this Court under Section 482 Cr.P.C. to quash the charge sheet, is maintainable.

50. No hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extra-ordinary jurisdiction of quashing the proceeding at any stage. (**Janata Dal (supra) M. Devendrappa¹; Raghubir Saran (Dr) (supra)**). Inherent powers under Section 482 include powers to quash the FIR, investigation or any criminal proceedings pending before the High Court, or any court subordinate to it, and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court, and to make such orders as may be necessary to give effect to any order under the Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice, and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly, carefully and with caution. (**Padal Venkata Rama Reddy (supra)**). The inherent power is to be exercised *ex debito justitiae* to do real and substantial justice for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. (**Mrs. Dhanalakshmi (supra); Ganesh Narayan Hegde vs. S. Bangarappa** (1995) 4 SCC 41); and **M/s Zandu Pharmaceutical Works Ltd. vs. Md. Sharaful Haque and amp** (AIR 2005 SC 9); **Padal Venkata Rama Reddy (supra)**. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers is designed to achieve a salutary public purpose which is that a

court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has to be administered according to laws made by the legislature. (**L. Muniswamy (supra)**; **Padal Venkata Rama Reddy (supra)**). That the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial, if he considers the charge to be groundless, does not mean that the accused cannot approach the High Court under Section 482 of the Code to have the proceeding quashed when no offence has been made out against them, and still they are required to undergo the agony of a criminal trial. (**G. Sagar Suri (supra)**; **Pepsi Foods Ltd. v. Special Judicial Magistrate** (1998) 5 SCC 749) and **Ashok Chaturvedi v. Shitul H. Chanchani** (1998) 7 SCC 698). Merely because a revision lies under Section 397 Cr.P.C, would not, by itself, constitute a bar for entertaining an application under Section 482 of the Code. Even in cases where a second revision before the High Court, after dismissal of the first one by the Court of Session, is barred under Section 397(2) of the Code, the inherent power of the Court is available. (**Dhariwal Tobacco Products Limited v. State of Maharashtra** (2009) 2 SCC 370); **R.P. Kapur v. State of Punjab** (AIR 1960 SC 866) and **Som Mittal v. Govt. of Karnataka** (2008) 2 SCC 574).

51. In **Padal Venkata Rama Reddy (supra)**, the Supreme Court held that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant, and not in a situation where a specific remedy is provided by the statute; it cannot be used if it is inconsistent with the specific provisions provided under the Code; and, if an effective alternative remedy is available, the High Court will not exercise its powers under this Section, specifically when the applicant may not have availed of that remedy. After having so held, the Supreme Court went on to examine whether the charge sheet, and the statement of witnesses, had made out a prima facie case. After going through the complaint, the material, the allegations in the charge sheet, and the statement of witnesses, the Supreme Court held that it could not be presumed that there was no legal and acceptable evidence in support of the prosecution.

52. While this Court would exercise its inherent powers under Section 482 Cr.P.C. with due care and caution, and not repress a legitimate prosecution, it would nonetheless be justified in quashing the proceedings if it finds that initiation/continuation of it amounts to an abuse of process of Court. The inherent power of this Court is designed to achieve a salutary public purpose which is that a court proceeding should not be permitted to degenerate into a weapon of harassment or persecution requiring the petitioner to suffer the agony of a trial. When the charge sheet, and the documents annexed thereto, do not lay the factual foundation for the offence alleged under Section 468 IPC, requiring the petitioner to undergo the agony of a trial for the said offence would, undoubtedly, cause him needless harassment, and tantamount to persecution.

53. This Court is required to exercise its jurisdiction under Section 482 Cr.P.C. ex debito justicia to prevent the abuse of process of court. Neither the charge sheet nor the documents annexed thereto allege that the person deceived (i.e., either the Secretary or the Joint Secretary, Ministry of Home Affairs) had suffered, or was likely to suffer, injury to his mind or reputation for having addressed a letter to the Chief Secretary, Government of A.P. asking him to cause an enquiry on the basis of the forged letter. It would not only be wholly inappropriate, but would also result in injustice being caused to the petitioner, if he is required to undergo the agony of a trial for the offence alleged under Section 468 IPC. As the basic facts, (bald and bare allegations), attracting the ingredients of “**Cheating**” under Section 415 I.P.C. are not even alleged in the charge sheet, I see no justification to refrain from exercising jurisdiction under Section 482 Cr.P.C. merely on the ground that the petitioner can seek discharge under Section 239 Cr.P.C or that the prosecution may, in future, withdraw prosecution under Section 321 Cr.P.C.

54. In the result the Criminal Petition is partly allowed, and the charge sheet in C.C.No.555 of 2011, (renumbered as C.C.No.846 of 2011), is quashed in part to the extent the petitioner is charged of the offence under Section 468 IPC. In so far as the other offences under Sections 471, 120B and 201 IPC are concerned, the proceedings before the court below shall continue without being influenced by any observations made in this order.